

## **GROUND LEASE**

This Ground Lease ("Lease") is made as of the \_\_\_ day of \_\_\_\_\_ 2023 ("Effective Date"), by and between the City of Glendale, Arizona, an Arizona municipal corporation ("City"), and CivicGroup LLC ("Tenant"). City and Tenant may be referred to herein individually as a "Party" or collectively as the "Parties."

### **RECITALS**

City is the owner of certain real property generally located at 5750 W. Glenn Drive in Glendale, Arizona known as the Glendale Civic Center (the "Civic Center"). The Civic Center complex includes, among other things, two buildings and a parking lot adjacent to the main Civic Center building.

The parking lot is comprised of 4 parcels (the "Parcels") designated by the Maricopa County Assessor as: APN 147-25-138, which has a street address of 7128 N 57<sup>th</sup> Avenue, Glendale AZ 85301; APN 147-25-139, which has a street address of 7124 N 57<sup>th</sup> Avenue, Glendale AZ 85301; APN 147-25-140, which has a street address of 7120 N 57<sup>th</sup> Avenue, Glendale AZ 85301; and APN 147-25-141, which also has a street address of 7120 N 57<sup>th</sup> Avenue, Glendale AZ 85301. The Parcels are legally described in Exhibit A attached to this Lease. The Parcels are comprised of approximately 28,000 square feet.

Tenant wishes to lease the Parcels from City to construct a Hotel on the Parcels (the "Project"). The City agrees to Lease the Parcels for Tenant's intended use, except for that section used currently as an access road along the western boundary of the Parcels, which will remain the property of the City and retain its present use, whose exact boundaries will be established by a survey.

However, if the City determines that the purposes of the access road can be served through another method, the City may decide in their sole discretion to Lease the Parcels to Tenants in their entirety.

### **AGREEMENT**

In consideration of the mutual covenants and agreements set forth in this Ground Lease, and intending to be legally bound hereby, the Parties hereby agree as follows:

#### **SECTION 1 - LEASE OF PARCELS**

- a. City hereby leases the Parcels to Tenant, and Tenant hereby leases the Parcels from City subject to the promises, terms and conditions contained in this Lease. Tenant acknowledges that, as of the Commencement Date, it has inspected the Parcels, is familiar with the condition of the Parcels and the condition of title to the Parcels and accepts the same "AS IS" in its present condition, with no representation by, of or from City.
- b. The Parcels are currently used as a parking lot for the adjacent Civic Center complex. The parties agree that Tenant may demolish and remove any existing improvements including, but not limited to, asphalt pavement, curbs, gutters, medians, landscaping and streetlights and make Improvements for its intended use at Tenant's sole cost. The Parties agree and acknowledge that

any subsequent improvement constructed or installed by Tenant during the term of this Lease does not constitute a "government property improvement" as defined in A.R.S. §42-6201.

## **SECTION 2 - TERM**

The term of this Ground Lease commences as of the Effective Date and continues for a period of 10 years from the Effective Date or until the earlier termination of this Ground Lease in accordance with its terms (the "Term").

## **SECTION 3 - RENT**

a. Beginning on the Effective Date of this Lease and continuing until this Lease is terminated, Tenant will pay "Rent" to City, without notice or demand, for the use and occupancy of the Parcels on the anniversary of the Effective Date, as follows:

Year 1 - \$0/square foot	=	\$0
Year 2 - \$0/square foot	=	\$0
Year 3 - \$0.25/square foot	=	\$7,000
Year 4 - \$.50/square foot	=	\$14,000
Year 5 - \$.65/square foot	=	\$18,200
Year 6 - \$1/square foot	=	\$28,000
Year 7 - \$2/square foot	=	\$56,000
Year 8 - \$2.50/square foot	=	\$70,000
Year 9 - \$3/square foot	=	\$84,000
Year 10 -	=	\$0

b. The above rents are based off of estimated square footage. Should the conveyed area of the Parcels be found to be more or less than 28,000 square feet, the annual rent and purchase price shall be increased or reduced accordingly.

c. Rent will be paid in lawful money of the United States of America to the "City of Glendale, Arizona" payable at 5850 W. Glendale, Arizona 85301, Attn: Real Estate Department, or to such other place or person as City may designate in writing to Tenant from time to time.

d. If Tenant fails or neglects to pay any amount due and payable to City as Rent within thirty (30) days after such Rent is due (Tenant will pay to City a late payment charge in the amount of ten percent (10%) of the delinquent amount. The late payment fee provided by this Section will be in addition to, and not in lieu of, any other rights City may have pursuant to Section 17 of this Lease.

## **SECTION 4 - ADDITIONAL CHARGES**

a. For purposes of this Lease, "Additional Charges" are defined as: (i) all taxes, including the City transaction privilege tax, assessments, insurance premiums, charges, costs and expenses which Tenant agrees to pay under this Lease or is obligated to pay by law, together with all interest and penalties that may accrue thereon in the event of Tenant's failure to pay the same as herein provided; (ii) all other damages, costs and expenses which City may suffer or incur for which Tenant is liable under this Lease; and (iii) any and all other sums which may become due, by reason of any default

of Tenant or failure on Tenant's part to comply with the agreements, terms, covenants and conditions of this Lease., In the event of nonpayment of any Additional Charges as defined in this Section , City will provide notice of such noncompliance to Tenant and an opportunity to cure. Tenant shall have fifteen (15) days to make payment to bring its account current. Should nonpayment continue beyond the 15-day cure period, the City may assess a late payment charge in the amount of ten percent (10%) of the delinquent amount and the City may exercise all rights and remedies herein provided and available in law or equity.

## **SECTION 5 - NO COUNTERCLAIM OR ABATEMENT OF RENT**

Rent and Additional Charges and all other sums payable by Tenant hereunder will be paid without notice, demand, counterclaim, setoff, recoupment, deduction or defense of any kind or nature and without abatement, suspension, deferment, diminution or reduction.

## **SECTION 6 -TAXES, ASSESSMENTS AND UTILITIES**

a. It is the intention of the Parties hereto that, insofar as the same may be lawfully done, City will be free from all costs, expenses, obligations, taxes, assessments and all other governmental impositions and charges, throughout the Term. Tenant will pay and discharge, as and when the same become due and payable without penalty, all real estate, personal property, business, transaction privilege, occupation and occupational license taxes and assessments and all other governmental taxes, impositions and charges of every kind and nature, general or special, foreseen or unforeseen, whether similar or dissimilar to any of the foregoing, which at any time during the Term of this Lease be or become due and payable by City or Tenant and which are levied, assessed or imposed:

i. Upon or with respect to, or will be or become liens upon, the Parcels, or any portion thereof or any interest of City or Tenant therein or under this Lease (other than liens created or granted by City in its capacity as the fee owner of the real property constituting the Parcels, as opposed to liens created by City in its capacity as a municipality, which are subject to this Section 6):

ii. Upon or with respect to the possession, operation, management, maintenance, alteration, repair, rebuilding, use or occupancy of the Parcels; and

iii. Upon this transaction or any document to which Tenant is a party or is bound, creating or transferring an interest or an estate in the Parcels, under or by virtue of any present or future law, statute, charter, ordinance, regulation, or other requirement of any governmental authority.

b. Tenant has the right to contest any claim, tax or assessment levied against the Parcels or any interests therein and property thereon during the term of the Lease or from Tenant's activities by posting bonds to prevent enforcement of any lien resulting therefrom. Tenant agrees to protect and hold City harmless (and all interest of City in the Parcels) and all interests therein and improvements thereon for, from and against any and all claims, taxes, assessments and like charges and from any lien therefor or sale or other proceedings to enforce payment thereof, and all costs in

connection therewith, but only as to those that arise or occur during the Term of this Lease. City agrees to cooperate with Tenant and will promptly execute and deliver for filing any appropriate documents with reference to any such contest when so requested by Tenant.

c. Tenant, upon City's written request, will furnish to City, within twenty (20) days thereafter, proof of the payment of any taxes, impositions or charges which Tenant and not City has the obligation to pay under the provisions of this Section 6.

d. Tenant will be solely responsible for, and will pay the cost of, constructing or installing utility hookups from existing utility installations to the Parcels and will be solely responsible for, and will pay the cost of, all utility services consumed by Tenant on the Parcels.

### **SECTION 7 - USE OF PARCELS**

The Project and Parcels will be developed and used in accordance with Applicable Laws, including the City's Zoning Code (collectively, the "Permitted Uses"). Tenant will use the Parcels primarily for a Hotel and not for any other purpose without the prior written consent of City, which consent may be withheld, conditioned or delayed in City's sole, absolute and unfettered discretion. Tenant will not use or permit the Parcels to be used in violation of the Regulatory Requirements as defined in Section 10, below. Use of the Parcels in violation of the terms of this Section 7 will cause Tenant to be in default hereunder; however, Tenant will have the right to cure said default pursuant to the provisions of Section 25 of this Lease.

### **SECTION 8 - CONSTRUCTION OF IMPROVEMENTS**

a. Tenant, at its sole cost and expense, will cause to be constructed and completed a Hotel, and all other buildings, structures, facilities and other leasehold improvements, fixtures, and equipment constituting the Project (collectively, the "Improvements") on the Parcels in compliance with the City-approved Site Plan, the Zoning Code, Building Code and any and all other generally applicable City requirements which are consistent with the use of the Parcels. Tenant will pursue diligently the construction of all Improvements to completion.

b. Tenant shall use commercially reasonable efforts to cause the issuance of a building permit for the Project ("Commencement of Construction") to cause the start of construction of the Project to be no later than three (3) years after the Effective Date. If the Tenant has not commenced construction of the Project within three (3) years of the Effective Date or has not completed the Project by five (5) years of the start of Commencement of Construction, then within thirty (30) days after a written request is made by the City to the Tenant to commence or complete the Project, as applicable, the City shall have the right and option, to terminate this Lease.

c. City agrees to join in the execution of any instruments which may reasonably be required in order for Tenant to procure the issuance of any licenses, occupational permits, building permits or other government approvals required by Tenant in its use, occupancy or construction of the Parcels.

## **SECTION 9 – DUTY TO OPERATE, MAINTAIN AND REPAIR**

- a. From the commencement of the lease until the issuance of building permits, the Parcels will continue to be used as surface parking for the Civic Center, with the City remaining solely responsible for their operation and maintenance.
- b. From the issuance of building permits, Tenant will operate and maintain, at its sole cost and expense, all Improvements on the Parcels in compliance with all Applicable Laws, including but not limited to, the Americans with Disabilities Act. For purposes of this Lease, the term "Applicable Laws" means the federal, state, county and local laws (statutory and common law) ordinances, rules, regulations, permit requirements, and other requirements and official policies of the City of Glendale, as they may be amended from time to time, which apply to the development, use and operation of the Parcels and the Improvements during the Term of this Lease.
- c. From the issuance of building permits, Tenant shall at their sole cost and expense, keep, operate and maintain the Parcels and all related improvements, including but not limited to all buildings, facilities, structures, driveways, landscaped areas, in in a clean and sanitary condition and in good order and repair. All repairs, modifications, alterations, and replacements will be made promptly and be equal or better in quality and class to the original work. Tenant waives any right created by any legal requirement (now or hereafter in force) to make repairs to the Parcels at City's expense, it being understood that City will in no event be required to make any alterations, improvements or repairs subsequent to the issuance of building permits; except that if any damage to the buildings, facilities, structures, or improvements on the Parcels, or to any equipment or appurtenances located thereon, will have been solely as a result of City's grossly negligent or intentional actions (but expressly excluding any matter pertaining to or arising from the condition of the Parcels as of the Effective Date), City will pay the cost thereof to Tenant.

## **SECTION 10 - REGULATORY REQUIREMENTS**

- a. Tenant will promptly observe and comply with all present and future laws, ordinances, requirements, rules and regulations of all governmental authorities, including the City, having or claiming jurisdiction over the Parcels or any part thereof and of all requirements in written insurance policies covering the Parcels or any part thereof required in this Section 10 (the "Regulatory Requirements"). Without limiting the generality of the foregoing, Tenant will also procure each and every permit, license, certificate or other authorization required in connection with the lawful and proper use of the Parcels or required in connection with any building, structure or improvement hereafter erected thereon.
- b. Tenant covenants and agrees not to use, generate, release, manage, treat, manufacture, store, or dispose of, on, under or about, or transport to or from (any of the foregoing hereinafter described as "Use") the Parcels any Hazardous Materials (other than De Minimis Amounts). Tenant further covenants and agrees to pay all costs and expenses associated with any response, including any removal or remedial action, or any other enforcement action threatened, undertaken or ordered by any governmental or regulatory agency, administrative or judicial body pursuant to any related to the Use of any Hazardous Materials in any amount by Tenant, its employees, agents, invitees, subtenants, licensees, assignees or contractors.

c. For purposes of this Lease (1) the term "Hazardous Materials" includes, but is not be limited to, any hazardous substance, pollutant or contaminant such as asbestos, urea formaldehyde, polychlorinated biphenyls, oil, petroleum products, pesticides, radioactive materials, hazardous wastes, biomedical wastes, toxic substances or any other byproduct thereof, as defined in applicable federal or state law; (2) the term "De Minimis Amounts" means, with respect to any given level of Hazardous Materials, that such concentration or quantity of Hazardous Materials in any form or combination of forms (i) does not constitute a violation of or trigger any response, including any increased monitoring, under any Hazardous Materials Laws and (ii) does not pose any risk to human health or the environment;; and (3) the term "Hazardous Materials Laws" means any federal, state, county, municipal, local or other statute, law, ordinance or regulation now or hereafter enacted which may relate to or deal with the protection of human health or the environment, including but not be limited to the Comprehensive Environment Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 960 I, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251, et seq.; the Toxic Substances Control Act of 1976, 15 U.S.C. Section 2601, et seq.; Ariz. Rev. Stat. Ann., Title 49 (the "Arizona Environmental Quality Act of 1986"); and any rules or regulations legally adopted or promulgated pursuant to any of the foregoing as they may be amended or replaced from time to time.

c. Either party has the right, at its sole cost and expense, to contest the validity of any Regulatory Requirements applicable to the Parcels by appropriate proceedings diligently conducted in good faith provided, however, that no such contest will subject the other party to any liability, cost, expense or penalty or delay any response ordered by any governmental entity.

## **SECTION 11 - LIENS**

a. Tenant has no authority to do any act or make any contract that may create or be the basis for any lien, mortgage or other encumbrance upon any interest of City in the Parcels, provided however that Tenant is not prohibited from entering into any contracts in Tenant's capacity as a tenant, rather than as the title holder of said real property. Should Tenant cause any construction, alterations, modifications, , restorations, replacements, changes, additions, improvements or repairs to be made on the Parcels, or cause any labor to be performed or material to be furnished thereon, therein or thereto, neither the City nor the Parcels will under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished, and Tenant will be solely and wholly responsible to contractors, laborers and materialmen performing such labor and furnishing such material.

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

c. City will keep the fee title free and clear of all liens and encumbrances that may adversely affect Tenant's leasehold interest in this Lease.

## **SECTION 12 - PROPERTY AND PUBLIC LIABILITY INSURANCE**

Tenant will at all times, throughout the Term of this Lease, keep the Parcels insured pursuant to the requirements set forth in Exhibit X.

## **SECTION 13 - DAMAGE OR DESTRUCTION**

a. In the event of damage to or destruction of any of the buildings, structures or improvements built upon the Parcels by fire or other casualty, Tenant will give City immediate notice thereof and will at its own expense and whether or not the insurance proceeds are sufficient for the purpose, promptly commence and thereafter diligently pursue completion of any repair, restoration or replacement of the same so that upon completion of such repairs, restoration or replacement, the value and rental value of the buildings, structures or improvements will be sufficient to ensure City will be paid all Rent and Additional Charges in accordance with the schedule contained herein.

b. Notwithstanding anything to the contrary contained herein, if the buildings, structures or improvements built upon the Parcels by Tenant should be rendered untenable by fire or other casualty during the last five (5) years of the Lease to the extent of fifty percent (50%) or more of the replacement cost of said buildings, structures or improvements, Tenant may, at Tenant's option, terminate this Lease. Tenant's option to terminate must be exercised by a written notice given to City within sixty (60) days after the occurrence of such damage or destruction.

## **SECTION 14 - INDEMNIFICATION**

a. Tenant will indemnify, defend, pay and hold City, its agents, representatives, officers, directors, elected and appointed officials and employees harmless for, from and against any and all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys' fees, experts' fees and court costs associated with such matters; all of the foregoing, collectively, "Claims") imposed upon or asserted against City, its agents, representatives, officers, directors, elected or appointed officials, and employees, by reason of any of the following: (i) any act or omission by Tenant, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Tenant's obligations under this Lease; (ii) any use or nonuse of, or any condition created by Tenant on the Parcels or any part thereof; (iii) any accident, injury to or death of persons (including workmen) or loss of or damage to property occurring on or about the Parcels or any part thereof; (iv) performance of any labor or services or the furnishing of any materials or other property with respect to the Parcels or any part thereof; (v) any failure on the part of Tenant to comply with any of the matters set forth in Section 10 of this Lease, including but not limited to any failure by Tenant to clean up any Hazardous Materials; and (iv) all Claims relating to or arising from design, construction and structural engineering acts or omissions related in any way to, of or in connection with, the existing Garage, and all subsequent design, construction, engineering and other work and improvements by or on behalf of Tenant (collectively, "Indemnity").

b. In the event City, its agents, representatives, officers, directors, elected and appointed

officials, and employees should be made a defendant in any action, suit or proceeding brought by reason of any the occurrences described in this Section 14, Tenant will at its own expense resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by Tenant and reasonably approved by City. Except for the negligent or intentional acts of City, its agents, representatives, officers, directors, elected and appointed officials, and employees, if any such action, suit or proceeding should result in a final judgment against City, Tenant will promptly satisfy and discharge such judgment or will cause such judgment to be promptly satisfied and discharged.

c. Notwithstanding the terms and conditions contained in Subsection 14(b) above, Tenant is required to indemnify, defend, pay and hold harmless City, its agents, representatives, officers, directors, elected and appointed officials, and employees in the event negligence is imputed by operation of law against City, its agents, representatives, officers, directors, elected and appointed officials, and employees as a result of the actions or non-action of Tenant, its agents, servants, employees, directors, representatives, officials, customers, vendors, guests, licensees or invitees on the Parcels.

d. Tenant's obligations of Indemnity will survive the expiration or earlier termination of this Lease.

## **SECTION 15 – RESERVED**

## **SECTION 16 - HYPOTHECATION OF LEASEHOLD ESTATE**

Notwithstanding the prohibition on creating a lien on the Parcels contained in Section 11 above, Tenant may mortgage its interest in this Lease with reasonable notice to the City, and after a good faith effort to resolve any concerns the City may have.

## **SECTION 17- DEFAULTS BY TENANT**

a. Each of the following occurrences will be a default ("Default") of this Lease:

i. If Tenant fails to pay any Rent, Additional Charges or any other sum due hereunder promptly when due (a "Payment Breach") and such Payment Breach continues beyond written notice and ninety (90) day cure period;

ii. If Tenant fails to perform or comply with any of the other covenants, agreements, conditions or undertakings herein to be kept, observed and performed by Tenant other than a Payment Breach, for which no cure period is given and such failure continues for ninety (90) days after notice thereof in writing to Tenant; or

iii. If Tenant voluntarily files any petition, or has an involuntary petition filed on its behalf, under any chapter or section of the Federal Bankruptcy Code or any similar law, state or federal, whether now or hereafter existing, or files an answer admitting insolvency or inability to pay its debts; provided however, that Tenant shall not remain in Default if Tenant continues timely to pay all Rent and Additional Charges and otherwise fully comply with all other terms and conditions of this Lease.

iv. If Tenant makes an assignment for the benefit of its creditors.

b. Upon the occurrence of any Default, City will have the right, at its election, to terminate this Lease and reenter, occupy and take possession and control over the Parcels and the any buildings, structures and improvements then situated thereon, or any part thereof, and to expel, remove and put out Tenant and all persons occupying or upon the same under Tenant, using such force as may be necessary in so doing. Such right may be exercised without obtaining a court order. Such right shall include the right to receive all rental income of and from the same. No reentry by City will be deemed an acceptance of a surrender of this Lease, nor will it absolve or discharge Tenant from any liability, including the right to collect Rent and Additional Charges, under this Lease. Upon such reentry, all rights of Tenant to occupy or possess the Parcels cease and terminate.

c. The right to terminate and reenter shall be exercised by giving Tenant notice as provided in Section \_\_ at least 15 days prior to reentry. Such Notice shall specify the date this Lease will terminate and reentry will occur. Upon termination of this Lease, Tenant will quit and peacefully surrender to City the Parcels and the buildings, structures and improvements then situated thereon.

d. Notwithstanding the foregoing, in the event of a Default, all rights of Tenant under this Lease, will automatically and terminate, except for the right to exercise the Purchase Option. Should the Tenant fail to exercise the Purchase Option in a reasonable time, the Tenant will quit and peacefully surrender to City the Parcels and the buildings, structures and improvements then situated thereon.

e. At any time and from time to time after such reentry, City may re-let the Parcels and the buildings, structures and improvements thereon, or any part thereof, in the name of City or otherwise, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term of this Lease), and on such conditions (which may include concessions or free rental) as City, in its reasonable discretion, may determine and may collect and receive the rental therefore. Even though it may re-let the Parcels, City will have the right thereafter to terminate this Lease and all of the rights of Tenant in or to the Parcels.

f. Unless City has notified Tenant in writing that it has elected to terminate this Lease, no such reentry or action in lawful detainer or otherwise to obtain possession of the Parcels will relieve Tenant of its liability and obligations under this Lease; and all such liability and obligations will survive any such reentry. In the event of any such reentry, whether or not the Parcels and the buildings, structures and improvements thereon, or any part thereof, have been relet, Tenant will pay to City the entire Rent and all other Additional Charges required to be paid by Tenant up to the time of such reentry under this Lease, and thereafter Tenant, until the end of what would have been the Term of this Lease in the absence of such reentry, will be liable to City and will pay to City, as and for liquidated and agreed damages for Tenant's Default:

g. The amount of Rent and Additional Charges which would be payable under this Lease by Tenant if this Lease were still in effect, less the net proceeds of any reletting, after deducting all of City's reasonable expenses in connection with such reletting, including without limitation all reasonable repossession costs, brokerage commissions, legal expenses, attorneys' fees, alteration costs and expenses of preparation for such reletting.

h. In the event of any Default by Tenant, City will have, in addition to any specific remedies provided in this Lease, the right to invoke any right or remedy allowed by law or in equity or by statute or otherwise, including the right to enjoin such breach.

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

j. Any violation of any covenant or provision of this Lease, whether by act or omission, by any subtenant or any other persons occupying any portion of the Parcels or any buildings, structures or improvements thereon under the rights of Tenant will be deemed a violation of such provision by Tenant and a Default under this Lease; provided, however, that any such violation will not be deemed to be a Default under this Lease if and so long as Tenant in good faith and at its own expense takes and diligently pursues any and all steps it is entitled to take and which steps if completed will cure said Default and otherwise fully and timely performs all of Tenant's obligations under this Lease.

#### **SECTION 18 - OPERATING COVENANT**

a. Tenant covenants and agrees that Tenant will pursue the Project contemplated by this Lease and for the remainder of the Term, it will continuously and without interruption maintain the improvements in a manner which conforms to commercially reasonable management practices for comparable facilities, ("Operating Covenant"); provided, however, that the Operating Covenant will not apply during any period when the Parcels are untenable by reason of fire or other casualty or by eminent domain. Notwithstanding the foregoing, Tenant may request of City a waiver of the provisions of this Section 18 if it determines that economic factors and conditions make it impractical to comply therewith.

b. If Tenant fails to use commercially reasonable efforts to fulfill the Operating Covenant and such failure is not cured within the applicable cure period, then, as City's exclusive remedy for such failure, City may terminate this Lease upon ninety (90) days prior written notice to Tenant after which all obligations of Tenant and City under this Lease will terminate and be of no further force and effect.

#### **SECTION 19 - ASSIGNMENT OF RENTS, INCOME AND PROFITS**

Tenant is entitled to all rents, income and profits together with the right to collect and receive the same from all or a portion of the Parcels and the buildings, structures or improvements thereon.

#### **SECTION 20 - WAIVER OF PERFORMANCE**

No failure by City or Tenant to insist upon the strict performance of any term or condition hereof or to exercise any right, power or remedy consequent upon a breach thereof and no submission by Tenant or acceptance by City of full or partial Rent or Additional Charges during the continuance

of any such breach will constitute a waiver of any such breach or of any such term. No waiver of any breach will affect or alter this Lease, which will continue in full force and effect, nor the respective rights of City or Tenant with respect to any other then existing or subsequent breach.

#### **SECTION 21 - REMEDIES CUMULATIVE**

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

#### **SECTION 22 - TITLE TO BUILDINGS AND IMPROVEMENTS**

- a. During the Term, title to all Improvements constructed on the Parcels by Tenant will be in the Tenant.
- b. This Section 22 will survive the expiration or earlier termination of this Lease. Notwithstanding anything contained herein to the contrary, while this Lease remains in effect, Tenant alone will be entitled to claim depreciation on the buildings, structures, improvements, additions and alterations therein included within the Parcels, and all renewals and replacements thereof, for all taxation purposes.

#### **SECTION 23-ATTORNEYS FEES**

In the event City should bring suit for possession of the Parcels, for the recovery of any sum due hereunder, or for any other relief against Tenant, declaratory or otherwise, arising out of a breach of any term or condition of this Lease, or in the event Tenant should bring any action for any relief against City, declaratory or otherwise, arising out of this Lease, the prevailing Party will be entitled to receive from the other Party reasonable attorneys' fees and reasonable costs and expenses, which have accrued on the commencement of such action and will be enforceable whether or not such action is prosecuted to judgment.

#### **SECTION 24 - PROVISIONS SUBJECT TO APPLICABLE LAW**

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

#### **SECTION 25 - RIGHT TO CURE TENANT'S DEFAULTS**

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

## **SECTION 26 - NOTICES**

All notices, demands, requests, consents, approvals and other communications required or permitted hereunder will be in writing and will be deemed to have been given upon personal delivery to the respective Party, after delivery by personal service or a nationally recognized overnight courier service (e.g., UPS, Federal Express), or within three (3) days after the same has been mailed by registered or certified mail, postage prepaid and return receipt requested, at the address shown below:

### The City's Notice Address

City of Glendale  
5850 West Glendale Avenue  
Glendale, AZ 85301  
Attention: City Manager  
Email: citymanager@glendaleaz.com

With a copy to:  
City of Glendale  
5850 West Glendale Avenue  
Glendale, AZ 85301  
Attention: City Attorney  
Email: mbailey@glendaleaz.com

### The Tenant's Notice Address

CivicGroup  
Attn. Chris DeRose  
5425 E. Bell Road Suite 104  
Scottsdale, AZ 85254  
Email: chris@civicgroup.live

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

## **SECTION 27 - WARRANTIES OF THE PARTIES**

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

- i. City owns the real property included within the Parcels.
- ii. City has the full right, power and authority to enter into and perform City's obligations pursuant to this Lease and to lease the real property included within the Parcels to Tenant in the manner contemplated in this Lease subject only to the consent and approval of the Glendale City Council.
- iii. Except as otherwise disclosed in this Lease, no other person or entity other than Tenant has a right to possession of all or any part of the real property included within the Parcels.
- iv. To the extent of City's actual knowledge, this Lease does not violate any contract, agreement or instrument to which City is a party, or is otherwise subject.
- v. No third party has any option or preferential right to purchase all or any part of the Parcels.
- vi. City has not received or given any written notice that the Parcels or the operations thereon are in violation of any governmental law or regulation, including, without limitation, any Hazardous Materials Laws or the Americans with Disabilities Act, nor is City aware of any such violation.

For the purposes of this subsection a., the actual knowledge of City will be and mean the actual knowledge, without further duty of inquiry, of the City Manager of the City of Glendale.

b. Upon Tenant performing all covenants of this Lease to be performed by Tenant, Tenant will have quiet, exclusive and undisturbed use, possession and enjoyment of the Parcels, together with all appurtenances thereto without hindrance or ejection by any person lawfully claiming by, through or under City.

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

1. Tenant is a duly formed and validly existing limited liability company, formed under the laws of the State of Arizona.
2. Tenant has the full right, power and authority to enter into and perform Tenant's obligations pursuant to this Lease and to lease the real property included within the Parcels from City in the manner contemplated in this Lease.
3. To the extent of Tenant's actual knowledge, neither this Lease nor Tenant's contemplated use of the Parcels, as contemplated by this Lease, violates any contract, agreement or instrument to which Tenant is a party, or is otherwise subject.

For the purposes of this subsection c, the actual knowledge of Tenant will be and mean the actual knowledge, without further duty of inquiry, of Chris DeRose, representative of Tenant.

## **SECTION 28 - UNSUBORDINATED LEASE**

This is an unsubordinated lease. City is not and will not be obligated to subordinate its rights and ownership interest in the real property included within the Parcels to any loan, encumbrance or other lien that Tenant may place against Tenant's leasehold interest.

## **SECTION 29 - PURCHASE OPTION**

a. Option to Purchase. City hereby grants to Tenant the exclusive option to purchase the entirety of the Parcels ("Purchase Option") according to the terms and conditions hereinafter set forth.

b. Exercise of Purchase Option. The Purchase Option granted herein will become effective and Tenant will have the right to exercise the Purchase Option hereunder at any time during the Term ("Option Term") after site plan approval from the City. However, if the Lease is terminated, canceled, or threatened with cancellation, termination, or invalidation, or if the ability to exercise the Purchase Option sooner becomes necessary to reasonably finance the Project, the Tenant may exercise the Purchase Option prior to site plan approval. Tenant may only exercise the Purchase Option upon Tenant curing any material default then existing under this Lease. The Purchase Option may be exercised by Tenant at any time during the Option Term by Tenant delivering written notice to City as provided in Section 26 above. Such Notice shall state the day upon which the Purchase Option is being exercised so that conveyance of Parcels can occur in accordance with subsection d. below.

c. Purchase Price. The Purchase Price for the Parcels will be Ten Dollars (\$10) per square foot. Because the Parcels are comprised of approximately 28,000 square feet, the Purchase Price shall be approximately \$280,000, and will be determined precisely following a survey conducted after the commencement of the lease. All prior rent payments shall be deducted from the final purchase price. The Parcels shall be surveyed and the square footage confirmed at the Tenant's sole cost prior to Closing the purchase and sale of the Parcels.

d. Conveyance of Title and Delivery of Possession. City and Tenant agree to perform all acts necessary for conveyance in sufficient time for the Parcels to be conveyed within ninety (90) days after delivery to City of Tenant's notice of exercise of the Purchase Option or on the last day of the Rental Period, whichever first occurs. City's entire interest in the Parcels will be conveyed by Special Warranty Deed. The Parcels will be conveyed to Tenant in its "as-is, where-is" condition, with no representation of City with respect to any matter regarding the physical condition of the Parcels, including but not limited to the presence or absence of Hazardous Materials or compliance with any Regulatory Requirements. All expenses in connection with conveyance of the Land to Tenant including, but not limited to, title insurance (if requested by Tenant), recordation and notary fees and all other closing costs (including escrow fees if use of an escrow is requested by Tenant), will be paid by Tenant. Notwithstanding Tenant's actual possession of the Parcels pursuant to this Lease, possession of the Parcels will be deemed formally delivered to Tenant concurrently with

the conveyance of title, although Tenant will bear all risk of loss or damage.

e. Concurrently with the delivery of the Special Warranty Deed to Tenant, Tenant will grant to City, in a form reasonably satisfactory to City, a permanent, non-exclusive easement for the benefit of the public, on and over all private walks and walkways along Palmaire Avenue and 57<sup>th</sup> Avenue. In the alternative, City may elect to reserve such easements in the Special Warranty Deed.

f. In the event of a breach of City of its obligations arising under this Section 29, Tenant's sole remedy will be to seek specific enforcement (or comparable equitable remedy) of this Lease. Any such action must be commenced by Tenant within ninety (90) days of the alleged breach, and any action commenced later than such date will be deemed barred. Tenant waives all right to seek damages (whether actual, consequential, special, exemplary, speculative, or punitive) from or against City in the event of a breach by City of this Section 29.

### **SECTION 30 - ESTOPPEL CERTIFICATE**

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

### **SECTION 31 - COOPERATION**

To further the cooperation of the Parties in implementing the provisions of this Lease, City and Tenant each will designate and appoint a representative to act as a liaison between the City and its various departments and Tenant. The initial representative for City (the "City Representative") will be the Jessi Pedersen; and the initial representative for the Tenant (the "Tenant Representative") will be Chris DeRose . The representatives will be available at all reasonable times to discuss and review the performance of the Parties to this Lease and the development and maintenance of the Parcels.

### **SECTION 32 - MEMORANDUM FOR RECORDING**

Within ten (10) days after the Effective Date of this Lease, City and Tenant will execute and cause to be recorded with the Maricopa County Recorder's Office, and any other public or private official, a copy of this Lease.

### **SECTION 33 - PARTIES BOUND**

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

#### **SECTION 34 - TIME OF ESSENCE**

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

#### **SECTION 35 -- SECTION HEADINGS; REFERENCES; INTERPRETATION**

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

#### **SECTION 36 - SEVERABILITY**

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

#### **SECTION 37 - GOVERNING LAW AND CHOICE OF FORUM**

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

#### **SECTION 38 - PAYMENT OF COSTS AND EXPENSES**

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

#### **SECTION 39 - NO WARRANTIES**

Tenant acknowledges and covenants to City that it has made a complete investigation of the real property included within the Parcels, the surface and sub-surface conditions thereof, the present and proposed uses thereof, and agrees to accept all the same "as is". Tenant further agrees that, except as expressly provided herein, no representation or warranty, expressed or implied, in fact or by law,

has been made by City or anyone else, as to any matter, fact, condition, prospect or anything else of any kind or nature.

#### **SECTION 40 - BROKERS OR AGENTS**

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

#### **SECTION 41 - CONSENT OR APPROVAL**

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

#### **SECTION 42 - DELAY OF PERFORMANCE**

Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, acts of terrorism, and other causes entirely beyond the control of the Party obligated to perform, will excuse the performance by such Party for a period equal to any such prevention, delay or stoppage, except the obligations imposed with regard to rental and other monies to be paid by Tenant pursuant to this Lease.

#### **SECTION 43- RELATIONSHIP**

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

#### **SECTION 44 - LEASE AMENDMENT**

This Lease may be amended only upon written agreement by the Parties. In the event a Party wishes to amend one or more provisions of this Lease, it will make a written request to the other Party setting forth the nature of the request. In the event the Parties agree upon the terms of the proposed Lease modifications, City's approval of any proposed amendments will be subject to its City Council's review and approval. Notwithstanding the foregoing, administrative and non-material

amendments to this Lease may be made by the City Manager on behalf of City without the requirement of public hearing and City Council approval.

#### **SECTION 45 - FURTHER INSTRUMENTS AND DOCUMENTS**

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

#### **SECTION 46 - INTEGRATION CLAUSE; NO ORAL MODIFICATION**

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

#### **SECTION 47 - COUNTERPARTS**

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

#### **SECTION 48 - CONFLICT OF INTEREST**

This Lease is subject to cancellation pursuant to the provisions of A.R.S. §38-511 relating to conflicts of interest.

If the Lease is canceled pursuant to this statute or for any other reason, the parties will negotiate in good faith and, to the extent legally permissible, enter into a new agreement that reflects the provisions of this Lease. If the parties are unable to do so, the Tenant may exercise the Purchase Option.

#### **SECTION 49 - NO BOYCOTT OF ISRAEL**

Tenant certifies that to the extent A.R.S. §35-393.01 applied, that it is not currently engaged in, and for the Term of this Lease will not engage in, a boycott of Israel.

#### **SECTION 50 – PERMIT AND OTHER FEES**

Building permit, inspection, development and other similar fees for the development of the

Project ("Fees") will be those in effect at the time of any application or submission. The City agrees to waive any such fees in an amount not to exceed Two Hundred Thousand Dollars (\$200,000.00) ("Fee Waiver Amount") in exchange for Tenant's performance of its obligations under this Agreement. Notwithstanding anything in the previous provision to the contrary, no amount of the Fee Waiver Amount shall apply to development impact fees (DIF), and instead, Tenant shall pay any and all such development impact fees (DIF).

#### **SECTION 51 - PARKING**

Tenant shall have parking access at no cost in the city-owned garage, located at the southwest corner of 58<sup>th</sup> Avenue and Palmaire Avenue ("Parking Garage"), which includes approximately 600 spaces. With reasonable notice to the City, Tenant may elect to reserve up to one hundred thirty (130) parking spaces in the Parking Garage for exclusive use by the Tenant in an amount of \$40 per parking space, per month, subject to the general terms and conditions applicable to all users of the Parking Garage. Nothing shall prohibit Tenant from charging guests, patrons, or employees for reserved parking spots.

This section shall continue in force should the Tenant exercise its purchase option.

#### **SECTION 52 – PRESERVATION OF STATE SHARED REVENUE**

Notwithstanding any other provision of, or limitation in, this Agreement to the contrary, if pursuant to A.R.S. § 41-194.01 the Attorney General determines that this Agreement violates any provision of state law or the Constitution of Arizona (including but not limited to A.R.S. § 42-6201 *et seq.*), City and Tenant shall use all and best faith efforts to modify the Lease so as to fulfill each Parties obligations in the Agreement while resolving the violation with the Attorney General. If within thirty (30) days of notice from the Attorney General pursuant to and under the provisions of A.R.S. § 41- 194.01(B)(1), City and Tenant cannot agree to modify this Agreement so as to resolve the violation with the Attorney General, the Tenant shall have the ability to timely exercise their Purchase Option. Additionally, if the Attorney General determines that this Agreement may violate a provision of state law or the Constitution of Arizona under A.R.S. § 41-194.01(B)(2), and requires the posting of a bond under A.R.S. § 41-194.01(8)(2), City shall be entitled to terminate this Agreement, except if Tenant exercises their Purchase Option or posts such bond, if required; and provided further, that if the Arizona Supreme Court, determines that this Agreement violates any provision of state law or the Constitution of Arizona, the Tenant shall have the right to exercise their Purchase Option. If the Tenant fails to exercise their Purchase Option in a timely manner, City may terminate this Agreement and the Parties shall have no further rights, interests or obligations in this Agreement or claim against the other Party for a breach or default under this Agreement.

If the Lease is canceled or threatened with termination pursuant to this Section, the Tenant shall have the right to exercise the Purchase Option.

#### **SECTION 53 – LEASE MODIFICATION FOR PURPOSES OF FINANCING**

If a provision of this Lease proves an impediment to the Tenant's ability to reasonably finance the Project, the Tenant will notify the City, and the parties will negotiate in good faith to make

reasonable modifications. If the parties are unable to reach an agreement or the Lease cannot be modified to obtain reasonable financing, the Tenant shall have the ability to exercise the Purchase Option.

EXECUTED as of the Effective Date.

**CITY:**

CITY OF GLENDALE, an Arizona municipal corporation

By: \_\_\_\_\_  
Name: Kevin R. Phelps  
Title: City Manager

**ATTESTED**

\_\_\_\_\_  
Julie K. Bower  
City Clerk

**APPROVED AS TO FORM**

\_\_\_\_\_  
Michael D. Bailey  
City Attorney

**TENANT:**



By: Chris DeRose  
Name: Civic Group LLC  
Title: President

Exhibit A

Legal Description of Parcels

Lots 1, 2, 3, and 4, Block 27, of PARK ADDITION TO GLENDALE, ARIZ according to the plat of record in the office of the County Recorder of Maricopa County, Arizona in Book 3 of Maps, page 42.

