

GROUND LEASE
AND
MASTER DEVELOPMENT SERVICES AGREEMENT

between

CITY OF FLAGSTAFF, an Arizona municipal corporation,

as Landlord

and

GENTERRA ENTERPRISES, LLC, an Arizona limited liability company,

as Tenant

dated _____, 2024

**GROUND LEASE
AND MASTER DEVELOPMENT SERVICES AGREEMENT**

THIS GROUND LEASE AND MASTER DEVELOPMENT SERVICES AGREEMENT (this "**Lease**" or the "**Agreement**," as the context may require) is entered into as of the ____ day of _____, 2024 (the "**Effective Date**") by and between City of Flagstaff, an Arizona municipal corporation ("**Landlord**" or "**City**"), and Genterra Enterprises, LLC, an Arizona limited liability company ("**Tenant**" or "**Genterra**"). Landlord and Tenant may be referred to in this Lease individually as a "**Party**," or collectively as the "**Parties**."

RECITALS

As background to this Lease, the Parties recite and acknowledge the following, each of which is a material term of, and is included in, this Lease:

A. City is the owner of an approximately 31.468-acre tract of undeveloped land located adjacent to the Flagstaff Pulliam Airport (the "**Airport**") in the City of Flagstaff, Coconino County, Arizona, the legal description of which tract of land is attached to this Lease as Exhibit A, and incorporated into this Lease for all purposes (the "**Land**").

B. On August 16, 2020, City issued a Request for Statement of Qualifications 2021-06 (the "**RSOQ**") for a master developer to design, develop, lease, and operate a commercial and/or industrial development (the "**Project**") on the Land.

C. On September 21, 2020, Genterra submitted its Statement of Qualifications (the "**SOQ**") in response to the RSOQ.

D. On December 15, 2020, City, acting through its City Council (the "**City Council**"), determined Genterra was the best qualified candidate and directed staff to enter into negotiations for master development services with Genterra to develop and lease the Land.

E. On April 29, 2021, the Parties entered into a Pre-Development Engagement Agreement regarding the Project.

F. On June 8, 2021, the Parties entered into a Reimbursement Agreement regarding the Project.

G. The purpose of this Agreement is to provide for the leasing of the Land and the development of the Project in general accordance with the RSOQ and the SOQ, but in all events subject to the terms and conditions of this Agreement.

H. On March 19, 2024, the City Council passed Resolution No. 2024-12, authorizing and approving City's execution of this Agreement. Unless otherwise specified in this Lease, all acts of Landlord (or City) are (or are required to be) the actions of the City Council of the City of Flagstaff, Arizona, acting in its sole discretion.

NOW, THEREFORE, in consideration of the rents, terms, and conditions set forth in this Lease, the Parties agree as follows:

ARTICLE 1

Lease of Property, Permitted Uses

1.1 **Lease.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Land (the “**Premises**” or “**Land**”), subject to (a) all existing encumbrances of record; (b) the reservation or grant of all easement rights required as part of the City of Flagstaff Community Development review process for development of the Project (collectively, “**Easements**”); (c) the reservation of rights and future utility easements needed by City under Section 10.7; and (d) this Lease.

1.2 **Premises Adjustment.**

(a) After any Public Infrastructure has been dedicated to and accepted for maintenance by City (acting in its capacity as a municipal corporation rather than as Landlord under this Lease), the Parties will prepare and attach to this Lease an amended Exhibit A that removes any areas from the Premises that are dedicated public rights-of-way upon which Tenant has constructed any portion of the required Public Infrastructure. The area of the Premises will not be reduced to exclude utility easements (whether public or private), driveways connecting to public rights-of-way, cross-access easements, or areas upon which Public Infrastructure has been constructed that do not constitute public rights-of-way. If Tenant elects to construct the Public Infrastructure in phases, the Premises will be adjusted in corresponding phases, with an amended Exhibit A being prepared (and attached to this Lease) with respect to each such phase to remove any area from the Premises that is dedicated public right-of-way upon which Tenant has constructed any portion of the required Public Infrastructure.

(b) Additional land near the Airport that is owned by the City of Flagstaff may be added to the Premises, following a competitive solicitation process per the City Procurement Code Manual and in accordance with FAA requirements, upon the mutual agreement of the Parties and upon the amendment of this Lease.

1.3 **Permitted Uses.** Tenant may use the Premises as professional office space, short-term lodging, retail and restaurant, light industrial, research and development, and other “airport-related” industries, as permitted in the applicable zoning classification for the Land (collectively, “**Permitted Uses**”). No residential use of the Premises is permitted. No more than 50% of the Premises may be used for short-term lodging, retail or restaurant uses, or any combination of such uses. Tenant agrees to use good faith efforts to secure subtenants engaged in “airport-related” industries as priority uses within the Project. As of the Effective Date, one of Tenant’s potential uses of the Premises, “Research and Development Uses,” requires a conditional use permit and therefore is not permitted as of right by the Land’s zoning (Highway Commercial).

1.4 Prohibited Uses.

(a) Tenant shall not use (or permit the use of) the Premises for any use other than the Permitted Uses without the prior written consent of Landlord, which consent may be withheld by Landlord in its sole but reasonable discretion.

(b) Tenant and its subtenants shall not use the Premises for any unlawful use.

(c) Tenant and its subtenants shall not use the Premises in any manner that may materially interfere with operations of the Airport (as the same may be constituted from time-to-time during the Term), as determined by the Airport Director in the Director's discretion, or directives (or similar regulations) of the Federal Aviation Administration ("**FAA**"). Tenant shall not use or allow any use of the Premises that will attract wildlife and birds to the Premises; provided, however, compliance with standard City development requirements including but not limited to landscaping, resource protection, secured trash bins, and stormwater detention is permissible.

(d) Tenant's construction of all improvements on the Premises shall (a) comply with FAA Form 7460 (as the same may be amended or replaced from time to time) and (b) be subject to the reservation in favor of City of an Avigation Easement in City's standard form. Tenant shall not use or allow any use of the Premises that may cause the City of Flagstaff to be in violation of the FAA Assurances for Airport Sponsors, which may be amended from time to time.

1.5 Within ten (10) business days of the Effective Date, Landlord will deliver to Tenant copies of all material Third-Party reports performed to date relating to the physical condition of the Land that are in Landlord's possession. Copies may be in digital format.

1.6 **Right of City to Use Premises.** Notwithstanding anything in this Lease to the contrary, City reserves and retains the right to use any or all portions of the Premises during the one-year period following the Effective Date (that is, during the first Lease Years, the "**City Reserved Use Term**") for any purpose.

ARTICLE 2

Term and Termination

2.1 **Term.** This Lease commences on the Effective Date, and continues for forty (40) years (the "**Initial Term**"), plus any Renewal Term (collectively, with the Initial Term, the "**Term**"), unless sooner terminated as provided for in this Lease. Each full year of the Term (as the same may be extended in accordance with Section 2.2) may be referred to in this Lease as a "**Lease Year.**"

2.2 **Renewal Terms.** Provided that there is no Event of Default by Tenant, and upon not less than one year's, and no more than two years', prior written notice to Landlord to be received prior to the expiration of the then-current Term (the "**Notice Period**"), Tenant in its sole election may renew this Lease for two (2) additional twenty-five (25) year terms (individually a "**Renewal Term**" and collectively "**Renewal Terms**"). Tenant's right to renew this Lease may

be exercised only during the applicable Notice Period and only for one Renewal Term at a time. During any Renewal Term, all terms and conditions of this Lease will continue in full force and effect; provided that, as a condition of Tenant's renewal of this Lease, Landlord may require Tenant at Tenant's expense to perform such maintenance and repairs to the Building(s) that Landlord (in its reasonable discretion) has determined are necessary to return the Building(s) to a good and marketable condition, normal wear and tear excepted.

2.3 Termination by Tenant for Convenience. Tenant may terminate this Lease for convenience upon sixty (60) days' Notice to Landlord at any time prior to Tenant's commencement of construction of the Phase 1 Public Infrastructure ("**Tenant Termination Date**"). Within ninety (90) days following Landlord's receipt of Notice of Tenant's requested termination (the "**Grace Period**"), Tenant shall pay to Landlord the sum of Rent for Year 1 (\$57,250.00), or a prorated sum if Tenant terminates prior to the completion of the first year of the Term, plus Base Rent (as adjusted pursuant to Section 3.3) for any subsequent year of the Lease prorated through the termination date, less any Base Rent that has been previously paid by Tenant through the termination date, payable to Landlord pursuant to the same terms of payment and amortization described in Section 3.5(c) below as though Tenant was making payments of Deferred Rent except that all unpaid amounts due and owing after the Grace Period shall accrue interest at one percent (1%) monthly. Upon the expiration of the Tenant Termination Date, Tenant will have no right to terminate this Lease except as may otherwise be provided for herein or available at law. This provision shall survive the termination of this Lease.

2.4 Early Termination by Landlord.

(a) If the Landlord does not approve the Development Plan (as defined in Section 6.2.b), including plans for construction of the Public Infrastructure, because (i) the Development Plan has not been timely completed by Tenant in accordance with all terms and conditions of this Lease, including but not limited to the timelines and deadlines specified in Section 6.2, or (ii) the Development Plan does not comply with this Lease and all existing municipal ordinances and regulations, and county, state, and federal laws and requirements (collectively, "**Applicable Laws**"), including but not limited to incomplete submissions, or failure to pay applicable fees, following any applicable notice and cure period provided in this Lease, then this Lease will automatically, and without further act or notice required, terminate, and the Parties will have no further liability to each other except for (1) Tenant shall be obligated to pay Rent for Year 1 (\$57,250.00), or a prorated sum if Tenant terminates prior to the completion of the first year of the Term, plus pay Base Rent (as adjusted pursuant to Section 3.3) for any subsequent year of the Lease prorated through the early termination date, less any Base Rent that has been previously paid by Tenant, which shall be due immediately and in full, and (2) Tenant's obligations of indemnity that expressly survive the termination of this Lease. The City's denial of rezoning or a conditional use permit application is not considered to be the failure to approve a Development Plan or cause for early termination under this subsection.

(b) If Landlord does not approve the Development Plan, even though it has been timely completed and meets the terms and conditions of this Lease, then this Lease will automatically, and without further act or notice required, terminate, in which event (i) the Parties will have no further liability to each other (except for obligations of indemnity that expressly survive the termination of this Lease); and (ii) Landlord shall forgive 100% of the accrued Deferred

Rent and interest to the date of termination and shall reimburse Tenant for its actual Third-Party verifiable costs spent from the Effective Date to the termination date with respect to the Pre-Development Analyses and Pre-Construction Services of the Project, in an amount not to exceed \$3,741,393.00. As a precondition to City's obligation to forgive any Deferred Rent and reimburse Tenant for any costs, Tenant shall transfer (and shall cause its applicable architectural and engineering professionals to transfer) all licenses and rights to use all plans and specifications specific to the design, construction, and operation of the Public Infrastructure and any other construction, architectural, and engineering plans for the Project that may exist.

2.5 **Ownership of Buildings and Improvements.** During the Term (including any Renewal Term), ownership of and title to all Buildings and Improvements will be held by Tenant. At the expiration of the Term or earlier termination of the Lease, ownership of all Buildings and Improvements will automatically, and without further act or notice required, vest in Landlord free and clear of any debt, encumbrance, or other obligation, except those that may be explicitly approved by Landlord as described below in Section 11.2. Upon request from Landlord, Tenant will promptly execute all instruments reasonably requested by Landlord (including but not limited to deeds and bills of sale) to document Landlord's title to the Buildings and Improvements at the expiration of the Term.

ARTICLE 3

Rent and Other Amounts to be Paid to Landlord

3.1 **Rent.** For the purposes of this Lease, "**Rent**" means the Rent required to be paid by Tenant to Landlord for lease of the Premises as summarized in the Rent Schedule attached hereto as Exhibit B (the "**Rent Schedule**"), along with any other amounts required to be paid by Tenant to Landlord under this Lease. Although Landlord may use Rent for any municipal purpose, it is Landlord's intention to apply Rent to its operations of, and enhancements to, the Airport.

3.2 **Base Rent.** "**Base Rent**" means the appraised fair rental value of the Premises, as determined by a licensed commercial appraiser mutually and reasonably acceptable to the Parties ("**FRV**"), as adjusted pursuant to Section 3.3. Base Rent as of the Effective Date of the Lease is \$527,500.00 per year, based upon the appraisal prepared by Appraisal Technology, LLC with a valuation date of March 10, 2023, a copy of which will be kept on file with the Flagstaff City Clerk's Office.

3.3 Adjustments to Base Rent During Term.

(a) **Base Rent Adjustment for Premises Reduction.** Base Rent shall be adjusted when the Premises is reduced in size in accordance with Section 1.2, such adjustment being proportionally based on the reduced size of the Premises, and calculated on a per square foot basis. The adjusted Base Rent thereafter will be due and owing commencing on the first day of the month after City's acceptance of the Public Infrastructure in accordance with such adjustment.

(b) **Annual Increase to Base Rent.** Base Rent will be automatically increased annually during the Term by two percent (2%) on each anniversary of the Effective Date (each, an "**Adjustment Date**").

(c) Periodic Adjustments to Base Rent.

(1) At any time after the initial five (5) years of the Agreement, and no more than once every five (5) years, Landlord or Tenant, at its respective expense, may obtain an appraisal of the FRV of the Premises from a licensed commercial appraiser mutually and reasonably acceptable to the Parties (each, an “**Updated Appraisal**”). Each Party shall have the opportunity to review a draft Updated Appraisal and provide comments to the appraiser prior to finalization of the Updated Appraisal. If the other Party does not object in writing to the Updated Appraisal within 30 days from receipt, then the Updated Appraisal shall be used as the “**Final FRV**.” If the other Party does object to the Updated Appraisal, then, the other Party, at its own expense, may elect to obtain a second-opinion appraisal with the same valuation date from a licensed commercial appraiser mutually and reasonably acceptable to the Parties (also an “Updated Appraisal”). The Parties at their mutual expense will then retain a licensed commercial appraiser mutually acceptable to the Parties to conduct a Review of the two Updated Appraisals to render a final opinion as to FRV (“**Final FRV**”).

(2) After the determination of Final FRV, Landlord shall increase or decrease the Base Rent to match the Final FRV commencing on the next anniversary of the Effective Date (and the adjusted Base Rent will continue to be subject to annual increases in Base Rent thereafter as required by Section 3.3(b) until any subsequent readjustment under this Section 3.3(c)). Any increase or decrease in the Base Rent shall be prospective only.

(3) The Parties acknowledge that Base Rent as adjusted with the 2% annual increase required by Section 3.3(b) may be less than or more than FRV over time.

(d) Notice of Base Rent Adjustments. Landlord shall send written notice to Tenant of each Base Rent Adjustment under this Section 3.3. Copies of all supporting materials, such as the reduced Premises calculation or any Updated Appraisal, shall be kept on file with the Flagstaff City Clerk’s Office.

3.4 Rent Payments. Although Tenant is obligated for Base Rent throughout the Term, the payments of Base Rent required to be made by Tenant will be variable as set forth in this Section and as summarized in the Rent Schedule.

(a) During Lease Year 1 (that is, the City Reserved Use Term), in view of the value to City of (i) the City’s right to use the Premises, and (ii) the Pre-Development Analyses being performed on and at the Premises by Tenant during such time, Rent will be \$52,750.00, which is 10% of the Base Rent. During Lease Year 1, Rent may be deferred pursuant to Section 3.5.

(b) During Lease Years 2 through 5, the portion of Base Rent required to be paid by Tenant is 50% of the Base Rent. During Lease Years 2 through 5, Rent may be deferred pursuant to Section 3.5.

(c) During Lease Years 6 through 9, the portion of Base Rent required to be paid by Tenant is 75% of the Base Rent.

(d) Commencing with Lease Year 10 and continuing thereafter, the portion of Base Rent required to be paid by Tenant is 100% of Base Rent.

(e) In consideration of reduced Rent in Lease Years 2-9, Tenant shall pay a fixed annual sum of \$243,650.00 during Lease Years 10 through 17 (“**Recapture Rent**”) as additional Rent, payable in equal monthly installments. If the Deferment Period is extended per Section 3.5(b), the Recapture Rent will increase to \$255,117.00 during Lease Years 10 through 17. The Recapture Rent was calculated to enable Landlord to recover Base Rent (including an assumed 2% annual increase in Base Rent) in Lease Years 2 through 9 and 2.65% interest on Deferred Rent amortized over 15 years. Recapture Rent is part of the overall consideration for this Agreement and shall not be adjusted, although all or a portion of Recapture Rent may be prepaid by Tenant in its sole discretion.

(f) If there is an Event of Default by Tenant during Lease Years 1 through 17, and such Event of Default is not resolved within the applicable cure period, then (and in addition to any other remedy of Landlord) all Base Rent as calculated from the Effective Date (including but not limited to any unpaid Deferred Rent) will be immediately due and owing from Tenant to Landlord, payable to Landlord pursuant to the same terms of payment and amortization described in Section 3.5(c) below as though Tenant was making payments of Deferred Rent.

3.5 **Deferred Rent and Deferment Period.**

(a) At any time that there is no Event of Default by Tenant, Tenant at its option may defer payment of Rent that accrues during the Deferment Period as defined in Section 3.5(b). Any Rent that is deferred is “**Deferred Rent**.” Nothing in this Section 3.5(a) precludes Tenant from paying Rent during the Deferment Period.

(b) “**Deferment Period**” means the earlier of forty-eight (48) months after the Effective Date, or any sooner termination date of the Lease. City Council, acting in its sole discretion, may approve an extension of the Deferral Period for up to one (1) additional year (that is, a total of 60 months from and after the Effective Date), as an amendment to this Lease.

(c) At the expiration of the Deferment Period, Tenant shall make payments of Deferred Rent concurrently with Tenant’s monthly payments of Rent, with the amount of Deferred Rent amortized over a period of fifteen (15) years. Tenant may elect to pay Rent during the Deferment Period; provided, however, the fixed amounts due under the Rent Schedule for Repayment of Deferred Rent shall not be adjusted as a result of Tenant’s early payments, and payments will be applied to the first available Lease Year. The fixed payment amount for the forty-eight (48) month Deferment Period shall be \$58,404.00 per year during Lease Years 5 through 19. If the Deferment Period is extended pursuant to Section 3.5(b), the fixed payment amount for the sixty (60) month Deferment Period shall be \$77,437.00 per year during Lease Years 6 through 20. Tenant may prepay all or any portion of Deferred Rent at any time, without penalty, in its sole discretion.

(d) If the Lease is terminated pursuant to Section 2.3 of this Lease, Deferred Rent shall be paid as set forth in that Section.

(e) If the Lease is terminated pursuant to Section 2.4 of this Lease, Deferred Rent shall be paid or forgiven as set forth in that Section.

3.6 **Remittance.** Rent (including Base Rent, Deferred Rent, and additional Recapture Rent outlined in Section 3.4(e)), will be paid directly to Landlord by Tenant. Rent and all other amounts due will be paid in equal monthly installments in advance on the first day of each month in lawful money of the United States of America without notice or demand. If the Effective Date,

or the termination or expiration date of this Lease, is other than the first day of a month, Tenant shall be required to pay a pro rata portion of the monthly installment of Rent for any partial month. Tenant will pay Rent (including Deferred Rent) to the City of Flagstaff, City Treasurer, 211 W. Aspen Avenue, Flagstaff, Arizona 86001, or to such other persons or at such other addresses as Landlord may designate from time to time in writing to Tenant.

3.7 **Transaction Privilege and Use Taxes.**

(a) This Lease. Tenant shall pay to Landlord all transaction privilege (sales) and use taxes due and owing with respect to Tenant's payments of Rent, at the same time and in the same manner as Tenant's payments of Rent.

(b) Subleases. Tenant shall pay all taxes due and owing with respect to its Sublease payments, and is solely responsible for reporting and remitting such taxes. Tenant acknowledges that Landlord has no responsibility for collecting, remitting, or reporting such taxes, and Landlord disclaims any responsibility for such payments and reports.

3.8 **No Abatement of Rent.** Except as otherwise expressly provided in this Lease, no happening, event, occurrence, or situation during the Term (or any Extended Term), whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its obligations in this Lease to pay Rent to Landlord, or entitle Tenant to an abatement or otherwise defer any payments of Rent.

3.9 **Late Charge.** If Tenant fails to pay any Rent on or before the applicable date due for such payment, then Tenant shall pay to Landlord, in addition to the installment of Rent, as applicable, that is in default, one percent (1%) of such installment or amount, as applicable, as a late payment fee, which is owing to Landlord for its additional costs incurred for the administration of this Lease by reason of such late payment, and not as a penalty. The acceptance by Landlord of any late payment fee does not (i) relieve Tenant of its obligation to make timely payments of Rent as required by this Lease nor (ii) constitute a waiver by Landlord of its rights for default by Tenant under this Lease.

ARTICLE 4

Impositions, Utilities, Net Lease

4.1 **Impositions.** "Impositions" shall mean all taxes, assessments, use and occupancy taxes, water and sewer charges, rates and rents, charges for public utilities, excises, levies, license and permit fees and other charges by any public authority, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which shall or may during the Term be assessed, levied, charged, confirmed, or imposed by any public authority upon, or accrue, or become a lien on (i) the Land or any part thereof; (ii) the buildings or improvements now or hereafter constructed on the Land; (iii) the appurtenances to the Premises or the sidewalks or streets adjacent to the Premises; (iv) the rent and income received by or for the account of Tenant from any subtenants or for any use or occupation of the Premises; (v) such franchises, licenses, and permits as may be pertinent to the use of the Premises; or (vi) any documents to which the Tenant is a party creating or transferring an interest or estate in the Premises. Impositions shall not include any income tax, capital levy, estate, succession, inheritance, or transfer taxes, or similar tax of Landlord; any franchise tax imposed upon any owner of the fee of the Premises; or any

income, profits, or revenue tax, assessment, or charge imposed upon the rent or other benefit received by Landlord under this Lease by any association having jurisdiction over the Land, any municipality, county, state, the United States of America, or any other governmental body, subdivision, agency, or authority having jurisdiction over the Land or Tenant, including the City (hereinafter all of the foregoing bodies are collectively referred to as “**Governmental Authorities**”).

4.2 **Tenant’s Obligation.** From and after the Base Rent Commencement Date and continuing throughout the remainder of the Term (including any Extended Term), Tenant will pay all Impositions as and when they become due. Notwithstanding the foregoing, Tenant’s obligation to pay all ad valorem taxes and assessments (as part of the Impositions) with respect to the Land or any Building(s) on the Premises shall commence on the Effective Date (or the date of completion of construction as to any Building(s) as determined by the Coconino County Assessor). Impositions that are payable by Tenant for the tax year in which the Term commences, as well as during the year in which the Term ends, shall be apportioned so that Tenant shall pay its proportionate share of the Impositions payable by Tenant for such periods of time. If and as required, Tenant shall pay to Landlord, within thirty (30) days following demand therefore, Tenant’s proportionate share of all Impositions payable by Tenant for the tax year in which the Term ends. Where any Imposition that Tenant is obligated to pay may be paid pursuant to law in installments, Tenant may pay such Imposition in installments as and when such installments become due. Tenant shall, if so requested, deliver to Landlord evidence of due payment of all Impositions Tenant is obligated to pay hereunder, concurrently with the making of such payment.

4.3 **Tax Contest.** Tenant may, at its sole cost and expense, contest the validity or amount of any Imposition for which it is responsible. So long as Tenant diligently pursues the contest, the payment of the Imposition being contested may be deferred, as permitted by law, during the pendency of such contest. Nothing contained in this Lease, however, shall be construed to allow any Imposition to remain unpaid for such length of time as would permit the Premises, or any part thereof, to be sold or seized by any Governmental Authority for the nonpayment of same. Landlord will, at the request of Tenant, cooperate in such contest, provided that Landlord is not required to incur any expense in connection with any such contest.

ARTICLE 5

Landlord’s Warranties and Covenants

5.1 **Warranties of Title and Use.** Landlord warrants and represents to Tenant that it holds fee simple title to the Land and has full right, power, and authority to enter into this Lease, and the consummation of this Lease by City has been duly authorized by all necessary municipal action. Landlord further warrants that: (i) the execution, delivery, and consummation of this Lease is not prohibited by and does not conflict with any other agreements or instruments to which City is a party or is otherwise subject; (ii) City has received no notice as of the Effective Date asserting any noncompliance in any material respect with applicable statutes, rules, and regulations of the United States of America, the State of Arizona, City, or of any other state or municipality or agency having jurisdiction over and with respect to the transactions contemplated in and by this Lease; (iii) City has caused no construction to have been performed on the Land during the ninety (90) day period prior to the execution of this Lease for which payment has not been made; (iv) the uses

described in Section 1.3 are permitted as of right on the Premises by the Flagstaff Zoning Code; and (iv) there are no mortgages or other liens granted by Landlord encumbering the Land.

5.2 **Dedications and Easements.** In order to split or plat the Land or to construct the Public Infrastructure and the Project on the Land, it may be necessary or desirable that street, water, sewer, drainage, gas, power lines, set-back lines, and other easements, dedications, and similar rights be granted or dedicated over or within portions of the Land by plat, replat, grant, deed, or other appropriate instrument. Landlord shall, on written request of Tenant, timely join with Tenant in executing and delivering such documents, in recordable form, from time to time throughout the Term, as may be reasonably appropriate, necessary, or required by any Governmental Authority, public utility, or company for the purpose of granting such easements and dedications. Tenant shall have the right to review and reasonably approve any and all documents regarding declarations, development, and easements affecting the Land, or any portion thereof.

ARTICLE 6

Development Schedule, Pre-Development Analyses, Pre-Construction and Construction of Public Infrastructure

6.1 Definitions.

(a) **“Buildings”** or **“Improvements”** means collectively all buildings, structures, and other improvements constructed on the Premises, except for and expressly excluding the Public Infrastructure dedicated to and accepted by the City of Flagstaff.

(b) **“Pre-Development Analyses”** means those analyses, services, reports, surveys, and studies described in Section 6.2.

(c) **“Public Infrastructure”** means all off-site and on-site improvements and other public infrastructure required by any platting and permitting process for the Project, including, but not limited to, the provision of, or upgrades and additions to, (i) stormwater management/drainage systems; (ii) grading and paving; (iii) water distribution and sanitary sewer systems, including but not limited to reclaimed water lines; (iv) electrical distribution, telecommunications systems, and other public utilities; (v) roadway improvements; (vi) curbs, gutters, and sidewalks; (vii) landscaping within public rights-of-way identified on the subdivision plat; and (viii) easements and other property interests required as part of the City of Flagstaff Community Development review process.

(d) **“Pre-Construction Services”** means those bona fide, Third-Party services, reports, plans, documents, and studies necessary for planning and final approval of the construction of the Public Infrastructure, as described in Section 6.3.

(e) **“Third-Party”** means any person that is not a Party or an Affiliate of a Party, except that Permitted Affiliates shall be considered Third Parties. **“Affiliate”** as applied to any person, means any person directly or indirectly controlling, controlled by, or under common

control with, that person or a blood relative or spouse of such person, if such person is a natural person. “**Permitted Affiliate**” for purposes of this Lease shall mean only Kinney Construction Services, Inc., Kinney Construction, LLC, The Genterra Group, LLC, and Timothy Kinney PLLC that were identified in Tenant’s SOQ as being part of Tenant’s development team, and only with the members existing as of that date, and none other. For the purposes of this definition, (i) “control” (including with correlative meaning, the terms “controlling,” “controlled by,” and “under common control”), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, by contract or otherwise, and (ii) “person” means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts, or other organizations, whether or not legal entities.

6.2 **Pre-Development Analyses.** Tenant will secure necessary funding, the adequacy of which shall be in its sole but reasonable discretion, no later than twelve (12) months after the Effective Date, and will notify Landlord of the funding date (the “**Funding Date**”). Tenant will complete its Development Plan (as defined in Section 6.2(b)) and Pre-Development Analyses necessary to determine the feasibility and constructability for the Project’s future phases, including the planning and preliminary design of the necessary Public Infrastructure no later than eighteen (18) months after the Funding Date; provided, however, Landlord will provide a reasonable extension of this deadline: (a) if the City does not meet its standard published review time frames for Tenant’s submittals or if Tenant’s submittals are under review by the City at the time the deadline occurs; and/or (b) if a Planning and Zoning Commission Meeting or City Council Meeting where the Tenant’s proposed Development Plan has been scheduled to be considered is cancelled, postponed, or continued; or (c) if the City Mayor and Council otherwise decide to delay or withhold approval of Tenant’s Development Plan (the “**Pre-Development Period**”). Developer will perform pre-development and due diligence services, including but not limited to:

(a) Creation of a commercial and/or industrial research park business plan; review and issuance of necessary title commitments and reports; master planning of the Project including preliminary surveys, preliminary civil engineering, landscaping, and a geotechnical analysis (which may include multiple soils samples, a Phase I Environmental Assessment per the National Environmental Policy Act (NEPA), and a Phase II report, if necessary); construction estimates and budgets; creation of bidding and procurement processes for subcontractors; and financing requirements based on the preliminary estimates and budgets for future phases.

(b) Tenant, in consultation with City, will create and have approved by City (in accordance with City Code and City’s standard procedures) a master Development Plan per City Code Section 11-20.80 Development Master Plans in effect as of the Effective Date of this Agreement or an equivalent instrument for the Project. The Development Plan, or equivalent, at a minimum will identify the internal road layout, any necessary Public Infrastructure, including permitted phasing of the construction of Public Infrastructure by Tenant (the “**Development Plan**”). In the event Tenant is required to seek approval for a Conditional Use Permit (“CUP”) or rezoning, the CUP or rezoning approval shall be considered part of the Development Plan approval for purposes of this Agreement. City will review the proposed Development Plan per its standard City Code requirements and statutory time frames including providing Tenant with comments regarding any required revisions, if applicable or necessary, and will endeavor to review and

provide comments and approvals in a shorter time frame when possible. The City shall provide Tenant the same opportunities to address its review comments and resubmit revised versions of the Development Plan that the City affords all other applicants for development approvals. In the event the City intends to formally reject the Development Plan due to a reason specified in Section 2.4(a) of this Lease, the City shall provide Tenant with a minimum of ninety (90) days' prior written notice of its intention within which Tenant may further attempt to resolve the issue.

(c) Subject to City's approval in accordance with City's standard procedures, Tenant shall plan and have received all necessary land split or subdivision plat approvals needed prior to construction of the Public Infrastructure, which will separate the Public Infrastructure and future non-public areas of the Land. The City will review the applications per its standard Community Development Division standards and statutory time frames, if applicable, and will endeavor to review and provide comments and approvals in a shorter time frame when possible.

(d) Tenant shall create an estimated schedule and timeline for the Pre-Construction and construction of the Project based upon its Pre-Development Analyses. The schedule will be maintained and updated by Tenant showing tasks, deadlines, persons assigned to complete tasks, and current status. Tenant will complete work per the schedule, subject to Force Majeure.

(e) During Tenant's Pre-Development Analyses, the Parties shall negotiate in good faith, draft, agree upon, and have executed and recorded any necessary or desired amendments to or replacement of, the Land's existing Covenants, Conditions, and Restrictions ("CC&Rs"), and subject to any necessary approvals from adjacent property owners having rights to enforce CC&Rs. The CC&Rs may include Building construction and design standards and other terms common for similar business/airport/technology/commerce parks.

(f) Tenant shall create template draft sublease agreements to be used when subleasing future portions of the Premises that will include certain reasonable sublease terms required by the Landlord and that comply with Section 11.2.

6.3 Pre-Construction of Public Infrastructure. Upon the completion and approval of the Development Plan, Tenant shall create and submit to Landlord all necessary civil engineering documents, construction plans, and construction documents for the Public Infrastructure to be completed in phases, each being a "**Public Infrastructure Phase**" (all of which must be approved by the City acting in its regulatory capacity as a municipal corporation in accordance with Applicable Laws).

6.4 Construction of Public Infrastructure. Upon Tenant's obtaining necessary construction approvals and securing funding needed to construct one or more phases of the Public Infrastructure, Tenant will promptly engage a Third-Party contractor and construct the applicable phase or phases of the Public Infrastructure in conformance with the construction standards included below in Section 6.8(a).

(a) Tenant will issue surety bonds for the entire cost of construction of the Public Infrastructure. The bonds (in a form reasonably approved by City of Flagstaff acting in its capacity as a municipal corporation) will be written to protect City's interests in the Land, Tenant's lenders, and all contractors and subcontractors engaged and hired by Tenant to perform work on the Project.

(b) Tenant will complete (or cause the completion of) each approved Public Infrastructure Phase no later than thirty-six (36) months after commencement of construction of each phase. Landlord (acting through its City Council and in the Council's sole and absolute discretion) and Tenant may agree to reasonable extensions of the timeline to complete the Public Infrastructure.

6.5 Ownership, Dedication, Acceptance, and Maintenance of Public Infrastructure.

(a) Public Infrastructure shall be the property of Tenant until such time as it is dedicated to and accepted by City.

(b) Tenant shall convey and transfer the relevant Public Infrastructure Phase to City, in a form reasonably approved by City and free and clear of all liens, claims, and encumbrances. All Public Infrastructure shall be dedicated pursuant to Landlord's standard plat dedication language and other agreements for dedication and acceptance.

(c) City will be responsible for maintenance or repair of the Public Infrastructure upon acceptance by City; provided, however, Tenant or a common area maintenance association controlled by Tenant is required to provide for maintenance of sidewalks in the same manner as a property owner under the Flagstaff City Code. In addition, either Tenant or a common area maintenance association controlled by Tenant, shall be responsible for keeping sidewalks cleared of snow and making any repairs to such sidewalks caused by tree roots or other damages caused by Tenant, its subtenants, or their invitees. Landlord shall maintain and keep in good condition (as required by any then-applicable City Code) all other Public Infrastructure. Tenant may require its subtenants to maintain adjacent sidewalks as condition of a sublease, but such delegation does not relieve Tenant of its obligations under this Lease.

6.6 Funding of Pre-Development Analyses, Pre-Construction, and Construction of Public Infrastructure. Tenant shall be responsible for obtaining necessary funding for its Pre-Development Analyses, services, and the costs of Pre-Construction Services, and of construction of the Public Infrastructure, for construction of the private portions of the Project, and for payment of Deferred Rent. The Parties acknowledge that Tenant may collaterally assign its interest in this Lease to a qualified Lender(s) providing financing for the Public Infrastructure and overall Project. Landlord will reasonably cooperate with Tenant (at no additional cost to Landlord) in Tenant's application for grants to reduce and/or cover the Tenant's costs of Public Infrastructure. Any grants received by Landlord for the planning, design, and/or construction of the Public Infrastructure shall be used for the purposes set forth in the grant. Notwithstanding anything else contained in this Lease, Tenant's obtaining funding for any Pre-Development activities, or for any subsequent design and construction of the Project, whether from lenders, from investors or otherwise, is not a condition to Tenant's performance under this Lease. In the event Tenant is unable to secure necessary funding on acceptable terms, which acceptance shall be in Tenant's sole but reasonable discretion, despite its good faith and diligent efforts to secure such funding, Tenant may request that Landlord consider adjustments to the deadlines, time frames, and schedules contained in this Lease; but City's then-governing City Council acting in its sole discretion has no obligation to make any amendment to this Lease.

Tenant may seek to obtain funding to develop the Project, including the Public Infrastructure, by any means, including but not limited to efforts to: (a) establish and utilize a

Community Facilities District (“**CFD**”), a Municipal Improvement District (“**MID**”), a Revitalization District (“**RD**”), or other financing mechanism or special taxing district; (b) apply for and obtain industrial development authority bonds; (c) apply for and obtain any local, county, state, private, or national bonds, grants, or other sources of financing that may be used to support the development of the Project; (d) apply for and obtain approval of any incentives offered through the Arizona Commerce Authority or other similar economic development agency or organization sponsored by the State of Arizona; (e) obtain any private or publicly subsidized loans; and (f) establish financing for any project or business through the federal programs contained in 8 CFR 204.6 and 8 CFR 216.6, including establishment of a regional center within the Property. If Tenant is able, and chooses to establish a CFD, MID, RD, or any other mechanism or special taxing district, Landlord shall not bear any costs of such financing mechanisms, including any taxes placed on the Property. The failure or inability of Tenant to qualify for or obtain such funding will not be a breach of this Lease by Landlord, or constitute an Event of Default by Landlord.

Upon receipt of Tenant’s written request for assistance, Landlord will endeavor timely to provide information and public records reasonably requested by Tenant to any agency, private institution, or public body in order to permit Tenant to obtain funding for the development of the Project. Landlord shall not be required to make any out-of-pocket expenditure related to Tenant’s efforts. Landlord may provide further support or assistance in its reasonable discretion.

6.7 Recovery of Costs. If a CFD, MID, and/or RD is formed to fund the pre-construction and/or construction of Public Infrastructure, Tenant will be permitted to recover one-hundred percent (100%) of any and all costs that Tenant has expended or will expend in designing, planning, installing, and/or constructing Public Infrastructure to the Project in accordance with this Lease and all applicable laws including those relating to public procurement. Such costs shall also include Tenant’s Third-Party costs and other professional costs as well as any Landlord costs, fees, and/or deposits which may be required related to the establishment of a CFD, MID, RD, and/or other mechanisms or districts. Nothing herein will modify or amend, or will be construed to modify or amend, Tenant’s obligations under this Lease, including but not limited to payment of Rent.

Tenant may apply for the City’s Development Reinvestment Incentive program, or any other economic development programs offered by the City from time to time. Any application by Tenant will be considered by City based on then-current eligibility criteria. Nothing contained in this Lease shall be interpreted to waive or restrict Tenant’s right to seek other means of recovery of its costs to construct Public Infrastructure; and the failure or inability of Tenant to qualify for or participate in any such program will not be a breach of this Lease by Landlord, or constitute an Event of Default by Landlord.

6.8 Construction Standards, Project Completion, and Liens.

(a) **Construction Standards.** The Improvements shall be constructed, and any alteration, renovation, repair, refurbishment, or other work with regard to the Improvements shall be performed, in accordance with the following standards (“**Construction Standards**”):

(1) All such construction or work shall be performed in a good and workmanlike manner in accordance with good industry practice for the type of work in question.

(2) All such construction or work shall be done in compliance with all applicable deed restrictions, building codes, ordinances, and other laws or regulations of Governmental Authorities and in accordance with plans and specifications approved by such Governmental Authorities, including City.

(3) No construction or work shall be commenced until all licenses, permits, and authorizations required of all Governmental Authorities having jurisdiction are obtained.

(4) Tenant shall have obtained and shall maintain in force and effect the insurance coverage required in Article 9 with respect to the type of construction or work in question.

(b) **Completion.** After commencement of the first Building in each phase of the Project, construction of all Buildings and Improvements in the phase will be prosecuted with due diligence to completion and in no event later than thirty-six (36) months after commencement of such phase (the “**Scheduled Completion Date**”), subject to Force Majeure and reasonable extensions as may be requested by Tenant and granted by City in its sole and absolute discretion, if Tenant is proceeding diligently and in good faith. The construction of the Project will be prosecuted with due diligence to its completion and in no event later than twenty-five (25) years after the Effective Date, subject to Force Majeure and reasonable extensions as may be requested by Tenant and granted by City in its sole and absolute discretion, if Tenant has been proceeding diligently and in good faith (the “**Project Completion Date**”).

(c) **Mechanic’s and Materialmen’s Liens.** Tenant shall have no right, authority, or power to bind Landlord or any interest of Landlord in the Land for any claim for labor or for material or for any other charge or expense incurred in constructing any Improvements or performing any alteration, renovation, repair, refurbishment, or other work with regard thereto, nor to render Landlord’s interest in the Premises liable for any lien or right of lien for any labor, materials, or other charge or expense incurred in connection therewith. Tenant shall not be considered the agent of Landlord in the construction, erection, or operation of any such Improvements. If any liens or claims for labor or materials supplied or claimed to have been supplied to the Premises are filed, Tenant shall cause the same to be satisfied, released, discharged, or bonded off within ninety (90) days after Tenant first becomes aware of the filing of such lien or claim.

6.9 **Tenant’s Equipment Defined.** The term “**Tenant’s Equipment**” means all trade fixtures and personal property, including, without limitation, furnishings, furniture, equipment, sign faces, computers, computer-related equipment on property, cabling, security systems, communications equipment, and other equipment or property useful to Tenant in its operations for use in connection with the conduct of Tenant’s business regardless of the manner in which they are installed.

6.10 **Ownership and Removal of Tenant’s Equipment.** Tenant’s Equipment shall be solely the property of Tenant. Within ninety (90) days following the expiration or termination of the Term, Tenant shall remove all Tenant’s Equipment from the Premises, unless Landlord gives prior written approval in its sole discretion to allow abandonment in place. Tenant shall repair any

damage caused by such removal. If Tenant fails to remove all Tenant's Equipment within such ninety (90) day period, all of Tenant's Equipment remaining on the Premises shall become the property of Landlord without any credit or compensation to Tenant, and Landlord may invoice Tenant for, and Tenant shall promptly pay, the reasonable costs of removal or disposal.

ARTICLE 7

Buildings

7.1 Terms Specific to Construction of Individual Buildings; Sustainability.

(a) Upon completion of construction and dedication and acceptance by the City of the Public Infrastructure required by City (acting in its regulatory capacity as a municipal corporation) to serve any particular phase of the Project (or the entire Project if there is no phasing), Tenant will plan, design, and pre-lease Buildings to a minimum of sixty-five percent (65%) occupancy, and then construct individual Buildings for the Project. Commencement of construction of individual Buildings shall be in Tenant's sole discretion and may be completed in multiple phases which may include one or more Buildings. Upon commencement of the planning of an individual Building, Tenant, with City's input and consent and in compliance with existing agreed upon terms and the Project's CC&Rs, will conduct necessary pre-construction services to create construction, engineering, architectural, and landscape plans, as well as construction cost estimates, construction schedules and phases, and draft sublease terms and conditions, and will ensure compliance with all City and FAA regulations.

(b) **Sustainability.** Tenant shall cause the Project to be designed and constructed to meet or exceed adopted sustainability standards of the City, as amended from time to time. Tenant acknowledges that Landlord desires the Project to be a model of sustainability, and the Parties will negotiate in good faith during the Pre-Development Phase to agree upon commercially and economically reasonable sustainability design and construction standards for Buildings based upon the City staff's current recommended sustainability guidelines that have not yet been adopted as City Code and that are above what is required of City Code. Additionally, Tenant shall make good faith efforts to address the City's Carbon Neutrality Plan (CNP) goals throughout the creation of the Development Plan, with an emphasis on Net Zero Energy Development and the creation of a Transportation Demand Management Program. "**Net Zero Energy Development**" means a development that balances its energy needs with energy produced from renewable, zero-emission sources. "**Traffic Demand Management Program**" means a program of information, encouragement, and incentives to encourage the use of transportation options to optimize all modes in the system, including both traditional and innovative technology-based services to help people use transit, ridesharing, walking, biking, and telework.

ARTICLE 8

Use, Maintenance and Repairs

8.1 **Use.** Except for the Permitted Use, Tenant shall not use the Premises for any other use or purpose not permitted by Section 1.3 above without the prior written consent of Landlord,

which consent may be withheld by Landlord in its sole but reasonable discretion. Tenant shall not use or occupy, knowingly permit the Premises to be used or occupied, nor do or knowingly permit anything to be done in or on the Premises in a manner which would (i) in any way make void or voidable any insurance then in force with respect thereto, (ii) make it impossible to obtain the insurance required to be furnished by Tenant hereunder, (iii) constitute a public or private nuisance, or (iv) violate any (A) deed restrictions affecting the Land (other than restrictions which would prohibit or restrict use of the Land for the operation of the contemplated Improvements for the Permitted Use hereunder), or (B) present or future, ordinary or extraordinary, foreseen or unforeseen, laws, regulations, ordinances, or requirements of any Governmental Authority. Tenant, at Tenant's expense, shall at all times cause the Premises and any improvements thereon to be in compliance with the Americans with Disabilities Act.

8.2 **Maintenance and Repairs.** Subject to Tenant's rights under Article 6, Tenant shall take good care of the Premises, and shall maintain and keep the Premises and Buildings in good order, repair, and condition at all times during this Lease. Tenant will not commit, knowingly permit, or suffer any waste, damages, disfigurement, or injury to or upon the Premises or Buildings or any part thereof, but this Section shall not be construed as limiting Tenant's rights under Article 6.

ARTICLE 9

Insurance and Indemnity

9.1 **Liability Insurance.** At all times during the Term, Tenant shall maintain public liability insurance, insuring Landlord against claims for property damage and bodily injury occurring at the Project in accordance with the policy limits and requirements set forth in Exhibit B, and subject to increases in such policy limits as are reasonably required by Landlord to maintain comparable coverage over the lengthy Term of this Lease. In addition, Tenant is responsible for causing contractors and other persons performing services or work on the Premises to comply with City's insurance requirements relating to the design and construction of Public Infrastructure, as set forth in more detail in Exhibit C attached to this Lease, in addition to any applicable surety bond requirements herein.

(a) The insurance certificates submitted by Tenant to City shall indicate that the Commercial General Liability carries an endorsement which names City, and the City Council and its members, and City's employees and agents, as additional insureds. Policies of insurance obtained by Tenant, contractors, and subcontractors shall be primary to any insurance carried by City and any insurance carried by City shall be noncontributing with respect thereto.

(b) If Tenant delegates performance of any of its services, work, obligations, duties, or responsibilities under this Lease to a subcontractor in accordance with the terms thereof, each subcontractor is also required to purchase and maintain insurance coverage that satisfies the requirements of Exhibit C attached to this Lease. The failure of Tenant or any subcontractor to obtain and/or maintain the required coverage will be an event of default if such failure continues for a period of sixty (60) days after written notice from City to Tenant.

(c) Tenant's procuring and maintaining the required insurance shall not relieve, release, or discharge Tenant of any services or work or obligation, duty, responsibility, or liability hereunder, including without limitation, the indemnity obligations of Tenant hereunder. Tenant may carry, at its cost and expense, such additional insurance, as Tenant deems necessary or appropriate. Tenant shall assist and reasonably cooperate with City in connection with the adjustment of any claims arising out of Tenant's services, work, obligations, activities, business, and operations relating to the Project, and shall cooperate in all claims, demands, and proceedings arising therefrom which its insurance carrier or carriers are requested to respond.

9.2 Indemnity.

(a) Tenant shall indemnify, defend, pay, and hold Landlord, its successors and assigns, its elected and appointed officials, employees, agents, boards, commissions, representatives, and attorneys (each, a "**Landlord Party**"; and collectively, "**Landlord Parties**") harmless for, from, and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges, and expenses, including property damage, personal injury, and wrongful death, and further including, without limitation, architects' and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against Landlord Indemnified Parties by reason of any of the following occurring during the Term unless caused solely by the gross negligence or willful misconduct of the Landlord Indemnified Parties:

(1) Tenant's construction of any Improvements constituting the Project, or any other work done therein, on or about the Premises or any part thereof by Tenant or its agents;

(2) any use, nonuse, possession, occupancy, alteration, repair, condition, operation, maintenance, or management of the Premises or Improvements;

(3) any nuisance made or suffered on the Premises or Improvements;

(4) any failure by Tenant to keep the Premises or Improvements, or any part thereof, in a safe condition;

(5) any acts or omissions of the Tenant or any subtenant or any of its or their respective agents, contractors, employees, licensees, or invitees;

(6) any fire, accident, injury (including death), or damage to any person or property occurring in, on, or about the Premises or any part thereof;

(7) any failure on the part of Tenant to pay rent or to perform or comply with any of the covenants, agreements, terms, or conditions contained in this Lease on its part to be performed or complied with and the exercise by Landlord of any remedy provided in this Lease with respect thereto;

(8) any lien or claim which may be alleged to have arisen against or on the Premises or improvements or any part thereof or any of the assets of, or funds appropriated to, Landlord or any liability which may be asserted against Landlord with respect thereto to the extent arising, in each such case, out of the acts of Tenant, its contractors, agents, or subtenants;

(9) any failure on the part of Tenant to keep, observe, comply with, and perform any of the terms, covenants, agreements, provisions, conditions, or limitations contained in the subleases or other contracts and agreements affecting the Premises or improvements or any part thereof, on Tenant's part to be kept, observed, or performed;

(10) any transaction relating to or arising out of the execution of this Lease or other contracts and agreements affecting the Premises or improvements, the Project, or any part thereof or any activities performed by any Party, person, or entity which are required by the terms of this Lease or such other contracts and agreements; and

(11) any tax, including any tax attributable to the execution, delivery, or recording of this Lease, with respect to events occurring during the term of this Lease.

Any or all of the foregoing obligations may be referred to as an "**Indemnification**" or "**Indemnity**"; and the obligation of Tenant to provide Indemnification of Landlord may be referred to as an obligation to "**Indemnify**."

(b) Tenant will hold all goods, materials, furniture, fixtures, equipment, machinery, and other property whatsoever on the Premises and improvements at the sole risk of Tenant and Indemnify, defend, pay, and hold Landlord harmless for, from, and against any and all loss or damage thereto by any cause whatsoever, other than ordinary wear and tear and repair and replacement arising out of Tenant's maintenance obligations.

(c) The obligations of Tenant under this Section shall not in any way be affected by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting the Premises.

(d) If any claim, action, or proceeding is made or brought against Landlord by reason of any event to which reference is made in this Section 9.2, then, upon demand by Landlord, Tenant, at its sole cost and expense, shall resist or defend such claim, action, or proceeding in Landlord's name, if necessary, by the attorneys for Tenant's insurance carrier (if such claim, action, or proceeding is covered by insurance), otherwise by such attorneys as Landlord shall approve, which approval shall not be unreasonably withheld or delayed.

(e) The provisions of this Section 9.2 shall survive the expiration or earlier termination of this Lease for a period of two (2) years or any longer applicable statute of limitations.

ARTICLE 10

Condemnation

10.1 **Total Taking.** Should the entire Premises be taken (which term, as used in this Article, shall include any conveyance in avoidance or settlement of eminent domain, condemnation, or other similar proceedings) by any Governmental Authority, corporation, or other entity under the right of eminent domain, condemnation, or similar action, then Tenant's right of possession under this Lease shall terminate as of the date of taking possession by the condemning

authority, and the entire award will be paid to Landlord and will be distributed by Landlord as follows: (i) first, to reimburse Tenant for all unreimbursed Costs of Public Infrastructure, the repayment of all Tenant's then-outstanding debts incurred developing the Project, (ii) second, to the Parties' reasonable fees and expenses incurred in collecting the award; and (iii) third, the balance of the award to be equitably apportioned between Landlord and Tenant based on the then respective fair market values of Landlord's interest in the Land (appraised as if vacant and available for development according to its highest and best use, with the Public Infrastructure in place as it then exists) and Tenant's interest in the Premises (appraised by reference to all relevant factors, including the future income stream derivable by Tenant from the Premises for the remainder of the Term). If Landlord and Tenant are unable to agree on the respective fair market values of their interest in the Premises, then, at the request of either Party, the matter will be resolved by binding arbitration before a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. After the determination and distribution of the condemnation award as provided in this Lease, the Lease shall terminate, and the Parties shall have no further rights, duties, or obligations under the Lease.

10.2 Partial Taking. Should a portion of the Premises be taken by any Governmental Authority, corporation, or other entity under the right of eminent domain, condemnation, or similar action, such that in Landlord's and Tenant's reasonable judgment, so much of the Premises shall be so taken as to make it economically unsound to use the remainder for the uses and purposes contemplated in this Lease, then this Lease shall terminate as of the date of taking of possession by the condemning authority in the same manner as if the whole of the Premises had thus been taken, and the award therefor shall be distributed as provided in Section 10.1. Should any other partial taking of the Premises occur, then this Lease nevertheless shall continue in effect as to the Premises, or the remainder thereof, as the case may be. In the event of a partial taking where this Lease is not terminated, the amounts payable during the remainder of the Term after taking of possession by the condemning authority shall be reduced on a just and proportionate basis having due regard to the relative value and square footage of the portion of the Premises thus taken as compared to the remainder thereof and taking into consideration the extent, if any, to which Tenant's use of the remainder of the Premises shall have been impaired or interfered with by reason of such partial taking. If Landlord and Tenant are unable to agree as to a just reduction in Base Rent, then, at the request of either Party, the matter will be resolved by binding arbitration before a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

10.3 Award on Partial Taking. In the event of a partial taking where this Lease is not terminated, and as a result thereof Tenant will need to restore, repair, or refurbish the remainder of the Premises in order to put them in a usable condition, then (i) the award shall first be paid to Tenant for payment of such restoration, repair, and refurbishment in accordance with the Construction Standards and (ii) the remainder, or if no repair or restoration work is required, shall be apportioned and paid as provided in Section 10.1(iii), considering the respective interests of Landlord and Tenant in the portion of the Premises taken.

10.4 Temporary Taking. If the whole or any portion of the Premises is taken for temporary use or occupancy, the Term shall not be reduced or affected, and Tenant shall not be

required to pay Rent until the temporary taking is concluded. Except to the extent Tenant is prevented from so doing pursuant to the terms of the order of the condemning authority, Tenant shall continue to perform and observe all of the other covenants, agreements, terms, and provisions of this Lease. In the event of any temporary taking, Tenant shall be entitled to receive the entire amount of any award therefor unless the period of temporary use or occupancy shall extend beyond the expiration of the Term, in which case such award, after payment to Landlord therefrom for the estimated cost of restoration of the Premises to the extent that any such award is intended to compensate for damage to the Premises, shall be apportioned between Landlord and Tenant as of the day of expiration of the Term in the same ratio that the part of the entire period for such compensation is made falling before the day of expiration and that part falling after, bear to such entire period.

10.5 Notice of Taking, Cooperation. Landlord and Tenant shall immediately notify the other of the commencement of any eminent domain, condemnation, or other similar proceedings with regard to the Premises. Landlord and Tenant covenant and agree to fully cooperate in any condemnation, eminent domain, or similar proceeding in order to maximize the total award receivable in respect thereof. Any termination of this Lease pursuant to this Article 10 shall not affect the rights of Landlord and Tenant to any such award.

10.6 Conflict with Permitted Mortgage. Notwithstanding anything contained in this Lease to the contrary, the requirements in the loan documents of any Permitted Mortgage regarding use of such condemnation award proceeds shall prevail over this Article 10.

10.7 Reservation of Rights and Future Easements Needed by City. Notwithstanding anything in this Article 10 to the contrary, the reservation of rights by City for future easements over the Premises will not be a taking, a condemnation, or an act of eminent domain entitling Tenant to compensation or abatement of Rent; and during the Term, Landlord reserves the right to declare public utility (and similar) easements in favor of City over parking lots and other open and unimproved portions of the Premises which are not proposed for development, with Tenant's consent, which shall not be unreasonably withheld and so long as such easement(s) do not interfere with or alter the approved Development Plan or the usable area of the Premises, without additional compensation to Tenant or Tenant being entitled to any reduction in or abatement of Rent, provided that Landlord restores the Premises to its condition as reasonably existing prior to the installation of all public utility (and related) infrastructure at Landlord's sole cost and expense. Landlord shall provide Tenant not less than ninety (90) days' prior written notice detailing the scope and locations of its proposed easement(s) or public utility work (as applicable) on the Premises.

ARTICLE 11

Assignment and Subletting

11.1 Tenant's Right to Assign. Provided that Tenant is not in default of any term or condition of this Lease, Tenant may assign the entirety of its rights hereunder to any other single person or entity with Landlord's prior written approval, including an assignment contemplated by Subsection 11.1(e), which approval shall not be unreasonably withheld or delayed in any case, and upon such assignee's unconditional assumption of all of Tenant's liabilities under this Lease.

(a) Notwithstanding the foregoing, Tenant has represented to Landlord that it intends to develop the Project through the use of two separate entities: one for the overall Project, including conducting Pre-Development Analyses and the Pre-Construction Services necessary to design and plan the Public Infrastructure and the Buildings and other non-public portions of the Project, and for the construction and operation of the non-public portions of the Project (“**Entity One**”); and the second specifically for the construction of the Public Infrastructure when such plans are approved and the Public Infrastructure areas of the Land have been identified, and if deemed necessary by Tenant (“**Entity Two**”). In such event, and subject to Landlord’s right to approve all assignments of this Lease, Landlord will reasonably consider an assignment in which Tenant assigns this Lease in its entirety to Entity One for the purposes and uses described in the foregoing sentence. Additionally, Landlord will reasonably consider an assignment in which Entity One assigns to Entity Two its specific and limited interest of solely the right to construct and dedicate the Public Infrastructure. Such assignment from Entity One to Entity Two for the construction and dedication of the Public Infrastructure may occur upon the following: (i) Tenant’s Pre-Development Analyses are completed or near completion, (ii) the Development Plan has been approved, (iii) plans for Public Infrastructure have been approved (including the severance of the Public Infrastructure from the future non-public areas of the Land), and (iv) Tenant has secured funding for the construction of the Public Infrastructure. Upon the completion, dedication, and acceptance of the Public Infrastructure as required by this Lease, Entity Two’s rights in the assigned portions of this Lease shall terminate, and Entity Two shall re-assign its rights in this Lease to Entity One.

(b) Upon Landlord’s written approval of any proposed assignment of all or some of Tenant’s rights under this Lease, Genterra shall be released from liability under this Lease (except for obligations of indemnity that expressly survive termination or assignment), and Tenant’s assignee shall become the new Tenant.

(c) Landlord shall indicate its written approval or disapproval of any proposed assignee within sixty (60) days after Tenant gives to Landlord notice of the proposed assignment, including the identity of the proposed assignee and reasonably sufficient information as to the proposed assignee and proposed use to enable Landlord to evaluate such assignee. Landlord acknowledges Entity One and Entity Two will be created for the specific purposes described herein and therefore will have no history at the time of Tenant’s requested assignment. Landlord shall therefore not withhold its consent to an assignment based upon Entity One or Entity Two’s lack of history alone. If Landlord fails to indicate its approval or disapproval within such sixty (60) day period, Landlord shall be deemed to have approved the requested assignment. Any assignment of Tenant’s rights under this Lease that are not in accordance with this Section shall be void, and not voidable.

(d) In the event of an approved assignment under Section 11.1(a), the obligations of Entity One and Entity Two shall be cross-defaulted, so that a default by Entity One will be a default of Entity Two that entitles Landlord to exercise all of its rights for a default by Tenant under this Lease, and a default by Entity Two will be a default of Entity One that entitles Landlord to exercise all of its rights for a default by Tenant under this Lease.

(e) The transfer of the controlling interest in Tenant shall be deemed an assignment within the meaning of this Section 11.1. As used in this Section 11.1, the definition of term “control” or “controlling interest” shall mean (i) direct or indirect ownership of more than

fifty (50%) percent of the voting rights associated with the ownership of the Tenant, or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the business, management, or policies of the Tenant, through the power of being the manager of the Tenant or having the power to vote for a majority of the representatives to serve on a board of managers, or a board of directors. Provided control or a controlling interest is retained by Tenant under either subsection (i) or (ii) in the preceding sentence, there shall not be deemed a transfer of a controlling interest in Tenant for the purposes of this Section 11.1. Any transaction by which Tenant or any manager, majority shareholder, or general partner of Tenant undergoes a merger or other reorganization, including, without limitation, a sale of all or substantially all of its assets, wherein the stakeholders of Tenant or of Tenant's member, majority shareholder, or general partner, as applicable, immediately before the merger or reorganization do not retain control of the surviving corporation, limited partnership, limited liability company, or other entity, shall be deemed a transfer of this Lease for purposes of this Section 11.1. Notwithstanding anything to the contrary in this Lease, if Tenant is a publicly traded company, any sale or other transfer of any of the stock of, or other ownership interests in, Tenant shall not be deemed an assignment within the meaning of this Section 11.1 unless said sale or other transfer is made by a person or entity (or related groups of persons or entities) owning a controlling interest in Tenant and results in a change in the person(s) or entity/entities having control of Tenant.

11.2 Tenant's Right to Sublease.

(a) Tenant may enter into subleases, licenses, or otherwise permit the occupancy or use of all or any portion of the non-public portions of the Premises, and may keep the revenue therefrom, provided that (i) the lease term of each such sublease, license, or right of occupancy (including all renewal and extension rights of any kind or type) shall not extend past the stated expiration date of the Term, unless Landlord consents in writing thereto, which consent may be granted or withheld in Landlord's sole and reasonable discretion, and (ii) the intended use by the subtenant, licensee, or occupant is consistent with the Permitted Uses.

(b) Subject to Section 11.2(a) above, each sublease, license, or right of occupancy for space in the Improvements shall specifically provide that the subtenant's, licensee's, or occupant's rights thereunder are subject to Landlord's rights under this Lease and shall provide that upon a termination of this Lease or of Tenant's right to possession of the Premises, such sublease, license, or right of occupancy shall continue in effect as a lease or license directly between Landlord and the subtenant or licensee thereunder, provided that (i) the subtenant or licensee attorns to Landlord, (ii) Landlord shall not be responsible for the return or repayment of any security or other deposits made by such subtenant or licensee with Tenant unless Tenant has turned the same over to Landlord, and (iii) Landlord shall not be liable or responsible for the cure or remedy of any breach, violation, or default on the part of Tenant under subleases or licenses occurring prior to termination of this Lease or of Tenant's right to possession of the Premises. Tenant shall give a copy of each sublease or license to Landlord upon request therefor by Landlord from time to time. During the term of any sublease or license, Tenant shall remain primarily liable for all obligations of "Tenant" hereunder.

(c) Subject to Section 11.2(a) above, if for any reason this Lease or Tenant's right to possession of the Premises is terminated by Landlord in accordance with the terms of this Lease, such termination shall not result in the termination of any subleases or licenses

affecting the Premises whose subtenants or licensees have previously entered into subordination, non-disturbance, and attornment agreements with Landlord in a form approved by Landlord.

(d) As used in this Lease, the term “sublease” shall include any leases, licenses, occupancy agreements, franchise, or other similar rights, agreements, or arrangements of whatever nature relating to the use or occupancy of any part of the Premises.

11.3 Collateral Assignment of Reimbursement Obligations. Tenant may collaterally assign to its construction lender Landlord’s obligations of reimbursement described in this Agreement, if any; provided that (i) promptly upon such collateral assignment Tenant must provide Landlord with a true, correct and complete copy of such assignment; and (ii) nothing in such collateral assignment will modify any of Landlord’s rights and obligations described in this Agreement.

11.4 Landlord’s Right to Assign. Landlord may not assign its interest in this Lease except with the written consent of Tenant, which shall not be unreasonably withheld.

ARTICLE 12

Copyrights, Licenses, and Confidentiality of Work Product

12.1 Confidentiality of Tenant’s Work Product. The Parties shall continue to be bound by the terms of that certain Pre-Development Engagement Agreement entered into April 29, 2021, regarding terms related to Confidentiality of Proprietary Information.

12.2 Copyrights and Licenses. The Parties agree that in transmitting and sharing Work Product, including but not limited to reports, analyses, findings, opinions, financial information, strategies, designs, plan, drawings, schematics, or any other information (collectively “**Work Product**”), the transmitting or sharing Party is the copyright owner of such information or has permission from the copyright owner to transmit or share such information. Tenant and/or its consultants shall be deemed the creator, author, and owner of its respective Work Product, and shall retain all common law, statutory, and other reserved rights, including copyrights. Submission or distribution of Work Product to meet City or other regulatory requirements or requests or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of Tenant or its consultants.

Tenant grants to City a non-exclusive license to use Tenant’s Work Product solely and exclusively for purposes of furthering the Project, provided that City substantially performs its obligations under this Lease. Upon the termination of this Lease, the license granted in this Section shall also terminate automatically. City shall not assign, delegate, sublicense, pledge, or otherwise transfer the license granted in this Lease to another party without the prior written consent of Tenant. Any unauthorized use of Tenant’s Work Product shall be at City’s sole risk and without liability to the Tenant or its consultants.

A breach by either Party of any of the promises or agreements contained in this Article 12 may result in irreparable and continuing damage to the other Party for which there will be no

adequate remedy at law, and such other Party shall be entitled to injunctive relief and/or decree for specific performance as its sole remedy.

ARTICLE 13

Environmental Provisions

13.1 **Definitions.** For purposes of this Lease, the following terms shall have the following meanings:

(a) **“Environmental Law”** or **“Environmental Laws”** shall mean each and every applicable federal, state, regional, county, or municipal statute, ordinance, rule, regulation, order, code, directive, or requirement, relating to the environment or Hazardous Materials, including without limitation the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §9601 et seq.; the Federal Water Pollution and Control Act, 33 U.S.C. §1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; Title 49, Arizona Revised Statutes (**“A.R.S.”**); and the Tank Laws (as defined below), now or hereafter existing, together with all successor statutes, ordinances, rules, regulations, orders, directives, or requirements now or hereafter existing.

(b) **“Hazardous Material”** or **“Hazardous Materials”** shall mean any substance, material, waste, pollutant, irritant, or contaminant defined, listed, or referred to in any Environmental Law (together with any amendments thereto, regulations promulgated thereunder and all substitutions thereof) as being either hazardous or toxic, including without limitation, petroleum, petroleum byproducts or derivatives, asbestos, polychlorinated byphenyls, and medical biohazards.

(c) **“Release”** means depositing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing.

(d) **“Tank Laws”** shall mean all federal, state, regional, county, or municipal environmental statutes, ordinances, rules, or regulations relating to underground storage tanks, including, without limitation, the Federal Underground Storage Law, Subtitle I of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 et seq.; A.R.S. §49-1001 et seq.; and all amendments thereto, regulations promulgated thereunder and all substitutions thereof, and any successor legislation and regulations.

(e) **“Remediate”** or **“Remediation”** shall mean the necessary actions to comply with applicable Environmental Law with respect to the unlawful presence of, or suspected discharge of, a Hazardous Material. Remediation may include, without limitation: environmental investigation, monitoring, and sampling; installation, maintenance, and removal of monitoring wells; removal, treatment, neutralization, or containment of any Hazardous Material; storage of excavated materials; and installation, maintenance, storage, and removal of machinery and equipment used in connection with the Remediation.

13.2 **Tenant's Representations, Warranties, and Covenants.** Tenant hereby represents, warrants, and covenants that:

(a) Tenant will not Release, or allow its agents, consultants, contractors, invitees, subtenants, licensees, or other persons claiming by or through Tenant to Release, any Hazardous Material on, onto, or from the Premises that could result in a violation of any Environmental Law or in the creation of liability or obligations, including, without limitation, notification, deed recordation, or remediation, under any Environmental Law.

(b) Tenant agrees that it will not use, handle, generate, treat, store, or dispose of, or allow the use, handling, generation, treatment, storage, or disposal by its agents, consultants, contractors, invitees, subtenants, licensees, or other persons claiming by or through Tenant of, any Hazardous Materials (other than those types and quantities contained in normal office products and environments, which shall be used, handled, generated, treated, stored, and disposed of by Tenant in compliance with all Environmental Laws) in, on, under, around, or above the Premises now or at any future time (except in quantities permitted by applicable laws and used, handled, generated, treated, stored, and disposed of in compliance with all Environmental Laws).

(c) If Tenant is in breach of any of its agreements set forth in this Section, Tenant, at its sole expense, shall take all action required, including environmental cleanup of the Premises, to comply with the covenants in this Lease or applicable legal requirements and, in any event, shall take all action deemed necessary under all applicable Environmental Laws.

(d) Tenant agrees to indemnify, defend, pay, and hold Landlord Parties harmless from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, judgments, administrative orders, remediation requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorneys' fees and expenses), arising out of any breach by Tenant of its obligations under this Section.

(e) Notwithstanding any provision in this Lease to the contrary, Tenant shall not be responsible for, shall have no liability or obligations with respect to, and shall not be obligated to pay for or take any action with respect to the existence of any Hazardous Material on the Premises which occurred or existed prior to the date of the Lease, unless caused or knowingly permitted by Tenant, its agents, consultants, contractors, or invitees (the "**Environmental Exclusions**"). Notwithstanding anything in this Lease to the contrary, in the event any Hazardous Materials are discovered on (or migrate to) the Premises which Hazardous Materials arise solely from the Environmental Exclusions, then Landlord shall be obligated to remove and dispose of such Hazardous Materials at its sole cost and expense, in accordance with applicable Environmental Laws and otherwise in a manner that will not materially interfere with or impair Tenant's use of the Premises. In the event the presence of such Hazardous Materials are such that Tenant cannot operate at the Premises for the uses permitted hereunder, then Tenant shall have the right to abate Rent until such time as the Landlord removes or causes such Hazardous Materials to be removed from the Premises and Landlord's consultant provides Tenant written evidence of such removal. In addition, in the event any Hazardous Materials are discovered on (or migrate to) the Premises which Hazardous Materials arise from any of the Environmental Exclusions, and Landlord is obligated to remove and dispose of such Hazardous Materials at its sole cost and

expense, then provided such discovery occurs prior to the Scheduled Completion Date, as may be extended pursuant to the terms hereof, then the Scheduled Completion Date, as may be extended pursuant to the terms hereof, shall be extended for the period of time necessary to have the Hazardous Materials removed from the Premises.

ARTICLE 14

Warranty of Peaceful Possession

14.1 **Peaceful Possession.** Landlord covenants that Tenant, on timely paying Rent and performing and observing the covenants and agreements required to be performed by Tenant, shall and may peaceably and quietly have, hold, occupy, use, and enjoy the Premises during the Term and may exercise all of its rights hereunder, subject only to the provisions of this Lease and applicable governmental laws, rules, and regulations. Landlord agrees to warrant and forever defend Tenant's right to such occupancy, use, and enjoyment and the title to the Premises against the claims of any and all persons whomsoever lawfully claiming the same, or any part thereof, by, through, or under Landlord, but not otherwise, subject only to provisions of this Lease and all applicable governmental laws, rules, and regulations.

ARTICLE 15

Surrender

15.1 **Surrender of Premises.** On the last day of the Term, or upon any earlier termination of this Lease, Tenant shall surrender and deliver up the Premises to the possession and use of Landlord without delay and with the Improvements in their then "as is" condition. Tenant shall take reasonable steps to ensure the safety, security, and integrity of the Premises and Improvements, and shall be obligated to reasonably cooperate with Landlord in the transition of the surrender of same. Within ten (10) years prior to the expiration of the Term or Renewal Term(s) of this Lease, the Parties shall agree upon terms and conditions for any necessary demolition, removal, or rehabilitation of Buildings or Improvements upon Tenant's surrender of the Premises at the expiration of the Lease.

15.2 **Removal of Personal Property.** Where furnished by or at the expense of Tenant or secured by a lien held by either the owner or a Lender financing same (or otherwise owned by Tenant or any Subtenant), signs, furniture, furnishings, movable trade fixtures, business equipment, and alterations, and/or other similar items, may be removed by Tenant, or, if approved by Tenant, any lienholder at, or prior to, the termination or expiration of this Lease; provided, however, that if the removal thereof will damage a Building or Improvement or necessitate changes in or repairs to a Building or Improvement, Tenant shall, prior to the expiration or termination of this Lease, repair or restore (or cause to be repaired or restored) the Building or Improvement to a condition substantially similar to its condition immediately preceding the removal of such furniture, furnishings, movable trade fixtures, and business equipment, or pay or cause to be paid to Landlord, prior to the expiration or termination date, the reasonable cost of repairing any damage arising from such removal.

15.3 **Rights to Personal Property after Termination or Surrender.** Any personal property of Tenant which shall remain in the Premises after three (3) months following the termination or expiration of this Lease, may, at the option of Landlord, be deemed to have been abandoned by Tenant, and said personal property may be retained by Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see fit.

ARTICLE 16

Miscellaneous

16.1 **Notices.** Any notice provided for or permitted to be given in this Lease (each, a “**Notice**”) must be in writing and may be given (i) by depositing the same with a reputable nationwide delivery service for next business day delivery, addressed to the Party to be notified, or (ii) by delivering the same in person to such Party. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee, as evidenced by the executed postal receipt or other receipt for delivery as follows:

(i) To City:

City of Flagstaff
Attention: Economic Vitality Director
211 W. Aspen Avenue
Flagstaff, Arizona 86001

With a copy to:

City of Flagstaff
Attention: Grants and Contracts Manager
211 W. Aspen Avenue
Flagstaff, Arizona 86001

With a required copy to:

City of Flagstaff
Attention: City Attorney
211 W. Aspen Avenue
Flagstaff, Arizona 86001

(ii) To the Tenant:

Genterra Enterprises, LLC
Attn: Tim Kinney
121 E. Birch Ave. Suite 503
Flagstaff, AZ 86001
tk@kinneyconstructionservices.net

With a copy to:

Timothy Kinney PLLC
Timothy Kinney, Esq.
319 W. Simpson St. Suite 103
Tucson, AZ 85701
Tim@kinneylawaz.com

The Parties have the right from time to time to change their respective addresses for purposes of receiving a Notice to any other location within the United States by giving Notice to such effect in accordance with the provisions of this Section. Communications sent by telefacsimile or electronically (e.g., electronic or e-mail) will be considered “courtesy” notices, but will not constitute “Notice” as required by this Lease unless the Parties specifically agree to accept such communications as Notice.

16.2 **Project Team.** Tenant shall have the right in its sole discretion, and at its sole cost and expense, to hire and contract with Third Party firms and consultants to develop the Project. In addition, Tenant shall:

(a) Employ qualified development staff and engage qualified consultants to perform all of the Tenant’s responsibilities and obligations under this Agreement in a prompt and timely manner.

(b) Comply in all material aspects with all applicable laws and regulations, including those affecting employees and all applicable City regulations and policies.

(c) Ensure that the Tenant and its principal consultants shall obtain, have, and keep all required licenses, permits, and insurance coverages necessary for the Project.

(d) Tenant shall have the right to select and or replace its team members with or without cause to protect the interest of its lenders, City, and/or Tenant.

16.3 **Defaults.**

(a) Default By Tenant.

(1) Events of Default. The happening of any one of the following events (each, an “**Event of Default**”) shall be considered a material breach and default by Tenant under this Lease:

(i) Monetary Default. After the Deferment Period, if Tenant fails to pay any Rent or other payment when due (a “**Monetary Default**”) within ninety (90) days after written notice thereof to Tenant; or

(ii) Non-Monetary Default. If Tenant fails to perform or comply with any of the covenants, agreements, terms, limitations, or conditions of this Lease other than a Monetary Default or the Events of Default specified in Section 16.3(a)(1)(iii), Section 16.3(a)(1)(iv), or Section 16.3(a)(1)(v) below, but including a failure by Tenant to complete construction of all or any portion of the Improvements as required in Section 6.8(b) (each, a “**Non-Monetary Default**”), and such Non-Monetary Default shall continue after written notice by

Landlord to Tenant and reasonable opportunity to cure not to exceed ninety (90) days; provided, that if Tenant proceeds with due diligence upon receipt of such written notice to substantially cure such Non-Monetary Default and is unable by reason of the nature of the work involved, to cure the same within the required ninety (90) days, its time to do so shall be extended by the time reasonably necessary to cure the same (but in no event exceeding one hundred twenty (120) days); or

(iii) Bankruptcy -- Voluntary. If Tenant shall file a voluntary petition in bankruptcy or take the benefit of any relevant legislation that may be in force for bankrupt or insolvent debtors or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for itself under any present or future federal, state, or other statute, law, or regulation, or if Tenant shall seek or consent to or acquiesce in the appointment of any trustee, receiver, or liquidator of Tenant or of all or any substantial part of its properties, or shall make any general assignment for the benefit of creditors and not dismiss such actions within ninety (90) days; or

(iv) Bankruptcy -- Involuntary. If a petition shall be filed against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal, state, or other statute, law, or regulation, and has not been dismissed, vacated, or stayed for ninety (90) days, or if any trustee, receiver, or liquidator of Tenant, or of all or substantial part of its properties, shall be appointed without the consent or acquiescence of Tenant and such appointment has not been dismissed, vacated, or stayed for ninety (90) days; or

(v) Insurance. The lapse, termination, or cancellation of any policy of insurance required in this Lease, in whole or in part for the benefit of Landlord, shall be an event of default absent being cured within ninety (90) days of such lapse. No cure of such default can be accomplished unless a new or renewed policy is issued which specifically provides the required coverage to the Landlord for any liability arising during the lapsed or previously uncovered period.

(2) Tenant Liability Continues. No such expiration or termination of this Lease shall relieve Tenant of its obligations of Indemnity under this Lease, and all such obligations of Indemnity arising prior to the Lease expiration or termination shall survive any such expiration or termination of this Lease for a period of two (2) years and shall apply to any claim or action that is commenced within such two (2) year period.

(3) No Implied Waivers. No failure by Landlord to insist upon the strict performance of any covenant, agreement, term, or condition hereof, or to exercise any right or remedy consequent upon a breach hereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term, or condition. No covenant, agreement, term, or condition hereof to be performed or complied with by Landlord or Tenant, and no breach thereof, shall be waived, altered, or modified, except by a written instrument executed by the Party to be charged therewith. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term, limitation, and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach hereof.

(4) Remedies Cumulative. Except as otherwise stated herein, in the event of any breach by Tenant of any of the covenants, agreements, terms, or conditions hereof, Landlord, in addition to any and all other rights, shall be entitled to enjoin such breach and shall have the right to invoke any right and remedy allowed at law or in equity, by statute or by this Lease for such breach. In the event of Tenant's failure to pay Rent or any other payment on the date when due, Tenant shall pay Landlord interest on any such overdue payments and associated late charges at the Default Rate, but in no event an amount greater than permitted by law, but this shall in no way limit any claim for damages for Landlord for any breach or default by Tenant, except that Landlord shall not be entitled to special, exemplary, consequential, multiple, or punitive damages including for lost profits. "**Default Rate**" shall mean a rate of interest equal to two percent (2%) per annum in excess of the so-called "prime interest rate" then in effect as published in the Wall Street Journal (or comparable publication reasonably selected by Landlord, if the Wall Street Journal is not then being published, or does not regularly publish "prime rate" information) compounded monthly from the date of the act, event, omission, or default giving rise to Landlord's right to receive such interest payment.

(5) Termination of Lease. If an Event of Default is not cured within any applicable time period after service of Notice of the default, Landlord, may, at its option and with no further Notice to Tenant required, terminate this Lease; provided, however, that the termination of this Lease will not terminate or otherwise restrict Tenant's obligations to Indemnify Landlord as required in this Lease. During the Pre-Development phase contemplated in this Lease, the Parties and Tenant's lender(s) shall confer regarding Default cure periods and penalties, including termination of the Lease, and may elect (in their sole and absolute discretion) to amend the Lease.

(b) Default by Landlord. In the event of any breach by Landlord of any of the covenants, agreements, terms, or conditions hereof, Tenant, as its sole and exclusive remedy, may or may commence a special action to enforce Landlord's obligations under this Lease, or may seek its direct and actual damages incurred by Landlord's default, if any.

16.4 Waiver of Consequential Damages. Notwithstanding anything to the contrary in this Lease, both Parties hereby waive and release all rights of recovery against the other Party, including their employees, members, managers, managing members, officers, directors, and agents for consequential, indirect, special, exemplary, multiple, or punitive damages arising out of or relating to this Lease, except to the extent that such loss or damage is caused by the willful misconduct or grossly negligent acts or omissions of the other Party, or its employees, members, managers, managing members, officers, directors, or agents.

16.5 Modification and Non-Waiver. No variations, modifications, or changes to this Lease shall be binding upon any Party unless set forth in writing executed by both Parties. No waiver by either Party of any breach or default of any term, condition, or provision hereof, including without limitation the acceptance by Landlord of any Rent at any time or in any manner other than as provided in this Lease, shall be deemed a waiver of any other or subsequent breaches or defaults of any kind, character, or description under any circumstance. No waiver of any breach or default of any term, condition, or provision hereof shall be implied from any action of any Party, and any such waiver, to be effective, shall be set out in a written instrument signed by the waiving Party.

16.6 **Governing Law; Venue.** This Lease shall be construed and enforced in accordance with the laws of the State of Arizona. The Parties agree, on behalf of themselves and their successors and assigns (and notwithstanding the domicile of any such successor or assign), that venue for any judicial proceeding shall be exclusively in Coconino County Superior Court, or the United States District Court for the District of Arizona.

16.7 **Number and Gender; Caption; References.** Pronouns, wherever used in this Lease, and of whatever gender, shall include natural persons and corporations and associations of every kind and character, and the singular shall include the plural wherever and as often as may be appropriate. Article and section headings in this Lease are for convenience of reference and shall not affect the construction or interpretation of this Lease. Whenever the terms “hereof,” “hereby,” “herein,” or words of similar import are used in this Lease, they shall be construed as referring to this Lease in its entirety rather than to a particular section or provision, unless the context specifically indicates to the contrary. Any reference to a particular “Article” or “Section” shall be construed as referring to the indicated article or section of this Lease. Whenever placed before one or more items, the words “include,” “includes,” and “including” shall mean considered as part of a larger group, and not limited to the item(s) recited.

16.8 **Estoppel Certificate.** Landlord and Tenant shall execute and deliver to each other, within a reasonable time following written request therefor by the other Party, but no longer than ten (10) business days from receipt of such request, and not more frequently than once in any twelve-month period, a certificate addressed as indicated by the requesting Party and stating to the best of its actual knowledge:

- (a) whether or not this Lease is in full force and effect;
- (b) whether or not this Lease has been modified or amended in any respect, and submitting copies of such modifications or amendment;
- (c) whether or not there are any existing defaults hereunder known to the Party executing the certificate, and specifying the nature thereof;
- (d) whether or not (to the extent known by the Party executing the certificate) any particular article, section, or provision of this Lease has been complied with; and
- (e) such other matters as may be reasonably requested.

16.9 **Leasehold Mortgage.** Tenant may encumber its leasehold interest in the Premises to obtain a collateral loan, permanent financing, or refinancing for the Project (each such leasehold mortgage, a “**Permitted Mortgage**”), subject to the following:

- (a) Tenant may encumber its interest in this Lease and Premises only if Tenant is not then in default of any of its obligations under this Lease beyond any applicable cure period. Tenant may encumber its interest in this Lease and Premises for development of the Premises as described in this Lease, as well as for construction of the Public Infrastructure in which case such encumbrance shall only encumber Tenant’s interest in the Premises as adjusted pursuant to Section 1.2 of this Lease. The holder of a Permitted Mortgage shall be a “**Permitted Mortgagee.**”

(b) With respect to each such Permitted Mortgage, Landlord will agree to a form of commercially reasonable non-disturbance and recognition agreement with a recognized lender that is a Permitted Mortgagee. In no event will Landlord subordinate its interest in the Land or the Premises to such leasehold financing.

(c) A Permitted Mortgage cannot secure obligations other than costs, obligations, and expenses in connection with the Project or a portion of the Project or obligations of any person other than Tenant (or the permitted assignee under any severed leasehold interest).

(d) A Permitted Mortgage shall cover no interest in the Land.

(e) Tenant or the holder of a Permitted Mortgage shall promptly deliver to Landlord in the manner provided in this Lease for the giving of notice to Landlord, a true copy of the Permitted Mortgage(s), of any assignment of a Permitted Mortgage, and of the satisfaction of any Permitted Mortgage.

For the purpose of this Section 16.9, the making of a Permitted Mortgage shall not be deemed to constitute an assignment or transfer of this Lease, nor shall any holder of a Permitted Mortgage, as such, be deemed an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such holder of a Permitted Mortgage, as such, to assume the performance of any of the terms, covenants, or conditions on the part of Tenant to be performed hereunder.

16.10 **Exhibits.** All exhibits and addenda attached to this Lease are incorporated in this Lease for all purposes. Such Exhibits including the following:

Exhibit A: Legal Description of Land or Premises

Exhibit B: Rent Schedule

Exhibit C: City of Flagstaff Insurance Requirements

16.11 **Severability.** If any provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, and the basis of the bargain between the Parties is not destroyed or rendered ineffective thereby, the remainder of this Lease, or the application of such provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

16.12 **Relation of Parties.** The Parties agree that the relationship of the Tenant to City is that of landlord and tenant and as an independent developer engaged for the purpose of developing the Project. Nothing in this Lease shall create between Tenant and City the relationship of principal and agent (other than as expressly set forth in this Lease), joint venturers, partners, or any other similar or representative relationship, and the Tenant shall not hold itself out as an agent (except as expressly provided in this Lease), representative, partner, member, or joint venturer of City. Neither Party shall make for or on behalf of the other, or subject the other to, any contract, agreement, warranty, guaranty, representation, assurance, or other obligation, which has not been approved in advance in writing by the Party.

16.13 **Force Majeure.** As used in this Lease “**Force Majeure**” shall mean the occurrence of any event, including global pandemic (other than failure to obtain financing for, failure to refinance or cessation of disbursements under existing financing for, the purchase, construction, demolition, repair, or ownership of the Land or Improvements) which prevents or delays the performance by Landlord or Tenant of any obligation imposed upon it hereunder (other than payment of Rent or any other payment required to be made by Tenant) and the prevention or cessation of which event is beyond the reasonable control of the obligor. If Tenant shall be delayed, hindered, or prevented from performance of any of its obligations (other than to pay Rent) by reason of Force Majeure (and Tenant shall not otherwise be in default hereunder), the time for performance of such obligation shall be extended for the period of such delay (but not to exceed one hundred and twenty (120) days for any single event of Force Majeure), provided that the following requirements are complied with by Tenant: (i) Tenant shall give prompt written notice of such occurrence to Landlord and (ii) Tenant shall diligently attempt to remove, resolve, or otherwise eliminate such event, keep Landlord advised with respect thereto, and commence performance of its obligations hereunder immediately upon such removal, resolution, or elimination. Anything contained in or inferable from this Lease to the contrary notwithstanding, Tenant shall not be relieved by any event of Force Majeure from Tenant’s obligations (a) to pay Rent or any other payment required to be made by Tenant hereunder, (b) to provide insurance as required by Article 9, (c) to comply with the Environmental Provisions of Article 13, and (d) to indemnify Landlord Parties; nor shall the Term of this Lease be extended by reason of any event of Force Majeure.

16.14 **Entire Agreement.** Notwithstanding the previously-entered into agreements between the Tenant and City regarding the Project including the Pre-Development Engagement Agreement, this Lease constitutes the entire agreement of the Parties with respect to its subject matter, and all prior agreements with respect thereto are merged into this Lease. Any agreements entered into between Landlord and Tenant of even date herewith are not, however, merged into this Lease. In the event of a conflict between this Lease and the Pre-Development Agreement, this Lease will prevail.

16.15 **Incorporation of Recitals.** The Recitals set forth in this Lease are deemed to be true and accurate in all respects and are incorporated into this Lease.

16.16 **Recordation.** This Lease shall be recorded in the office of the Coconino County Recorder in accordance with A.R.S. § 9-500.05.

16.17 Special Provisions Regarding Contracts with Municipalities.

(a) Landlord’s Right of Cancellation. All Parties acknowledge that this Lease is subject to cancellation by the City of Flagstaff for a conflict of interest pursuant to the provisions of A.R.S. § 38-511.

(b) Immigration Reform and Control Act of 1986 (IRCA). Tenant understands and acknowledges the applicability of the IRCA to it and agrees to comply with the IRCA for all activities undertaken under this Lease and agrees to permit Landlord to inspect its personnel records to verify such compliance.

(c) No Boycott of Israel. Tenant certifies pursuant to A.R.S. § 35-393.01 that it is not currently engaged in, and for the Term of this Lease will not engage in, a boycott of Israel.

(d) Preserve State Shared Revenue. Notwithstanding any other provision of, or limitation in, this Lease to the contrary, if pursuant to A.R.S. § 41-194.01 the Attorney General determines that this Lease violates any provision of state law or the Constitution of Arizona, Landlord and Tenant are not able (after good faith attempts) to modify the Lease so as to resolve the violation with the Attorney General within thirty days of notice from the Attorney General pursuant to and under the provisions of A.R.S. § 41-194.01(B)(1), this Lease shall automatically terminate at midnight on the thirtieth day after receiving such notice from the Attorney General, and upon such termination, the Parties shall have no further obligations under this Lease. Additionally, if the Attorney General determines that this Lease may violate a provision of state law or the Constitution of Arizona under A.R.S. § 41-194.01(B)(2), and (to the extent permitted by statute) the Parties are unable to amend the Lease to correct the alleged violation within any applicable 30-day period, the City shall be entitled to terminate this Lease, except if Tenant timely posts such bond, if required; and provided further, that if the Arizona Supreme Court determines that this Lease violates any provision of state law or the Constitution of Arizona, City may terminate this Lease and convey or quitclaim the Land and Improvements to Tenant; and the Parties shall have no further obligations hereunder.

16.18 Successors and Assigns. This Lease shall constitute a real right and covenant running with the Premises, and, subject to the provisions of this Lease pertaining to Tenant's rights to assign, sublet, or encumber, this Lease shall be binding upon and inure to the benefit of the Parties and their respective (permitted, if applicable) successors and assigns. Whenever a reference is made in this Lease to either Party, such reference shall include the Party's permitted successors and assigns.

16.19 Landlord's Joinder. Landlord agrees to join with Tenant in the execution of statutory notices of commencement and such applications for permits and licenses from any Governmental Authority as may be reasonably necessary or appropriate to effectuate the intent and purposes of this Lease, provided that no such application shall constitute an encumbrance of Landlord's fee simple interest in the Land, and Landlord shall not incur or become liable for any payment or other obligation as a result thereof.

16.20 No Third Parties Benefitted. The terms and provisions of this Lease are for the sole benefit of Landlord and Tenant, and no third party is intended to benefit herefrom.

16.21 Survival. Any terms and provisions of this Lease pertaining to indemnification obligations, repair obligations, and rights, duties, or liabilities extending beyond the expiration or termination of this Lease shall survive the expiration or earlier termination of the Term.

16.22 Landlord's Lien. Landlord hereby waives and releases any statutory or contractual landlord's lien with respect to the property of Tenant now or hereafter located in the Premises.

16.23 Transfer of Landlord's Interest. Landlord may transfer its interest in the Land and under this Lease from time to time and at any time, provided that any such transfer is expressly

made subject to the terms, provisions, and conditions of this Lease, including Section 3.6 and Section 11.4, and the transferee agrees to be bound by the provisions hereof.

16.24 **Landlord and Tenant Defined.** The word “Landlord” as used in this Lease shall include the original Landlord named in this Lease and all persons, natural or artificial, who at any time or from time to time during the Term of this Lease succeed to the estate of Landlord in the Land and the interest of Landlord under this Lease. The word “Tenant” as used in this Lease shall mean Genterra and thereafter any permitted assignee or assignees.

16.25 **Commissions.** Each Party hereby warrants and represents to the other Party that it has not dealt with any broker in the negotiation of this Lease. Each Party hereby agrees to indemnify, defend, pay, and hold harmless the other Party for, from, and against any and all other commissions or finder’s fees due by virtue of the negotiation, execution, and performance of this Lease, the obligation or asserted claim for which arises from actions taken or claimed to be taken by the indemnifying Party.

16.26 **Authority.** Landlord and Tenant represent, each as to the other, that: (i) Landlord is a duly authorized and existing Arizona municipality and Tenant is a duly authorized and existing Arizona limited liability company, and each is qualified to do business in the State of Arizona, (ii) each has full right and authority to enter into this Lease, (iii) each person signing on behalf of the Landlord and Tenant are authorized to do so, and (iv) the execution and delivery of this Lease by Landlord and Tenant will not result in any breach of, or constitute a default under any mortgage, deed of trust, lease, loan, credit agreement, partnership agreement, or other contract or instrument to which either Landlord or Tenant is a party or by which either such Party may be bound.

16.27 **City Manager’s Power to Consent.** Landlord hereby authorizes and empowers the City Manager to consent to any and all requests of Tenant requiring consent of the Landlord hereunder; except City Council approval is required for any actions required as a matter of law, amendments, and assignments of this Lease.

16.28 **Time of Essence.** Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.

16.29 **Holidays.** If a date for performance by either Party falls on a Saturday, Sunday, or on a legal holiday, such date for performance shall instead be the next following business day.

16.30 **Waiver of Jury Trial. LANDLORD AND TENANT HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT’S USE OR OCCUPANCY OF THE PREMISES, AND/OR ANY CLAIM OF INJURY OR DAMAGE.** The waiver of trial by jury in the immediately preceding sentence is voluntarily and intentionally made by Landlord and Tenant.

16.31 **Attorneys’ Fees.** In the event that any action, suit, or other proceeding is initiated concerning or arising out of this Lease, the prevailing Party shall recover all of such Party’s costs

and attorneys' fees incurred in each and every action, suit, or other proceeding, including any and all appeals or petitions therefrom from the non-prevailing Party.

16.32 **Limitation of Liability.** Notwithstanding anything to the contrary in this Lease, there shall be no personal liability on persons, firms, or entities who constitute Landlord with respect to any of the terms, covenants, conditions, and provisions of this Lease, and Tenant shall look solely to the interest of Landlord, its successors, and assigns in the Premises for the satisfaction of each and every remedy of Tenant in the event of default by Landlord hereunder. Such exculpation of personal liability is absolute and without any exception whatsoever. The foregoing provisions are not intended to relieve Landlord from the performance of any of Landlord's obligations under this Lease, but only to limit the personal liability of the owners of Landlord in the event of recovery against Landlord; nor shall the foregoing be deemed to limit Tenant's rights to obtain injunctive relief or specific performance or to avail itself of any other right or remedy which may be awarded Tenant under this Lease.

16.33 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.

[THE BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES ARE ON THE FOLLOWING PAGE]

The Parties have executed and delivered this Lease as of the Effective Date set forth in the first grammatical paragraph of this Lease.

LANDLORD:

CITY OF FLAGSTAFF

By: _____

Its: Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

TENANT:

GENTERRA ENTERPRISES, LLC,
an Arizona limited liability company

By: _____

Printed Name: Timothy Kinney

Its: Manager

State of Arizona)

)

County of Coconino)

The foregoing Ground Lease and Master Development Services Agreement was acknowledged before me on _____, 2024, by Timothy Kinney, the Manager of Genterra Enterprises, LLC, an Arizona limited liability company, for and on behalf of the Tenant named in this instrument.

Notary Public

[Notarial seal]

EXHIBIT A

Legal Description of the Premises

A portion of 'Tract 4' according to the Final Plat of Pulliam Airpark Tracts 4 & 6 Unit 3 Amended, Case 8, Map 19, Official Records of Coconino County (herein referred to as R1), lying within the southwest quarter of Section 5, Township 20 North, Range 7 East, of the Gila and Salt River Meridian, Coconino County, Arizona, described as follows:

Commencing at the northwest corner of said 'Tract4' and the **TRUE POINT OF BEGINNING**;

Thence along the north line of said 'Tract 4', North 89°43'16" East, 775.85 feet (Basis of Bearing, North 89°32'07" East, 776.00 feet per R1) to a point on the westerly Right-of-Way line of Pulliam Drive as shown on R1, and the beginning of a non-tangent curve concave to the northeast having a radius of 1277 14 feet and being subtended by a chord which bears South 33°34'25" East 671.08 feet;

Thence along said Right-of-Way line, and southeasterly along said curve, 679.05 feet through a central angle of 30°27'49";

Thence continuing along said Right-of-Way line, South 48°59'46" East, 35.00 feet,

Thence continuing along said Right-of-Way line, South 03°59'46" East, 8.45 feet;

Thence South 41°12'04" West, 1155.66 feet to the beginning of a non-tangent curve concave to the northwest having a radius of 591.00 feet and being subtended by a chord which bears South 43°52'54" West 55.27 feet;

Thence southwesterly along said curve, 55.29 feet through a central angle of 5°21'38" to the beginning of a non-tangent curve concave to the north having a radius of 49.89 feet and being subtended by a chord which bears North 74°44'57" West 85.08 feet;

Thence northwesterly along said curve, 101.87 feet through a central angle of 116°59'40";

Thence South 73°22'31" West, 95.02 feet;

Thence South 16°37'29" East, 37.77 feet to the beginning of a tangent curve concave to the northwest having a radius of 70.80 feet;

Thence southwesterly along said curve, 107.50 feet through a central angle of 86°59'55" to the beginning of a tangent curve concave to the north, having a radius of 597.91 feet;

Thence westerly along said curve, 88.38 feet through a central angle of 8°28'10" to a point on the

westerly property line of said 'Tract 4';

Thence along said property line, North 44°06'49" West, 39.92 feet;

Thence continuing along said property line, North 03°16'48" West, 201.43 feet;

Thence continuing along said property line, North 16°30'37" West, 391.18 feet;

Thence continuing along said property line, North 06°53'45" West, 564.89 feet to the beginning of a non-tangent curve concave to the east having a radius of 5756.59 feet and being subtended by a chord which bears North 15°16'07" East 389.92 feet;

Thence continuing along said property line, and northerly along said curve, 390.00 feet through a central angle of 3°52'54";

Thence continuing along said property line, North 17°12'28" East, 110.64 feet to the **TRUE POINT OF BEGINNING**;

Containing 31.468 Acres, more or less.

EXHIBIT B
Rent Schedule

Lease Year	Rent Payment (Base Rent is increased 2% annually and will be adjusted at other times per Article 3)	<i>Plus</i> Deferred Rent (Annual amount, to be paid in 12 equal monthly installments, in the years noted below)	<i>Plus</i> Recapture Rent (Annual amount, to be paid in 12 equal monthly installments, in the years noted below)
1 *	10% of Base Rent		
2	50% of Base Rent		
3	50% of Base Rent		
4	50% of Base Rent		
5	50% of Base Rent	\$58,404.00	
6	75% of Base Rent	\$58,404.00	
7	75% of Base Rent	\$58,404.00	
8	75% of Base Rent	\$58,404.00	
9	75% of Base Rent	\$58,404.00	
10	100% of Base Rent	\$58,404.00	\$243,650.00
11	100% of Base Rent	\$58,404.00	\$243,650.00
12	100% of Base Rent	\$58,404.00	\$243,650.00
13	100% of Base Rent	\$58,404.00	\$243,650.00
14	100% of Base Rent	\$58,404.00	\$243,650.00
15	100% of Base Rent	\$58,404.00	\$243,650.00
16	100% of Base Rent	\$58,404.00	\$243,650.00
17	100% of Base Rent	\$58,404.00	\$243,650.00
18	100% of Base Rent	\$58,404.00	
19	100% of Base Rent	\$58,404.00	
20	100% of Base Rent	\$58,404.00	
21 through 40	100% of Base Rent		
Renewal Term**	100% of Base Rent		

* City Reserved Use Term

** If applicable

EXHIBIT C
City of Flagstaff
INSURANCE REQUIREMENTS

1. In General. Tenant shall maintain insurance against claims for injury to persons or damage to property, arising from performance of or in connection with this Contract by the Tenant, its agents, representatives, employees, contractors, or subtenants.
2. Requirement to Procure and Maintain. Each insurance policy required by this Contract shall be in effect at, or before, commencement of work under this Contract and shall remain in effect until all Tenant’s obligations under this Contract have been met, including any warranty periods. The Tenant’s failure to maintain the insurance policies as required by this Contract or to provide timely evidence of renewal will be considered a material breach of this Contract.
3. Minimum Scope and Limits of Insurance. The following insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City does not represent or warrant that the minimum limits set forth in this Contract are sufficient to protect the Tenant from liabilities that might arise out of this Contract, and Tenant is free to purchase such additional insurance as Tenant may determine is necessary.

Tenant shall provide coverage at least as broad and with limits not less than those stated below.

a. Commercial General Liability - Occurrence Form

General Aggregate	\$2,000,000
Products/Completed Operations	\$1,000,000
Each Occurrence	\$1,000,000

b. Umbrella Coverage \$2,000,000

c. Automobile Liability –
Any Automobile or Owned, Hired
and Non-owned Vehicles
Combined Single Limit Per Accident
for Bodily Injury & Property Damage \$1,000,000

d. Workers’ Compensation and Employer’s Liability

Workers’ Compensation	Statutory
Employer’s Liability: Each Accident	\$500,000
Disease - Each Employee	\$500,000
Disease - Policy Limit	\$500,000

4. Self-Insured Retention. Any self-insured retentions must be declared to and approved by the City. If not approved, the City may require that the insurer reduce or eliminate such self-insured retentions with respect to the City, its officers, agents, employees, and volunteers.

Tenant shall be solely responsible for any self-insured retention amounts. City at its option may require Tenant to secure payment of such self-insured retention by a surety bond or irrevocable and unconditional letter of credit.

5. Other Insurance Requirements. The policies shall contain, or be endorsed to contain, the following provisions:
 - a. Additional Insured. In Commercial General Liability and Automobile Liability Coverages, the City of Flagstaff, its officers, officials, agents, and employees shall be named and endorsed as additional insureds with respect to liability arising out of this Contract and activities performed by or on behalf of the Tenant, including products and completed operations of the Tenant, and automobiles owned, leased, hired, or borrowed by the Tenant. Tenant shall provide insurance language and/or proper additional insured endorsements, which shall be subject to approval of the City Risk Management.
 - b. Broad Form. The Tenant's insurance shall contain broad form contractual liability coverage.
 - c. Primary Insurance. The Tenant's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees, shall be in excess of the coverage of the Tenant's insurance and shall not contribute to it.
 - d. Each Insured. The Tenant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Not Limited. Coverage provided by the Tenant shall not be limited to the liability assumed under the indemnification provisions of this Contract.
 - f. Waiver of Subrogation. The policies shall contain a waiver of subrogation against the City, its officers, officials, agents, and employees for losses arising from work performed by Tenant for the City.
6. Notice of Cancellation. Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, cancelled, or reduced in coverage or in limits unless prior written notice has been given to the City. Notices required by this section shall reference the Contract Name and Number and be sent directly to:

Attention: Real Estate Manager
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, Arizona 86001

7. Acceptability of Insurers. Tenant shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not

less than A-: VII. The City does not represent or warrant that the above required minimum insurer rating is sufficient to protect the Tenant from potential insurer insolvency.

8. Certificates of Insurance. The Tenant shall furnish the City with certificates of insurance (ACORD form) as required by this Contract. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. The City project/contract number and project description shall be noted on the certificates of insurance. The City must receive and approve all certificates of insurance and endorsements before the Tenant commences work.
9. Policies. The City reserves the right to require, and receive within ten (10) days, complete, certified copies of all insurance policies and endorsements required by this Contract at any time. The City shall not be obligated, however, to review any insurance policies or to advise Tenant of any deficiencies in such policies and endorsements. The City's receipt of Tenant's policies or endorsements shall not relieve Tenant from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Tenant's obligations under this Contract.
10. Modifications. Any modification or variation from the insurance requirements in this Contract must have the prior approval of the City's Attorney's Office in consultation with the City's Risk Manager, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by their handwritten revision and notation to the foregoing insurance requirements.