

**LEASE**

**by and between**

**The City of Mesa, Arizona,  
an Arizona municipal corporation,**

**“Lessor”**

**and**

**The Arizona Board of Regents,  
a body corporate, for and on behalf of  
Arizona State University**

**"Lessee"**

\_\_\_\_\_, 2018

## LEASE

**THIS LEASE** (this "**Lease**") is made and entered into to be effective as of the \_\_\_\_ day of \_\_\_\_\_, 2018 (the "**Effective Date**"), by and between the City of Mesa, Arizona, an Arizona municipal corporation ("**Lessor**") and the Arizona Board of Regents, a body corporate for and on behalf of Arizona State University ("**Lessee**"). Each of Lessor and Lessee may be referred to in this Lease as a "**Party**," or collectively as the "**Parties**."

### RECITALS:

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

- A. This Lease is entered into in connection with, and in furtherance of, the IGA.
- B. Lessor has agreed to provide the ASU Facilities and related Public Infrastructure within its City Center as depicted on Exhibit A, and at those approximate locations within the City Center as depicted on Exhibit B, in accordance with the City Center Master Plan, the Design Standards and the Initial Project Budget, for the operation of a post-secondary educational facility by Lessee.
- C. Lessor will design and construct the ASU Facilities and related Public Infrastructure in cooperation with Lessee and in accordance with the IGA.
- D. As set forth in the IGA, it is anticipated the ASU Facilities will be provided in phases; however, this Lease deals exclusively with "Phase One" (as defined in the IGA), and the ASU Facilities, as defined in this Lease, are only those facilities to be constructed on the Premises as part of Phase One. The ASU Facilities to be constructed as part of Phase One consist solely of approximately \_\_\_\_\_ gross square feet (\_\_\_\_\_ net square feet) in new construction of a five-story building designated as Building A and generally depicted on Exhibit B ("**Building A**").
- E. In addition to construction of the ASU Facilities as part of Phase One, Lessor also will construct, design and develop (or redevelop, in the case of the Mesa Innovation Studios) the following (which are not included in or part of the ASU Facilities) as part of Phase One: (i) the Mesa Innovation Studios in the location depicted on Exhibit B, and (ii) the associated Public Infrastructure.
- F. The schedule for the date for Lessor's completion of construction of the improvements constituting Phase One, the issuance of a certificate of completion (or similar certification) for the ASU Facilities, and the delivery of the ASU Facilities by Lessor to Lessee, is attached as Exhibit C. The development of additional phases of the City Center (if any) is based upon the requirements in the IGA and will be reflected in a separate lease or other agreements, subject in each case to prior authorization of the Mesa City Council and the Arizona Board of Regents. Future phases, if any, may be the subject of one or more amendments to the City Center Master Plan as mutually agreed by the Parties.
- G. Upon completion of the ASU Facilities and the related Public Infrastructure, Lessor will lease the Premises to Lessee, and Lessee will lease the Premises from Lessor, according to the terms, conditions and provisions of this Lease.

## AGREEMENTS:

For and in consideration of the mutual agreements, covenants and promises set forth in this Lease and for other good and valuable consideration, the receipt, sufficiency and validity of which are hereby acknowledged, Lessor and Lessee agree as follows:

### 1. Definitions:

Words and phrases used in this Lease, including the Recitals, have the meanings given to them in this Paragraph 1. Words and phrases that are used in this Lease but are not defined in this Paragraph 1 and are defined in the IGA, have the meanings given to them in the IGA. In the event of a conflict in a definition of a word or phrased used both in this Lease and in the IGA, the definition given in this Lease will prevail. Words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

(a) “**Additional Rent**” means all amounts, other than Base Rent, to be paid by Lessee to Lessor pursuant to this Lease, whether or not designated as such.

(b) “**ASU**” means Arizona State University.

(c) “**ASU Facilities**” means Building A and certain improvements appurtenant to Building A that have been constructed on the Land by Lessor.

(d) “**Base Rent**” means as set forth in Paragraph 4.

(e) “**Building A**” means as defined in Recital D.

(f) “**Capital Improvements**” means those improvements necessary to maintain the condition and use of the Premises, each of which improvements costs in excess of \$50,000 and with a useful life of at least five (5) years

(g) “**City Center**” means Lessor located areas within its City Center area that are appropriate for, and will support, the ASU Facilities.

(h) “**City Center Master Plan**” means a master plan for the City Center and related budget subject to approval by the Parties and will incorporate the following elements:

(i) Identification of the specific uses of the ASU Facilities;

(ii) Conceptual plans for civic space, streetscape, landscape, parking, pedestrian connections, etc.;

(iii) Elements that address building massing, height and exterior treatments (including materials, color, and architectural style);

(iv) City Center Design Standards and Guidelines; and

(v) Lessor shall be responsible, with the participation of Lessee, for procuring the designer for the City Center Master Plan, and Lessor shall be solely responsible for all such costs.

(i) “**Claims**” means any and all liabilities, claims, damages, losses, penalties, litigation, demands, causes of action (whether in tort or contract, in law or at equity or otherwise), suits, proceedings, judgments, disbursements, charges, assessments, and expenses (including attorneys' and experts' fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding).

(j) “**Commencement Date**” means the date on which Lessor has satisfied the Delivery Requirements and delivered possession of the Premises to Lessee.

(k) “**CPI**” means the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for all Urban Consumers (CPI-U), U.S. City Average (1982 - 1984 = 100). If at any time there shall not exist the CPI, Lessor may substitute any official index published by the Bureau of Labor Statistics or by a successor or similar government agency as may then be in existence and which in Lessor’s and Lessee’s reasonable judgment shall be most nearly equivalent thereto.

(l) “**Default Rate**” means the greater of (i) ten percent (10%) per annum, or (ii) five percent (5%) per annum plus the discount rate prevailing on the twenty-fifth (25th) day of the month preceding the date such payment was due, as established by the Federal Reserve Bank of San Francisco on advances to member banks under Sections 13 and 13a of the Federal Reserve Act as is now or hereafter in effect from time to time.

(m) “**Delivery Requirements**” means all of the following:

(i) final completion of Building A in accordance with the requirements of the IGA, the City Center Master Plan, the Design Standards, and approved plans and specifications (subject to approved change orders), and in compliance with all state and federal laws; and

(ii) final completion of the Open Space and such other portions of the Public Infrastructure as are reasonably necessary to serve the ASU Facilities, in accordance with the Public Infrastructure Plan; and in a manner satisfactory to the Parties; and

(iii) issuance of all required certificates of completion for the ASU Facilities.

(n) “**Design Standards**” means the Lessor’s and Lessee’s approved City Center Design Standards and Guidelines.

(o) “**Event of Default**” means a default by Lessee as defined in Paragraph 23 of this Lease.

(p) “**Facilities Manager**” means the Lessor provided facilities manager to oversee the condition and use of the City Center facilities and to monitor compliance with the property management requirements for the ASU Facilities

(q) “**FF&E**” means furniture, fixtures and equipment.

(r) “**Financing**” means as defined in the IGA.

(s) “**Hazardous Materials**” means any chemical, compound, material, substance or other matter that: (i) is a flammable explosive, asbestos, petrochemical, radioactive material, nuclear medicine material, drug, vaccine, bacteria, virus, hazardous waste, biohazard, toxic substance, petroleum product, or related injurious or potentially injurious material, whether injurious or potentially injurious by

itself or in combination with other materials; (ii) is controlled, designated in or governed by any Hazardous Materials Law; (iii) gives rise to any reporting, notice or publication requirements under any Hazardous Materials Law; or (iv) gives rise to any liability, responsibility or duty on the part of Lessee or Lessor with respect to any third person under any Hazardous Materials Law.

(t) “**Hazardous Materials Laws**” means any and all presently existing or enacted in the future federal, state or local laws, ordinances, rules, regulations, final decrees and orders (including the so-called “common law” of the State of Arizona) relating to hazardous substances, hazardous materials, hazardous waste or toxic substances on, under or about any of the improved real properties comprising the Premises, or soil and ground water conditions, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), as amended, 42 U.S.C. §9601, et seq., the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq., Title 49 of Arizona Revised Statutes, any amendments to the foregoing, and any similar federal, state or local laws, ordinances, rules, regulations, final decrees and orders.

(u) “**IGA**” means the Intergovernmental Agreement dated March 1, 2018 between Lessor and Lessee, a true and correct copy of which is attached to this Lease as Exhibit D.

(v) “**Improvements**” means Building A and all other structures and permanent facilities constructed on the Land as part of the ASU Facilities.

(w) “**Indemnify**” means indemnify, defend (with counsel reasonably acceptable to the indemnified party), pay and hold free and harmless for, from and against.

(x) “**Initial Project Budget**” means the initial project budget for the design and construction of the Public Infrastructure and ASU Facilities, as described in the IGA.

(y) “**Land**” means the real property on which the Improvements have been constructed (as commonly referred to as the “footprint” of any applicable building or other structure). Land also includes a perimeter around the Improvements, as shown in more detail on Exhibit B.

(z) “**Laws**” means all applicable present and future laws, ordinances, orders, rules, regulations, permitting requirements and other requirements of the City of Mesa, the Arizona Board of Regents, the State of Arizona, and the United States of America.

(aa) “**Lessee Parties**” means Lessee and Lessee’s Representatives.

(bb) “**Lessor Parties**” means Lessor, the members of Lessor’s City Council, and Lessor’s Representatives.

(cc) “**Mesa Innovation Studios**” means Lessor’s existing information and technology building designated in Exhibit B, a portion of which (but not less than 6,000 square feet) will be redeveloped and operated by Lessor for the creation of an innovation studio.

(dd) “**Mesa Innovation Studios License Agreement**” means an agreement to be entered into by the Parties, in form acceptable to the Parties (each in its sole discretion), pursuant to which Lessee is provided with a nonexclusive right to access and use designated portions of the Mesa Innovation Studios for the purposes contemplated therein and otherwise contemplated in this Lease and the IGA, including, without limitation, rights in favor of Lessee allowing it to host (i) not fewer than twenty-five (25) film or other public Lessee events scheduled per year to be held at the Mesa Innovation Studios; and

(ii) not fewer than twenty (20) public entrepreneurial innovation events to be held per year at the Mesa Innovation Studios. The Mesa Innovation Studios License Agreement will include, *inter alia*, Lessee's authorization to use the Mesa Innovation Studios for entrepreneurial and innovation programs, Lessee's staffing commitments at the Mesa Innovation Studios, and Lessee's programming role with respect to the Mesa Innovation Studios.

(ee) "**Open Space**" means approximately two (2) acres of public open space in the City Center.

(ff) "**Phase One**" means as defined in Recital D.

(gg) "**Preliminary Submittal**" means a site plan and four-sided color elevation and a color and material board for its proposed work showing in detail the dimensions, ingress, egress, grading, drainage, site and building signage, site and building lighting, parking, hardscape and landscaping.

(hh) "**Premises**" means the Land and Improvements leased to Lessee by Lessor as depicted in Exhibit B.

(ii) "**Project Budget**" means the budget for the design and construction of the Public Infrastructure and ASU Facilities.

(jj) "**Public Infrastructure**" means all public utilities, water lines, sewer lines, chilled water lines, streets, sidewalks, streetlights, streetscape, parks and other public open space and landscaping (including the Open Space) within the City Center that are reasonably necessary to support the ASU Facilities.

(kk) "**Public Infrastructure Plan**" means the Parties' plan for the development of Public Infrastructure consistent with the City Center Plan.

(ll) "**R&R Account**" means a renewal and replacement reserve fund account for Capital Improvements.

(mm) "**Remedial Work**" means any monitoring, investigation, clean-up, removal and other remedial work.

(nn) "**Rent**" means Base Rent and Additional Rent.

(oo) "**Representatives**" means, as to a Party, any permitted assignees or sublessees of the Party and such Party's officers, directors, shareholders, members, partners, affiliates, board members, staff, employees, members, agents, principals, lenders, independent contractors, attorneys, accountants and representatives; the predecessors, heirs, successors and assigns of any such person; and all persons and entities claiming through any of these persons or entities.

(pp) "**Taxes**" means, collectively, all taxes (including, without limitation, all ad valorem, or similar taxes as the same relate to or are imposed upon Lessor, or the Premises, and any excise or similar taxes imposed upon government property), assessments (including, without limitation, all assessments for public improvements or benefit, whether or not commenced or completed prior to the date hereof; and further including, but not limited to, amounts that would customarily be assessed by SID 228 and paid [whether as a required or a voluntary payment] by a private property owner), water, sewer or other rents and charges, excises, tax levies, fees (including, without limitation, license, permit, inspection, authorization and similar fees), and all other governmental charges, in each case whether general or

special, ordinary or extraordinary, foreseen or unforeseen, of every character in respect of the Premises or occupancy of the Premises (including all interest and penalties thereon due to any failure in payment by Lessee), which at any time prior to, during or in respect of the Term hereof may be assessed or imposed on or in respect of or be a lien upon the Premises or any part thereof or any rent therefrom or any estate, right, title or interest of Lessor therein, or in connection with the Premises or the leasing or use of the Premises or any part thereof by Lessee; provided, however, that nothing contained herein shall be construed to require Lessee to pay and the term “**Taxes**” shall not include (i) any tax based on net income imposed on Lessor, (ii) any transfer fee or other tax imposed with respect to the sale, exchange or other disposition by Lessor of the Premises (other than taxes due with respect to this Lease), (iii) any interest or penalties imposed on Lessor as a result of the failure of Lessor to file any return or report timely and in the form prescribed by law or to pay any tax or imposition, except to the extent such failure is a result of a breach by Lessee of its obligations hereunder, and (iv) any impositions imposed on Lessor that are a result of Lessor not being considered a “**United States person**” as defined in Section 7701(a)(30) of the Internal Revenue Code of 1986.

(qq) “**Term**” means the rental Term of this Lease consisting of a period of ninety-nine (99) years beginning on the Commencement Date and expiring on the date which is ninety-nine (99) years thereafter.

(rr) “**Waives**” means that Lessor, Lessee, Lessee Parties or Lessor Parties, as the case may be, waive and knowingly and voluntarily assume the risk of.

## 2. **Leased Premises:**

(a) **Lease of Premises:** From and after the Commencement Date, Lessor leases the Premises to Lessee, and Lessee accepts and leases the Premises from Lessor, upon the terms and conditions set forth in this Lease. Notwithstanding the foregoing, this Lease is subject to: (i) all covenants, restrictions, easements, agreements and reservations of record, (ii) all present building restrictions and regulations, zoning Laws of the City of Mesa and any other governmental entity or agency having jurisdiction over any portion of the Premises, and (iii) all other Laws. This Lease does not grant any rights to Lessee (including, but not limited to, a license) to use the Open Space, but Lessee’s Representatives have a right to use the Open Space as members of the public.

(b) **Parking:** No student or Lessee staff parking is or will be provided at the City Center or be included in the ASU Facilities; provided that the City Center Master Plan will accommodate disabled parking and certain limited parking requested by Lessee and agreed by the Parties. Lessor and Lessee will confer from time-to-time to attempt to provide parking to serve both Lessee-generated parking demand and replacement parking for spaces eliminated from the City Center area to accommodate development of the ASU Facilities. If Lessor elects to allow Lessee to operate and maintain Lessor-developed parking (if any), all of Lessee’s revenues derived from such parking (net of Lessee’s reasonable expenses directly related to operating and maintaining the parking facilities, and as approved by Lessor) will be paid to Lessor as Additional Rent, and Lessor will use such revenues, in its sole election, for Lessor’s expenses related to the public operation and maintenance of the City Center, or for the repayment of the Financing.

(c) **Student Housing:** The Parties acknowledge that, although student and faculty housing may be desired in the future, no student or faculty housing is included in the ASU Facilities, and the Parties are not obligated under this Lease or the IGA to provide student or faculty housing. Notwithstanding the foregoing, the Parties will confer from time-to-time to determine if housing for students or faculty can be provided in the general vicinity of the City Center pursuant to terms that are mutually acceptable to the Parties.

3. **Duration of Lease:**

(a) **Term:** Although this Lease is and shall be effective as of the Effective Date, the Term of this Lease for the purpose of occupancy of the Premises will be for ninety-nine (99) years from the Commencement Date, unless this Lease is extended or sooner terminates as expressly provided in this Lease. At the expiration or earlier termination of this Lease (other than as a result of an Event of Default), all items of rent, taxes, insurance, utilities and other matters shall be adjusted and prorated as of the date of termination, and Lessee shall pay to Lessor, or Lessor shall pay to Lessee, as the case may require, such sums as shall be required to accomplish the proration. If this Lease terminates or expires for any reason while the IGA is still in full force and effect, then the Parties agree that the IGA will thereupon, without further act or notice required, concurrently terminate.

(b) **Extension:** In the event Lessee, at its sole cost and expense, replaces the ASU Facilities or expends more than \$5,000,000.00 for Capital Improvements in connection with the rebuilding or improving of any portion of the ASU Facilities, and the useful life of such replaced or rebuilt Improvements (as reasonably determined by the Parties) exceeds the remainder of the Term, then the Term will be extended to include the reasonable useful life of the replaced or rebuilt Improvements.

(c) **Lessor's Condition Precedent:** Lessee agrees and acknowledges that Lessor's obligation to design and construct the ASU Facilities and to construct the related Public Infrastructure is conditioned upon the Financing. Accordingly, Lessor shall have right to terminate this Lease by providing written notice of termination to Lessee not later than the close of business on July 1, 2019, in the event that Lessor, on or before the date of such notice, (i) fails to obtain the Financing for any reason, or (ii) fails to authorize, issue and sell instruments evidencing the Financing. In the event that Lessor sends such a notice of termination to Lessee, then (1) this Lease will automatically terminate upon Lessee's receipt of such notice, without further act or notice required; (2) Lessor's failure to obtain Financing will not be (or be deemed to be) a breach by Lessor with respect to any term or provision of this Lease; and (3) neither Lessor nor Lessee will have any claims against the other arising out of this Lease, except for obligations of Indemnity that expressly survive such termination.

4. **Base Rent:** Lessee will, commencing on the Commencement Date and on the first day of each year thereafter during the Term, pay Base Rent to Lessor in the sum of One Hundred Thousand and no/100 Dollars (\$100,000.00), subject to adjustment in accordance with the further provisions of this Paragraph 4. On the first anniversary of the Commencement Date and on each subsequent anniversary of the Commencement Date thereafter, the currently payable Base Rent under this Lease will be increased by an amount that is equal, on a pro rata basis, to the amount by which the CPI in effect on the applicable anniversary date has increased over the CPI in effect on the Commencement Date or the most recent previous anniversary of the Commencement Date, as applicable. In no event will Base Rent be reduced from the Base Rent charged during any previous year in the event of any decrease in the CPI. Lessor intends to use the Base Rent to reduce Lessor's costs of Financing and/or operating and maintaining the City Center.

5. **Payment of Rent:** Lessee will pay the annual installment of Base Rent and all other sums due under this Lease to Lessor, without notice or demand, and without deduction, abatement or setoff, in advance during the Lease Term, at the address set forth for Lessee in Section 29, or at such other place, or to such other person or persons as Lessor may designate in writing. All sums due under this Lease will be paid in current legal tender of the United States of America.

6. **Additional Rent:** Additional Rent will be due and payable upon demand or together with the next succeeding installment of Base Rent, whichever shall first occur. Additional Rent includes amounts paid as the reimbursement of the allocable portion of the Facilities Manager's salary and benefits

set forth in Paragraph 12(c)(ii). Lessor shall have the same remedies for Lessee's failure to pay Additional Rent as for Lessee's nonpayment of Base Rent. Absent a specific provision to the contrary, all Additional Rent shall be due within ten (10) days after Lessor's invoice.

7. **Lessee's Other Payment Obligations:** In addition to other obligations of Lessee set forth in this Lease:

(a) **Utilities and Related Services:** Lessee will be solely responsible for all costs associated with the operation and maintenance of the Premises including all utilities and any contractor services, including (but not limited to) janitorial, landscaping, and internal building and building access security.

(b) **FF&E:** Lessee will pay and be solely responsible for all FF&E in the Premises for the entire Term. The amount of FF&E required to be provided in the Premises by Lessee will be a minimum of Ten Million Dollars (\$10,000,000.00), to be provided as follows: Eight Million Dollars (\$8,000,000.00), which expenditure must be demonstrated by Lessee to Lessor no later than one (1) year following the Commencement Date, and an additional Two Million Dollars (\$2,000,000.00), which additional expenditure must be demonstrated by Lessee to Lessor no later than three (3) years following the Commencement Date.

(c) **Tenant Improvement Upgrades:** Lessee will pay and be solely responsible for all upgrades to tenant improvements that exceed the agreed-upon Design Standards or the Initial Project Budget, such as "smart" building technologies, advanced building sciences, and similar. In addition, Lessee, during the Term and at its sole cost and expense, will cause the ASU Facilities to include all technologies found in comparable facilities for institutions of higher education, as those technologies develop, evolve and advance over the Term.

(d) **Functional Programming:** Lessee will develop, and be solely responsible for paying all costs for, functional programming and operating requirements for the Premises.

8. **Taxes:**

(a) **Occupancy, Sales and Rental Taxes:** In addition to and together with its payments of Base Rent and Additional Rent, Lessee shall pay to Lessor any governmental taxes imposed on Base Rent, Additional Rent and other charges collected or paid pursuant to the terms of this Lease including, without limitation, state, county or local rental, occupancy, sales, transaction privilege and excise taxes. Lessee shall pay such taxes to Lessor concurrently with Lessee's payments of Base Rent, Additional Rent and other charges.

(b) **Personal Property Taxes:** Lessee shall pay to the appropriate taxing authority, not later than ten (10) days prior to delinquency, all personal property taxes assessed against any personal property of Lessee located on or used in connection with the Premises.

(c) **Real Property Taxes:** From and after the Commencement Date, Lessee shall pay all Taxes (including, but not limited to water, irrigation project, sewer, street, paving and other improvement lien assessments) that may be owing with respect to the Premises. Lessor shall arrange for the bill for all Taxes to be sent directly from the taxing authorities to Lessee and Lessee shall pay all such Taxes to the appropriate taxing authorities at least thirty (30) days prior to delinquency. Lessor shall, at no cost or expense to Lessor, reasonably cooperate with Lessee's efforts to have the bill for all Taxes sent directly from the taxing authorities to Lessee. Lessee shall, prior to the last day that any Taxes may be paid without the imposition of interest and/or a penalty, provide to Lessor written evidence of timely

payment of Taxes by Lessee. Notwithstanding the provisions of this Paragraph 8(c) to the contrary, Lessor may, upon written notice to Lessee, require that Lessee pay one-tenth (1/10) of the amount reasonably estimated by Lessor to be the Taxes due and payable during that year of the Lease Term, together with and at the same time that each monthly installment of Base Rent is due pursuant to Paragraphs 4 and 5 above. Lessor reserves the right to adjust the amount payable by Lessee pursuant to the provisions of this Paragraph 8(c). From time to time, Lessor shall notify Lessee of the most current tax assessment against the Premises, together with Lessor's computation of the monthly amount of such tax to be paid by Lessee. At the end of each full tax year during the Lease Term and again at the expiration or termination of this Lease, Lessor and Lessee shall calculate the actual Tax paid or owing for the Premises, and Lessee shall be credited or charged, as the case may be, for such adjustments as may be necessary by reason of any difference between the actual amounts determined by Lessor to have been paid or owing for the Premises (or the pro-rata portion of such amount notwithstanding that payment to the taxing authority may not then be due) and the amount of such Taxes actually paid by Lessee to Lessor.

(d) **Contest of Taxes:** If the Premises is separately assessed, Lessee shall have the right, after prior written notice to Lessor, to contest by appropriate legal proceedings, diligently conducted in good faith, in the name of Lessee or Lessor or both, without cost or expense to Lessor, the validity or application of any Taxes, subject to the following:

(i) If any lien, charge or civil liability would be incurred by reason of any such contest, Lessee nevertheless, on the prior written consent of Lessor (such consent not to be unreasonably withheld), may contest as aforesaid, provided that such contest shall not subject Lessor to criminal liability and Lessee (i) furnishes to Lessor security, reasonably satisfactory to Lessor against any Claim by reason of such contest (actual or potential), and (ii) prosecutes the contest with due diligence and in good faith.

(ii) Lessor shall, at Lessee's sole cost and expense, including reasonable attorneys' fees, execute and deliver any appropriate papers which may be necessary or proper to permit Lessee to contest the validity or application of any such Taxes. Lessee shall Indemnify Lessor from any Claim (actual or potential) arising from such proceedings.

9. **Use of Premises:** The Premises must be used and occupied throughout the Term solely for post-secondary education uses and facilities operated by Lessee, and such other reasonably appurtenant uses (e.g., a restaurant and sales of sundries, but on the first floor only) approved by Lessor (acting through its City Manager, or designee) in Lessor's reasonable discretion. In addition:

(a) With respect to any Financing done on a tax-exempt basis, promptly upon written request from Lessor, Lessee will provide and make such certifications and elections as may be required or permitted by State Law and will comply with all federal Laws in effect at the time of issuance of any applicable bonds (or similar instruments) and thereafter adopted which apply to such exempt bonds and which exempt the interest on any such bonds from gross income for federal income tax purposes.

(b) Lessee must offer the following minimum required programs (or activities or courses related to such programs): Digital and Sensory Technology, Film and Media Arts, User Experience Design, and Entrepreneurial Support. Lessee shall cause the attendance of a minimum of 750 students and 40 faculty and staff at the Premises within five (5) years after the Commencement Date. As a part of its use of the Premises, Lessee agrees (i) to host not fewer than twenty-five (25) film or other public Lessee events scheduled per year to be held at the Mesa Innovation Studios or City Center; and (ii) conditioned upon the completion of the Mesa Innovation Studios and the execution of the Mesa Innovation Studios License Agreement, to host not fewer than twenty (20) public entrepreneurial

innovation events to be held per year at the Mesa Innovation Studios or City Center and ensure that not fewer than fifteen (15) businesses are enrolled annually in Lessee's entrepreneurial programs.

(c) Students will use the Premises during all academic semesters while faculty and staff may use the Premises year-round. For purposes of this Lease, the number of students shall be calculated as the number of students enrolled in courses or participating in course-related or research activities conducted at the Premises during the course of an academic year. The number of faculty shall be calculated as the number of faculty who have teaching, research or other responsibilities that are conducted at the Premises. The number of staff shall be calculated as the number of staff based primarily at the Premises.

(d) Lessee may only replace or remove a successful minimum required program after consultation by Lessee's Provost or President with the Lessor's City Manager not less than six (6) months prior to such replacement or removal. Lessee may replace or discontinue any program reasonably determined by Lessee not to be successful. What constitutes a successful program is to be determined by Lessee in its reasonable discretion looking at the past and future expected enrollment of students and other relevant factors, if any. The replacement, removal or discontinuation of any program shall not affect Lessee's obligation for providing the minimum number of students and faculty as set forth in this Paragraph 9.

(e) If Lessee is not utilizing or subleasing portions of the Premises, Lessee will reasonably determine if such space can be subleased at reasonable rental rates to third-party, non-profit educational institutions that have locations in the City of Mesa. Such rental rates may not exceed Lessee's reasonable cost of operation and maintenance of the portion or portions of the Premises to be subleased.

(f) Lessee will award financial assistance to certain students enrolled at ASU who are residents of the City of Mesa (the "**Mesa Scholarship**"). Twenty-five (25) such awards shall be made in each academic year, provided that there are sufficient eligible applicants. The Mesa Scholarship may be awarded in the form of a scholarship, grant, stipend, teaching or research assistantship, or similar assistance that does not require the recipient to repay the aid amount and is inclusive of university-based assistance. Preference will be given to those students enrolled in classes offered at the ASU Facilities or to other eligible students demonstrating financial need.

(g) As part of its downtown redevelopment and revitalization, and the creation of its innovation district and the Mesa Innovation Studios, Lessor has been encouraging and promoting the presence of post-secondary education uses and facilities. Lessee will identify at least one (1) Lessee staff member to serve on Lessor's committee on the development of an innovation district and the Mesa Innovation Studios.

(h) Lessee shall not use or occupy the Premises, nor permit anything to be done in or on the Premises which will cause or be likely to cause material damage to the Improvements or any part of the Improvements, or which will constitute a public or private nuisance, or which will violate the rights of adjoining landowners which are binding on the Premises and Lessee shall not use or occupy or permit the Premises to be used or occupied in any manner which will violate any Laws. Lessee shall fully comply with all covenants, conditions and restrictions, if any, imposed upon the Land as of the Effective Date, or recorded after the Effective Date at the request of, with the joinder of or with the consent of Lessee. In this regard, Lessee shall, at its sole expense, comply at all times with the terms and conditions of any covenants, conditions and restrictions and/or reciprocal easement agreements recorded against the Premises as of the Effective Date, or recorded after the Effective Date at the request of, with the joinder of or with the consent of Lessee as if Lessee were the owner of the Premises and shall at all times cause

its employees, customers, permitted subtenants, licensees and concessionaires to comply with the applicable provisions of such covenants, conditions and restrictions and/or reciprocal easement agreements. Lessee shall timely pay or perform, as the case may be, all obligations attributable to the Premises or the owner of the Premises under the covenants, conditions and restrictions and/or reciprocal easement agreements recorded against the Premises. Throughout the Lease Term, Lessee, at its sole cost and expense, shall promptly remove any violation and shall promptly comply with all Laws, which may be related to the Premises, or any part of the Premises, or to the use or manner of use of the Premises, or any part of the Premises, whether or not the correction or removal so necessitated shall have been foreseen or unforeseen or whether the same shall involve radical, extraordinary, or capital construction or other disposition. Lessee shall not do or suffer any waste, damage, disfigurement or injury to the Premises or any part of the Premises.

**10. Other Revenues and Fund Sources:**

(a) **Non-City Center Development by Lessee.** Revenue from any ASU facilities and operations not financed by Lessor and not constructed within the City Center or other Lessor-owned real property, will be the sole property of Lessee, if owned by Lessee, and any participating private developer.

(b) **Non-ASU Facilities Development by Lessor.** Any development, other than the ASU Facilities, constructed within the City Center or other Lessor-owned real property, will be on such terms and conditions as Lessor may require in its sole discretion and all revenue from such facilities and operations will be the sole property of Lessor and any participating private developer.

(c) **Community Outreach:** Lessee agrees to pursue through legislative advocacy and community outreach, the identification of alternative revenue streams, gifting, etc. to assist with development of the City Center. Funds from these activities shall be utilized to further program development, to further development of City Center facilities, or to reduce the level of debt incurred by and financial participation required from Lessor.

(d) **Fund Raising and Naming Rights:** The Parties shall engage in fund raising for the ASU Facilities to support academic programs and capital costs. The Parties will agree in separate agreements, on a case-by-case basis, on how revenue from fund raising for capital costs (other than for FF&E) and entire building naming rights will be split between the Parties; provided, however, that all such funds shall be used on the City Center and ASU Facilities. Lessee shall have the right to grant entire building naming rights, subject to prior consultation with Lessor, provided that Lessee shall make the final determination with respect to such naming; and further provided that no such name shall include language which is offensive to accepted standards of decency or which includes any Arizona geographic names or the names of Arizona municipalities (other than the City of Mesa) without the prior written approval of Lessor, not to be unreasonably withheld. Notwithstanding the foregoing, the Parties recognize that donations must be applied in accordance with the expressed intent of donors, provided that neither Party will direct donors to restrict or specify donations in a way to thwart the intent of the Parties that all proceeds of fund raising relating to the Premises will be used for the City Center and ASU Facilities.

(e) **Development within the City Center:** If no future phases are developed by Lessor or Lessee, Lessor may develop and redevelop the City Center, other than the Premises, in Lessor's sole discretion; provided however, Lessor will provide Lessee with an opportunity to review and comment on any non-ASU development within that portion of the City Center north of Main Street. Lessee may redevelop the Premises in a manner consistent with the City Center Master Plan.

11. **Alterations and Improvements:** Prior to Lessee commencing construction of (a) any Improvements, or (b) any alterations to the exterior of the Improvements, or (c) any interior structural alterations to the Improvements, or (d) any interior or non-structural alterations to the Improvements that diminish the value of the Improvements, Lessee shall first seek the written approval of Lessor to its proposed alterations or Improvements, which approval may be granted or withheld in Lessor's sole and absolute discretion. Prior to commencing construction, Lessee shall submit to Lessor, on an electronic medium (together with a hard copy), a Preliminary Submittal. In addition, prior to Lessee commencing construction of any Improvements (or alterations to Improvements), Lessee shall submit to Lessor for approval, comprehensive plans and specifications therefor. No work may be performed that requires Lessor's consent, until Lessor shall give such consent. It shall be reasonable for Lessor to withhold its approval if the comprehensive plans and specifications do not substantially conform to the Preliminary Submittal approved by Lessor. Lessee acknowledges that Lessor does not assume any responsibility whatsoever for the design of any structure or for any violation of applicable laws, ordinances or regulations. Lessee acknowledges that Lessor's review and approval of the Preliminary Submittal and any plans and specifications is for Lessor's own benefit and does not constitute any representation or warranty whatsoever to Lessee. Lessee shall not make any material changes or modifications to the plans and specifications for any alterations or new Improvements after having received the approval of Lessor, without first obtaining the approval of Lessor to such change, which approval shall not be unreasonably withheld, conditioned or delayed. All work shall be constructed in a good, workmanlike and lien free manner, in conformance with the plans and specifications approved by Lessor and in compliance with the codes and ordinances of governmental authorities having jurisdiction. Within one hundred twenty (120) days after completion of Improvements on the Land and within one hundred twenty (120) days after completion of any alterations to the Improvements, Lessee shall deliver to Lessor, at no cost or expense to Lessor, one (1) set of "as built" plans for the Improvements on electronic media, together with a signed and sealed letter of certification from Lessee's architect and/or engineer certifying that the electronic media furnished represents the true "as built" plans for the Improvements. All alterations, Improvements, additions and fixtures made or installed by Lessee shall remain upon the Premises at the expiration or earlier termination of this Lease and shall become the property of Lessor, unless Lessor has reasonably required the removal of the applicable alterations, Improvements, additions and fixtures as part of Lessor's consent, or the Parties otherwise agree to such removal. If removal is required or agreed upon by the Parties, Lessee will, on or before the expiration or earlier termination of the Term remove the items so specified and repair all damage occasioned in connection with such removal, all at Lessee's sole cost and expense.

12. **Maintenance and Repairs:**

(a) **Lessee's Obligations:** Regardless of the sufficiency of the R&R Account, Lessee, at its sole cost and expense, shall operate and maintain in good order and repair and to a standard consistent with first class developments in the Phoenix, Arizona, metropolitan area (making all necessary replacements, renewals, and alterations) all portions of the Premises, interior and exterior, glass, doors, signs, interior and exterior walls, ceilings, structural elements, roof, exclusive and non-exclusive parking areas, landscaping, plumbing, heating, cooling, refrigeration, electrical systems, fixtures, plumbing systems and all other improvements now or in the future located on the Premises. From and after the Commencement Date, Lessee assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance, and management of the Premises.

(b) **Renewal and Replacement Reserve Fund Account:**

(i) **Establishment.** At the commencement of the Term, Lessor and Lessee will establish an R&R Account for the benefit of Lessor and Lessee at a mutually acceptable financial

institution. The purpose of the R&R Account is to accumulate a reserve fund to ensure that funds will be available in the future for Capital Improvements.

(ii) **Funding.** Lessee will make annual payments to the R&R Account in the amount of \$75,000.00 per year for the first five (5) years of the Term, and at the rate of \$2 dollars per year per net square foot (or as otherwise mutually agreed upon by Lessor and Lessee) for all areas included in this Lease for each year of the Term thereafter. The first payment will be made on the Commencement Date, and subsequent payments will be made on each anniversary date thereafter. Lessor's City Manager (or designee) may temporarily suspend payments into the R&R Account if the City Manager determines that the R&R Account is or has been sufficiently funded.

(iii) **Schedule of Improvements and Funding Levels.** Within thirty (30) days of each anniversary date of the establishment of the R&R Account, Lessor and Lessee shall reasonably agree on a schedule of improvements to be funded by the R&R Account and the adequacy of the R&R Account funding levels for the Premises. The withdrawal of funds from the R&R Account shall require the written authorization of both Lessor and Lessee; provided, however, in a deemed emergency by either Lessor or Lessee, either Party shall have the right to unilaterally withdraw funds for the emergency purpose.

(iv) **Term of R&R Account.** The R&R Account shall continue in existence for the Term. Upon expiration or termination of the Term, other than for the default by Lessee, the balance of the R&R Account shall be paid to Lessee. If this Lease is terminated for default by Lessee, Lessor shall be paid the balance the R&R Account and said balance shall be applied to payment of the amounts owing from Lessee to Lessor under this Lease, with any remaining amount thereafter, if any, paid to Lessor.

(c) **City Center Operations:**

(i) **Property Manager:** Lessee will be solely responsible for property management, which will include the operation and maintenance of all interior and exterior elements of the Premises.

(ii) **Facilities Manager:** Lessor will provide a Facilities Manager to oversee the condition and use of the City Center facilities, and to monitor compliance with the property management requirements for the Premises. The Facilities Manager may be an independent contractor or an employee of Lessor whose responsibilities include (but may not be limited to) the City Center. The Facilities Manager's fee or salary (including benefits) is Additional Rent pursuant to this Lease and will be paid as an annual reimbursement to Lessor from available proceeds in the R&R Account; provided, however, if the Facilities Manager manages any property in addition to the ASU Facilities, there will be an equitable determination by Lessor and Lessee as to what portion of the Facilities Manager's fee (or salary, as applicable) is allocable to the ASU Facilities and to be paid from the R&R Account.

(iii) **Operations and Maintenance Protocol.** Lessor and Lessee will jointly develop operation and maintenance protocols for the Premises.

(iv) **Operation and Maintenance.** Lessee will pay and be solely responsible for all costs for the operation and maintenance of the Premises for the entire Term. Lessee agrees to fund and pay not less than One Million Three Hundred Thousand Dollars (\$1,300,000.00) per year for operations and maintenance in and at the Premises, or such other amount necessary to maintain and operate the Premises in compliance with the terms and conditions of this Lease.

(v) **Service Records:** Lessee and its property manager shall maintain service records relating to and evidencing preventative maintenance, repair or replacement of building infrastructure, equipment and systems. Within twenty (20) days following a reasonable written request from Lessor for an inspection of such records, but in no event more than once annually, Lessee shall provide copies of such records to Lessee or otherwise make such records available for Lessor's review at the Premises.

(vi) **Contractor Warranties; Operations and Maintenance Manuals:** On the Commencement Date, Lessor will assign to Lessee all assignable warranties issued to Lessor by Lessor's contractors and material suppliers then in existence with respect to the Premises and any operating systems included in the ASU Facilities. Lessor will provide to Lessee, without warranty, all operations and maintenance manuals and schedules of preventative maintenance for all building equipment and systems for the Premises that are received by Lessor during the construction of the Premises.

(vii) **Security:** Prior to the Commencement Date. Lessor and Lessee will jointly develop a security plan for the City Center which will include Lessee's responsibility for providing security for the Premises at Lessee's sole cost and expense. Lessee agrees and acknowledges that Lessor is not providing, and is not obligated to provide, any security for the Premises, Lessee, Lessee's Representatives or Lessee's invitees.

(viii) **Damage Attributable to Lessor's Acts or Omissions:** Notwithstanding any provision in this Lease to the contrary, to the extent that any damage to the Premises is attributable to the acts or omissions of Lessor or Lessor's officers, officials, agents, employees, volunteers and independent contractors occurring after the Commencement Date, then, in each such case, Lessor shall be responsible for the costs of repair, and Lessor will pay directly, or reimburse Lessee for, all such costs; provided, however, that this clause does not apply to any Claim relating to the design or construction of the Premises.

(ix) **Maintenance of Open Space:** At all times during the Term, Lessor, at its sole cost and expense, shall maintain the Open Space in good order and repair and to a standard consistent with comparable public park facilities of the City of Mesa.

(x) **Damage Attributable to Lessee's Acts or Omissions:** Notwithstanding any provision in this Lease to the contrary, to the extent that any damage to the Open Space is attributable to the acts or omissions of Lessee or Lessee's officers, officials, agents, employees, volunteers and independent contractors occurring after the Commencement Date, then, in each such case, Lessee shall be responsible for the costs of repair, and Lessee will pay directly, or reimburse Lessor for, all such costs.

(xi) **Maintenance of City Center:** At all times during the Term, Lessor, at its sole cost and expense, shall maintain the City Center in good order and repair and to a standard consistent with comparable public facilities of the City of Mesa.

(xii) **Public Access.** At all times during the Term, Lessor shall cause the Premises, and the Open Space have adequate pedestrian access to and from adjacent public streets and alleys, subject only to restrictions reasonably required by Lessor.

13. **Lessor's Access:** Lessor and its authorized representatives shall have, at all reasonable times, upon not less than forty-eight (48) hours oral or written notice (except in the event of an emergency, in which event only such notice as may be reasonable under the circumstances shall be required), the right to enter the Premises to exhibit the Premises to prospective purchasers or lenders. In

addition, Lessee grants to Lessor and its authorized representatives the right (but not the obligation) during business hours, upon not less than twenty-four (24) hours oral or written notice to Lessee (except in case of an emergency, in which event only such notice as may be reasonable under the circumstances shall be required) to enter upon the Land for the purpose of inspection. Inspection by Lessor of the Land or any Improvements being constructed on the Land is for the sole purpose of protecting the rights of Lessor and is not to be construed as an acknowledgement, acceptance or representation by Lessor that there has been compliance with any plans and specifications, any terms or provisions of this Lease or that the Improvements will be free of defective materials or workmanship.

**14. Indemnification and Insurance:**

**(a) Indemnification by Lessor:**

(i) To the fullest extent permitted by law, from and after the Effective Date, Lessor will Indemnify Lessee and Lessee's officers, officials, agents, employees and volunteers with respect to Claims of Lessee and Lessee's officers, officials, agents, employees and volunteers for Property Damage, Personal Injury and Bodily Injury occurring on or at the Premises that are the result of the negligent or intentional acts or omissions of Lessor and Lessor's officers, officials, agents, employees and volunteers.

(ii) The terms "Bodily Injury," "Personal Injury" and "Property Damage" in this Lease will have the same meanings as in the form of commercial general insurance policy issued by Insurance Services Office, Inc. most recently prior to the date of the injury or loss in question

**(b) Indemnification by Lessee:** To the fullest extent permitted by law, from and after the Effective Date, Lessee will Indemnify Lessor and Lessor's officers, officials, agents, employees and volunteers with respect to Claims of Lessor and Lessor's officers, officials, agents, employees and volunteers for Property Damage, Personal Injury and Bodily Injury occurring on or at the Premises that are the result of the negligent or intentional acts or omissions of Lessee and Lessee's officers, officials, agents, employees and volunteers.

**(c) Lessee's Insurance:** From and after the Commencement= Date, Lessee shall carry, at Lessee's sole cost and expense, the following types of insurance, in the amounts specified or in such higher amounts as requested by Lessor and which are customary in the Phoenix, Arizona, metropolitan area:

(i) Commercial general liability insurance for personal injury, bodily injury (including wrongful death) and damage to property with a combined single limit of not less than Five Million and No/100 Dollars (\$5,000,000.00), per occurrence, Five Million and No/100 Dollars (\$5,000,000.00), annual aggregate, insuring against any and all liability of the insured with respect to the Premises, or arising out of the maintenance, use or occupancy of the Premises, including Premises operations, products and completed operations providing coverage at least as broad as ISO policy form CG 0001, or its equivalent. The commercial general liability insurance policy shall contain a contractual liability endorsement specifically deleting the contractual liability exclusion for Personal Injury. The policy required pursuant to the provisions of this Paragraph 14c)(1) shall not have a deductible in excess of Ten Thousand and No/100 Dollars (\$10,000.00).

(ii) Business auto coverage for owned, hired and non-owned vehicles with a combined single limit of not less than Three Million and No/100 Dollars (\$3,000,000.00), per occurrence, Three Million and No/100 Dollars (\$3,000,000.00) annual aggregate. At least One Million and No/100

Dollars (\$1,000,000.00) of such coverage shall be primary coverage and the remaining Two Million and No/100 Dollars (\$2,000,000.00) of such coverage may be pursuant to an umbrella or excess liability policy. In addition, the policy required pursuant to the provisions of this Paragraph 14(c)(2) shall not have a deductible in excess of Ten Thousand and No/100 Dollars (\$10,000.00).

(iii) A policy or policies of workers' compensation insurance with an insurance carrier and in amounts approved by governmental authorities having jurisdiction and a policy of employer's liability insurance with limits of liability not less than One Million and No/100 Dollars (\$1,000,000.00), each accident; One Million and No/100 Dollars (\$1,000,000.00), disease policy limit; and One Million and No/100 Dollars (\$1,000,000.00), disease each employee. Both such policies shall contain waivers of subrogation in favor of Lessor.

(iv) **"Causes of Loss-Special Form"** property insurance, including coverage for sprinkler leakage, vandalism and malicious mischief covering the entire Premises, including all of Lessee's leasehold improvements, alterations, additions or improvements made pursuant to Paragraph 11, removable personal property from time to time in, on or upon the Premises, in an amount not less than one hundred percent (100%) of the full replacement cost of the Premises without depreciation, providing coverage at least as broad as ISO policy form CP 10 30, including earthquake damage, flood and terrorism coverage, as well as the following endorsements: boiler and machinery, difference in conditions, business income and extra expense (with extended period of indemnity), service interruption and building ordinance or law and against such other risks or hazards and in such amounts as the Lessor shall reasonably require. Any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed unless this Lease shall cease and terminate under the provisions of Paragraph 16. Such policy of property insurance shall name Lessor as a **"loss payee"** and shall not have a deductible in excess of Twenty-Five Thousand and No/100 Dollars (\$25,000.00).

(v) If all or any portion of the Premises is used for the sale of alcoholic beverages (whether for on premises or off premises consumption), the policy of commercial general liability insurance required pursuant to Paragraph 14(c)(i) shall include coverage for employer's liability, host liquor liability and liquor liability coverage with a combined single limit of not less than Five Million and No/100 Dollars (\$5,000,000.00), per occurrence.

(vi) Pollution legal liability insurance coverage insuring Lessor and Lessee against any and all Claims with respect to the release, transportation and/or use by Lessee or any sublessee of Lessee of Hazardous Materials (as defined below) during the Lease Term and for such additional periods of time within which Lessor or Lessee may be liable with respect to Hazardous Materials under applicable Hazardous Materials Laws. Such insurance shall name Lessor as a named insured, shall have a per occurrence limit of liability of no less than One Million and No/100 Dollars (\$1,000,000.00), shall have an aggregate limit of liability of no less than Three Million and No/100 Dollars (\$3,000,000.00) and shall have a deductible of no more than Ten Thousand and No/100 Dollars (\$10,000.00).

(vii) During the course of demolition or construction of any Improvements on the Land, Lessee shall procure and maintain (or shall cause Lessee's contractor constructing the Improvements to procure and maintain) in full force and effect **"causes of loss – special form"** builder's risk insurance, including coverage for vandalism and malicious mischief satisfying the requirements of clause (4) above. The policies of builder's risk insurance shall cover Improvements in place and all material and equipment at the job site furnished under contract, but may exclude contractors', subcontractors' and construction manager's tools and equipment and property owned by contractors' or subcontractors' employees.

(viii) All policies of insurance to be procured by Lessee shall be issued by insurance companies having a claims paying rating ability of not less than NAIC 1 as established by the Securities Valuation Office of the National Association of Insurance Commissioners (or an equivalent Standard & Poors, Moody's or Duff & Phelps rating), qualified to do business in the State of Arizona. All property policies shall be issued in the name of Lessee, and shall name Lessor as a "**loss payee**". All liability policies obtained by Lessee shall name Lessor as an additional insured. In addition, Lessee's liability insurance policies shall be endorsed as needed to provide cross-liability coverage for Lessee, Lessor any management company of Lessor and any lender of Lessor and shall provide for severability of interests. Evidence of insurance meeting the requirements of Acord Form No. 27 or 28 (March 1993) or such other evidence as may be reasonably acceptable to Lessor and evidence of required additional insured endorsements on ISO Form CG 20-26 (collectively referred to in this Paragraph 14(c) as "**Certificates**") shall be delivered to Lessor within ten (10) days after the Effective Date and thereafter, executed copies of renewal policies or Certificates shall be delivered to Lessor not less than thirty (30) days prior to the expiration of the term of each such policy. All commercial general liability insurance policies shall contain a provision that Lessor, although named as an additional insured, shall nevertheless be entitled to recovery under the policy for any loss occasioned to Lessor and its Representatives by reason of the negligence or willful misconduct of Lessee. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Lessee in like manner and to like extent. All policies of insurance delivered to Lessor must contain a provision that the company writing the policy will give Lessor twenty (20) days' notice in writing in advance of any cancellation or lapse or the effective date of any material change in the policy, including any reduction in the amounts of insurance. All commercial general liability, property damage and other casualty policies shall be written as primary policies in relation to any insurance carried by Lessor (but may be effected by a combination of primary and umbrella policies) and shall provide that any insurance which Lessor may carry is strictly excess, secondary and non-contributing with any insurance carried by Lessee. The insurance requirements contained in this Paragraph 14(c) are independent of Lessee's waiver, indemnification and other obligations under this Lease and shall not be construed or interpreted in any way to restrict, limit or modify Lessee's waiver, indemnification or other obligations or to in any way limit Lessee's obligations under this Lease.

(ix) The Parties acknowledge that, pursuant to A.R.S. § 41-621, the Arizona Department of Administration ("**DOA**") is required to obtain insurance against loss for Lessee that DOA determines is in the best interest of the State. Lessor agrees that it will accept the DOA determined insurance as meeting the Lessee's insurance requirements set forth above so long as: (1) DOA obtains insurance in an amount similar to other, comparable ASU leased facilities in the Phoenix metropolitan area; and (2) if DOA makes an initial determination that the amount of insurance DOA will obtain pursuant to this Lease is an amount less than what is required by this Lease, then Lessee and DOA will meet with Lessor to determine in good faith the appropriate amount of additional insurance coverage to be acquired by DOA under this Lease.

(x) It is further expressly understood and agreed between the Parties that, notwithstanding any provision in this Lease to the contrary, insurance requirements for events within the ASU Facilities can be insured through Lessee's Tenant Users Liability Insurance Program ("**TULIP**") for events coverage as long as Lessor is listed as an additional insured. Such special event coverage must be for at least One Million Dollars (\$1,000,000.00).

(d) **Adequacy of Insurance.** Lessor makes no representation or warranty to Lessee that the amount of insurance to be carried by Lessee under the terms of this Lease is adequate to fully protect Lessee's interests. If Lessee believes that the amount of any such insurance is insufficient, Lessee is encouraged to obtain, at its sole cost and expense, such additional insurance as Lessee may deem desirable or adequate. Lessee acknowledges that Lessor shall not, by the fact of approving, disapproving,

waiving, accepting, or obtaining any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of such insurance, the solvency of any insurance companies or the payment or defense of any lawsuit in connection with such insurance coverage, and Lessee hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto.

15. **Liens:** Lessee shall keep the Premises free and clear of all mechanics', materialmen's and other professional service liens arising from the acts of Lessee or any Lessee Representatives. If any such mechanics', materialmen's or other lien, charge or order for the payment of money that arises from the acts of Lessee or any Lessee Representatives shall be filed or recorded against the Land or any Improvement on the Land, or against Lessor (whether or not such lien, charge or order is valid or enforceable as such) during (or as a result of any work performed during) the Lease Term (other than by Lessor), Lessee shall, at its own expense, cause the same to be canceled or discharged of record within thirty (30) days after Lessee shall have received written notice of the filing of such lien, charge or order, or Lessee may, within said fifteen (15) day period, furnish to Lessor, a bond pursuant to A.R.S. § 33-1004 and satisfactory to Lessor against the lien, charge or order, in which case Lessee shall have the right to contest, in good faith, the validity or amount of such lien, charge or order. Prior to Lessee commencing construction of (a) any Improvements on the Land, or (b) alterations to Improvements, which in either case are reasonably anticipated to cost in excess of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) (provided that such maximum amount will be increased, as applicable throughout the term by an amount that is equal, on a pro rata basis, to the amount by which the CPI in effect at the time of the applicable bonding requirement has increased over the CPI in effect on the Commencement Date or the most recent previous anniversary of the Commencement Date, as applicable, Lessee shall obtain and cause to be recorded in the official records of Maricopa County, Arizona, labor and material payment and performance bonds (AIA 311 and 312, or their equivalent) naming Lessor as an obligee and assuring Lessor of the payment in full of Claims of all persons for work performed, services rendered or materials furnished in connection with the construction of any Improvements.

16. **Destruction of Premises:** Lessee shall notify Lessor as soon as is reasonably possible of any damage or casualty (in whole or in part) to the Premises or interference with the use of the Premises as a result of fire, flood, or building or utility system failure. If the Premises shall be wholly or partially damaged or destroyed by fire, flood, system failure, the elements, weather or by other causes, Lessee shall, at its sole cost and expense, and whether the insurance proceeds are sufficient for the purpose, promptly commence and thereafter diligently pursue to completion the repair, restoration or rebuilding of the Premises so that upon completion of such repairs, restoration and/or rebuilding, the value of the Premises shall equal or exceed the value of the Premises prior to the occurrence of such casualty. Lessee shall have a reasonable time within which to so construct or repair the damaged Premises, provided Lessee proceeds with due diligence. There shall be no abatement of Base Rent, Additional Rent or other charges under this Lease or delay in the payment of Base Rent, Additional Rent or other charges under this Lease on account of all or any portion of the Premises being unused because of damage or destruction. Lessee Waives any statute or law now or hereafter in effect which grants to Lessee the right to terminate a lease or which provides for an abatement of rent on account of damage or destruction, including without limitation A.R.S. § 33-343. All insurance proceeds payable on account of damage to or destruction of the Improvements by fire or other casualty shall be deposited with a bank or trust company doing business in the State of Arizona having assets of at least One Billion and No/100 Dollars (\$1,000,000,000.00) (the "**Depository**"), in trust for the purpose of reimbursement of the costs of the demolition, restoration, repairs, replacements, rebuilding or alterations to the Improvements. Insurance proceeds on deposit with the Depository shall be advanced from time to time to Lessee for the restoration or as such work progresses, upon certification by the architect or engineer in charge of restoration work that the amounts requested either shall have been paid in connection with such restoration or shall be due to contractors, subcontractors, materialmen, architects or other persons who rendered services or furnished materials on account of the restoration work and, upon completion of such restoration work, the

balance remaining in the Depository, if any, shall be disbursed to Lessor. If, at any time, the reasonably anticipated cost of the demolition, restoration, repairs, replacements, rebuilding or alteration to the Improvements exceeds the amount of insurance proceeds on deposit with the Depository, Lessee shall deliver to the Depository the amount of such deficiency. Notwithstanding the foregoing, in the event of damage to or destruction of the Improvements by fire or other casualty as a result of which the proceeds of insurance are less than Twenty-Five Thousand and No/100 Dollars (\$25,000.00), such proceeds shall be payable directly to Lessee, in trust, to be applied against cost of restoring the Improvements and such funds shall be used only for the purpose of restoring the Improvements until such restoration work is complete and any excess proceeds shall be returned to Lessor. If the Improvements are damaged or destroyed by fire or other casualty and less than three (3) years remain in the Term, then Lessee, at its sole election, may, by notifying Lessor within sixty (60) days after the casualty, terminate this Lease effective on the date thirty (30) days after the date of such termination notice, and all insurance proceeds will be paid and disbursed to Lessor. Although Lessee has no right to terminate this Lease as a result of damage or casualty to the Premises, except as set forth in the preceding sentence, if the Parties mutually agree that this Lease may be terminated as a result of damage or casualty to the Premises, then all insurance proceeds will be paid and disbursed to Lessor.

17. **Condemnation:** If all or such portion of the Premises is condemned by eminent domain for any public or quasi-public use or purpose or is transferred in avoidance of an exercise of the power of eminent domain (an "**Appropriation**") so as, in the reasonable judgment of Lessee (which shall be identified in a written notice from Lessee to Lessor given no later than ninety (90) days after notice from the authority with the power to make such Appropriation of its intention to exercise such power), to make the balance of the Premises unsuitable for its intended purpose, then this Lease shall terminate as of the date that title vests in the condemning authority. In the event of a termination of this Lease as a result of an Appropriation of less than the entirety of the Premises, on or before the effective date of such termination and as a condition to the termination of this Lease, Lessee shall surrender and deliver to Lessor the portion of the Premises not the subject of the Appropriation. All Base Rent and Additional Rent shall be paid up to such date of termination and Lessee shall have no further Claim against Lessor nor against the condemning authority for the value of any unexpired term of this Lease, and the entire proceeds awarded on account of such Appropriation shall be paid solely and exclusively to Lessor. In the event of an Appropriation of a portion of the Premises which does not result in a termination of this Lease as provided above, the Base Rent payable under this Lease shall be abated in the proportion which the square footage of the portion of the Improvements so taken bears to the total rentable square footage of the Improvements immediately prior to the Appropriation. The entire award made by reason of any such partial Appropriation shall belong entirely to Lessor. Nothing contained in this Paragraph 17 shall impair Lessee's right to any award or payment on account of the FF&E, together with any other Lessee's trade fixtures, equipment or other tangible personal property which is not part of the Improvements, moving expenses or loss of business, if available, to the extent that and so long as Lessee shall have the right to make, and does make, a separate Claim for such loss against the condemning authority and any amounts payable to Lessee on account of such Claims do not reduce the award otherwise payable to Lessor. Lessee Waives any statutory and/or common law rights of termination which may arise by reason of any Appropriation of the Land and/or the Improvements on the Land including, without limitation, the provisions of A.R.S. § 33-343.

18. **Signs:** Lessee shall have the right to install such signs on the Premises in connection with Lessee's operation of the Premises as Lessee may elect from time to time. All signs shall be installed and maintained at the sole cost and expense of Lessee and shall be in compliance with (i) all sign ordinances now in effect or in the future enacted by the City of Mesa, and (ii) City Center Design Guidelines, to the extent applicable.

19. **Consents of the Parties:**

(a) Whenever Lessor's consent or approval is requested pursuant to the provisions of Paragraph 8(d), 11, or 20 of this Lease, Lessee will reimburse Lessor for Lessor's reasonable third-party legal, architectural, engineering, accounting and other professional expenses incurred by Lessor in connection with responding to any such request, irrespective of whether such consent or approval is granted.

(b) Where provision is made in this Lease for Lessor's consent or approval and Lessee requests such consent or approval, and Lessor fails or refuses to give, or delays in giving, such consent or approval, Lessee will not be entitled to any damages and Lessee hereby Waives any claim based on such failure, refusal or delay; provided however in any situation where Lessor is expressly required not to withhold its consent or approval unreasonably, Lessee will (as its sole remedy) be entitled to bring an action for specific performance or injunction.

(c) If Lessor fails to respond to any request for consent hereunder within ten (10) days, Lessee may, after the expiration of such 10-day period, give Lessor a second notice requesting such consent; and such second notice must contain an advisory in at least fourteen (14) point type to the effect that failure of Lessor to respond to such second notice within ten (10) days after Lessor's receipt of such second notice will constitute Lessor's consent or approval to the matter requested. If Lessor fails to respond to Lessee's second notice within such ten (10) day period, Lessor's consent or approval to such matter will be deemed given.

(d) Wherever Lessor's consent is required to be given in this Lease, such consent will be the consent of the City Manager of the City of Mesa (or designee), without the requirement of the consent of the City Council of the City of Mesa.

(e) Approvals of the Parties to the City Center Master Plan, Initial Project Budget, Public Infrastructure Plan and Design Standards will be provided, in the case of Lessor, by its City Manager (or designee); and in the case of Lessee, by its designated representative.

(f) The Parties acknowledge and agree that Exhibit B will change during the design of the ASU Facilities and any future phases. Accordingly, the Parties (the City through its City Manager or designee; and ASU through its authorized representative) will agree, each in their own reasonable discretion, to revise and replace Exhibit B from time-to-time.

## 20. **Sublease, Assignment, Transfer:**

(a) **Sublease:** A portion of the first (ground) floor of the Premises (the "**Retail Space**") has been (or will be) designed for use and occupancy by retail and other third-party tenants whose use and occupancy are compatible with the operation of the Premises as a post-secondary educational institution. Accordingly, and in recognition that Lessee has unique experience in subleasing space within its other leased and owned facilities to retail and other third-party tenants, Lessor hereby delegates to Lessee the right to sublease the Retail Space; provided, however, (i) Lessor has the sole right to designate the Retail Space and its permitted uses (provided, however, that no changes to the Retail Space may be made after the Commencement Date without the reasonable approval of Lessee); (ii) Lessor has the sole and exclusive right to approve any subtenant of such space; (iii) all subleases must require that Lessee or the subtenants pay for and be solely responsible for the tenant improvements within their subleased premises; and (iv) all subleases must comply, as reasonably determined by Lessor, with any restrictions or requirements imposed by the Financing. In addition to Retail subleases, Lessee also shall have the right to sublease, for non-Retail purposes, any other portion of the Premises with Lessor's approval, which may be granted, conditioned or delayed in Lessor's sole discretion. If Lessee determines, in its sole discretion, not to engage in subleasing space within the Premises, Lessee shall provide written

notice to Lessor and return all subleasing rights and responsibilities to Lessor, in which event Lessee shall have no further rights to sublease any portion of the Premises for the remainder of the Term.

(b) **Assignment or Transfer:** Lessee shall not directly or indirectly, by operation of law or otherwise, assign or transfer all or any part of its interest in this Lease, including any assignment for collateral purposes, without the prior written approval of Lessor, which approval may not be unreasonably withheld, conditioned or delayed. No assignment or transfer requiring Lessor's consent shall be valid or binding without such written approval, and then only upon the condition that the assignee or other transferee in interest, shall agree in writing to be bound by each and all of the covenants and conditions of this Lease. Any assignment without Lessor's consent shall be void, and not voidable. No assignment or transfer of all or any part of this Lease shall release Lessee from its continuing liability under this Lease.

(c) **Sublease Terms:** Any sublease of all or any portion of the Premises shall provide: (i) that it is subject and subordinate to this Lease and to the matters to which this Lease is or shall be subject or subordinate; (ii) that other than the payment of Base Rent or any obligation relating solely to those portions of the Premises which are not part of the subleased Premises, the sublessee shall comply with and be bound by all of the obligations of Lessee under this Lease; (iii) that unless Lessor waives such prohibition, the sublessee may not enter into any sub-sublease, sublease assignment, license or any other agreement granting any right of occupancy of any portion of the subleased Premises; (iv) that the sublessee Indemnify Lessor and Lessee for Claims for Property Damage, Personal Injury and Bodily Injury occurring on or at the Premises and arising from the negligent or intentional acts or omissions of the sublessee and provide general liability insurance for the benefit of Lessor and Lessee in an amount of at least \$1,000,000.00; (v) that Lessor shall be an express third party beneficiary of any such obligations; and (vi) that in the event of termination of this Lease or reentry or dispossession of Lessee by Lessor under this Lease, Lessor may, at its option, take over all of the right, title and interest of Lessee, as sublessor under such sublease, and such sublessee shall, at Lessor's option, attorn to Lessor pursuant to the then executory provisions of such sublease, except that Lessor shall not (1) be liable for any act or omission of Lessee under such sublease, (2) be bound by any previous modification of such sublease unless consented to by Lessor or by any previous prepayment of more than one (1) month's rent, (3) be required to account for any security deposit of the sublessee other than any security deposit actually received by Lessor, or (4) be responsible for any monies owing by Lessee to the credit of sublessee, and such sublease shall provide that the sublessee thereunder shall, at the request of Lessor, execute a suitable instrument in confirmation of such agreement to attorn.

(d) **Rent Assignment:** In order to help repay the indebtedness and reduce expenditures for the City Center, Lessee shall execute assignments of rent to Lessor on all existing and future retail or commercial space subleases within the Premises for the Term. Such assignments of rent shall be net of reasonable management, operating and maintenance costs associated with the renting of the retail or commercial space. The "reasonable management, operating and maintenance costs" shall not exceed eight percent (8%) of the total amount of any rent paid by a sublessee pursuant to its sublease, excluding any amounts representing tenant improvements performed by the sublessee to the subleased space that have been offset against rent owing pursuant to the sublease.

(e) **Accounting and Auditing:** Lessee shall keep and maintain complete and detailed records affecting amounts payable to Lessor under this Lease, and each Party agrees to maintain complete and detailed accounting records and vouchers evidencing all costs, receipts, payments and any other matter of accounting associated with its respective performance under this Lease in accordance with generally accepted accounting principles. Each Party, or its respective audit representative, shall have the right at any reasonable time to inspect, copy and audit the accounting records, vouchers and their source documents which are related to costs, receipts and payments and other matters relating to this Lease.

(f) **Government Property Lease Excise Tax:** It is the Parties' reasoned belief that this Lease and any subleases entered into pursuant to this Lease are not subject to excise tax liability and other restrictions imposed under the Government Property Lease Excise Tax ("**GPLET**") provisions of A.R.S. §§ 42-6201, *et seq.* because: (i) Lessee is not a "prime lessee" as defined in A.R.S. § 42-6201(4); and (ii) the Premises are being used for a governmental activity, entitling this Lease to exemption under A.R.S. § 42-6208(1). Lessee is solely responsible for ensuring that all subleases confirm their exemption from GPLET by stating that Lessee, as sublessor, is not a "Government lessor" as defined in A.R.S. § 42-6201(1), and that the subleased premises do not constitute a "Government property improvement" since Lessee, as sublessor, does not hold "title of record" to the subleased premises as required by A.R.S. § 42-6201(2). Further, Lessee disclaims all right to seek any abatement of tax pursuant to A.R.S. § 42-6209. If any excise or other tax applicable to subleasing the Premises or this Lease becomes payable under GPLET or any subsequently-enacted statute, then Lessee wither must pay such tax or collect such tax from its sublessees.

21. **Surrender:** At the expiration or earlier termination of the Lease Term, Lessee shall peaceably and quietly surrender the Premises to Lessor free of all personal property of Lessee and any Lessee Representative and broom-clean and otherwise in the same condition as Lessee is required to maintain the Premises during the Lease Term, but Lessee shall have restored any damage due to casualty.

22. **Title to Improvements:** Title to all Improvements (including, but not limited to, all heating, plumbing, air conditioning, electrical and mechanical equipment, in or appurtenant thereto, installed or placed upon the Premises) shall be and remain in Lessor, and Lessor shall be solely entitled to any rights or benefits associated with its ownership thereof including, but not limited to, any depreciation, tax credits or other tax benefits. Title to any alterations to the Improvements and title to Lessee's furniture, trade fixtures, fixtures, equipment and other personal property placed upon or installed on the Premises by Lessee shall, for all purposes, be the property and assets of Lessee and, Lessee shall be solely entitled to any rights or benefits associated with its ownership thereof including, but not limited to, any depreciation, tax credits or other tax benefits. Notwithstanding the foregoing, upon the expiration or earlier termination of the Lease Term, title to any alterations or additions to the Improvements constructed by Lessee (and which are not removed by Lessee, if such removal is required pursuant to this Lease) shall, without the need for the execution of any further instrument, automatically vest in Lessor, free and clear of any Claim by Lessee or any Lessee Representative.

23. **Default of Lessee - Grounds:** Subject to Paragraph 24(a), the occurrence of any of the following events will constitute an Event of Default (herein so called) on the part of Lessee:

(a) failure to pay any installment of Base Rent, Additional Rent or any other sum due and payable under this Lease when such payment is due, which failure is not cured within ten (10) days after written notice of such failure by Lessor to Lessee;

(b) failure in the performance of any of Lessee's agreements or obligations under this Lease, (other than failure in the payment of any installment of Base Rent, Additional Rent or any other monetary obligation under this Lease) which shall continue for at least thirty (30) days after written notice of such failure from Lessor to Lessee. In the event the failure is such that more than thirty (30) days would reasonably be required to cure the default or otherwise comply with any term or provision herein, then Lessee shall notify Lessor of such and the timeframe needed to cure such default, so long as Lessee commences performance or compliance or gives notice of additional time needed to cure within said thirty (30) day period and diligently proceeds to complete such performance or fulfill such obligation; provided, however, that no such cure period may exceed one hundred and twenty (120) days;

(c) abandonment by Lessee of the Premises without Lessor's prior written consent (which consent may be granted or withheld in Lessor's sole, absolute and unfettered discretion); provided that any cessation of operations for purposes of remodeling, refurbishment, reconstruction or repair of any damage or destruction or any other temporary vacancy or cessation of operations for a period of sixty (60) days or less shall not be deemed to constitute an abandonment; or

(d) the occurrence of a default by Lessee under any provision of the IGA (with any required notice having been given and any applicable cure period having expired; provided, however, that the giving of notice and the passage of time with respect to any act or omission constituting a default under the IGA, does not give rise to an additional requirement of notice and opportunity to cure under this Lease).

**24. Default of Lessee - Remedies:**

(a) **Notice of Default:** In the event Lessee commits an Event of Default then the Lessor may provide written notice to perform to Lessee. Lessee shall have the period of time specified in Paragraph 23 from receipt of the notice to cure the default. Any written notice shall specify the nature of the default and how the default may be satisfactorily cured, if possible. In the case of an Event of Default described in Paragraph 23(d), if notice has been given in accordance with the terms of the IGA, no additional notice is required under this Lease with respect to such Event of Default.

(b) **Lessor Remedies:** Lessee acknowledges that Lessor would not have entered into this Lease and developed the City Center and ASU Facilities, but for the agreement of the Lessee to the operation of the Premises as a post-secondary educational institution. Lessor will expend large sums of public funds, including the issuance of municipal bond financing, in the development and operation of the City Center and ASU Facilities based on Lessee's operation of the post-secondary facility and the associated programming at the Premises. Lessee's failure to perform its obligations in this Lease related to the operation, maintenance and programming of the Premises will result in a material, significant economic impact to Lessor. Should Lessee fail to operate the post-secondary education institution at the City Center, Lessor could be left with a substantial portion of its downtown area requiring redevelopment, resulting in the expenditure of additional large sums of resources by Lessor. Accordingly, Lessee agrees that Specific Performance is an essential remedy of Lessor, without which Lessor would not have entered into this Lease, and Lessor agrees that Lessor's sole remedies for an uncured Event of Default by Lessee shall be:

(i) at any time while bonds issued in connection with the Financing (as defined in the IGA) remain unpaid and outstanding (but in no event more than thirty (30) years from the commencement of occupancy of Building A), to seek Specific Performance; or

(ii) at any other time after the bonds issued in connection with the Financing have been paid and are no longer outstanding:

(A) to terminate this Lease; provided, however, that before Lessor may pursue termination of this Lease as a remedy, Lessor must first provide a notice ("**Termination Election Notice**") to Lessee indicating that Lessor has elected to pursue termination of this Lease as a remedy for an uncured breach or default of this Lease by Lessee in existence at the time the Termination Election Notice is sent, and stating that if the specific breach or default is not cured within thirty (30) days following the delivery to Lessee of the Termination Election Notice, then Lessor may proceed to terminate this Lease; or

(B) to seek any remedies available at law or in equity.

For the purposes of Paragraph 24 and Paragraph 25 of this Lease, “**Specific Performance**” of this Lease means the enforcement of all of Lessee’s obligations under this Lease, including, but not limited to, the maintenance of programs and levels of students, faculty and staff. Lessor may seek and obtain Specific Performance (whether characterized as special action, mandamus, injunction or otherwise), requiring Lessee to use best and all efforts to fully and timely perform its obligations under this Lease. Lessee stipulates that a Maricopa County Superior Court, or Federal Court, may impose Specific Performance requirements on Lessee for an uncured default of this Lease.

(c) **Assignment of Rents and Leases:** If the Premises or any portion of the Premises shall be subleased by Lessee, then upon and at any time after the occurrence of an Event of Default, Lessor may, at Lessor’s election, provide written notice to sublessees to pay rent to Lessor and Lessor may collect rent from such sublessees so long as any such Event of Default shall continue. Any amounts received by Lessor may be applied towards the payment or performance of any obligation of Lessee under this Lease in any order of priority as Lessor may elect, any unexpended balance to be held by Lessor to be applied against obligations subsequently coming due. Application of such rents by Lessor shall not constitute an election of remedies and, in accordance with the provisions of Paragraph 23(b) above, Lessor may exercise such additional or further remedies as may be available at law, in equity, by statute and/or under this Lease.

25. **Default of Lessor:** In the event Lessor shall neglect or fail to perform or observe any of the material covenants, provisions or conditions contained in this Lease on its part to be performed or observed, and such failure continues for thirty (30) days after written notice of default which shall specify the nature of the default and how the default may be satisfactorily cured, if possible (or if more than thirty (30) days shall be required because of the nature of the default, if Lessor shall fail to commence the curing of said default within the thirty (30) day period and proceed diligently thereafter to complete the curing of the default), then Lessee’s sole remedies for an uncured breach or default of this Lease by Lessor shall be:

(a) at any time while the bonds issued in connection with the Financing remain unpaid and outstanding (but in no event more than thirty (30) years from the commencement of occupancy for the Premises), to seek Specific Performance; or

(b) at any time after the bonds issued in connection with the Financing are paid and not outstanding:

(i) to terminate this Lease; provided, however, that before Lessee may pursue termination of this Lease as a remedy, Lessee must first provide a Termination Election Notice to Lessor indicating that Lessee has elected to pursue termination of this Lease as a remedy for an uncured breach or default of this Lease by Lessor in existence at the time the Termination Election Notice is sent, and stating that if the specific breach or default is not cured within thirty (30) days following the delivery to Lessor of the Termination Election Notice, then Lessee may proceed to terminate this Lease; or

(ii) to seek any remedies available at law or in equity.

26. **[Reserved.]**

27. **Holding Over:** It is agreed that the date of termination of this Lease and the right of Lessor to recover immediate possession of the Premises upon the termination of this Lease is an important and material matter affecting the Parties to this Lease and the rights of third parties, all of which have been specifically considered by Lessor and Lessee. In the event of any continued occupancy

or holding over of the Premises without the express written consent of Lessor beyond the expiration of the Lease Term, whether in whole or in part, or by failing to surrender the Premises as required by this Lease, this Lease will be deemed a tenancy at the sufferance of Lessor and Lessee will pay one and one-half (1-1/2) times the Base Rent then in effect pursuant to Paragraph 4, in advance at the beginning of each held-over month, plus any other charges or payments contemplated in this Lease and Lessee shall be liable to Lessor for damages as provided in Paragraph 24. Lessee agrees that any FF&E left on or within the Premises following any termination of this Lease, in Lessor's sole discretion, may be deemed abandoned, in which event Lessor may dispose of such FF&E in any manner deemed reasonable by Lessor and charge Lessee for all costs of removal and disposition of such property.

28. **Statement from Lessor and Lessee:** Lessee shall, at any time, and from time to time, within ten (10) days after written request by Lessor, without charge, execute, acknowledge and deliver to Lessor a written statement certifying that this Lease is unmodified and in full force and effect if such is the fact (or, if there has been any modification to this Lease, stating the modification), the dates to which Base Rent and other charges have been paid in advance, if any, whether, to the actual knowledge of Lessee, any breach or default by either Party then exists under this Lease, and any other facts reasonably requested by Lessor. It is understood that any such statement by Lessee may be relied upon by any purchaser of the Premises or Lessor, or by any mortgagee or assignee of any mortgage of Lessor, or by the trustee or beneficiary of any deed of trust constituting a lien upon the Premises. Lessor shall, at any time and from time to time, within ten (10) days after written request by Lessee, without charge, execute, acknowledge and deliver to Lessee a written statement certifying that this Lease is unmodified and in full force and effect if such is the fact (or, if there has been any modification to this Lease, stating the modification) and the dates to which Base Rent and other charges have been paid in advance, if any, whether, to the actual knowledge of Lessor, any breach or default by either Party then exists under this Lease, and any other facts reasonably requested by Lessee. It is understood that any such statement by Lessor may be relied upon by any prospective permitted assignee or sublessee of Lessee.

29. **Notices:** All notices, demands or requests required to be given under this Lease shall be in writing and shall be served or given only by personal delivery, recognized overnight courier, or United States certified mail, return receipt requested, postage prepaid, addressed as follows:

To ASU: Arizona State University  
Attn: Senior Vice President and University Planner  
300 East University Drive, Ste. 410  
PO Box 877705 (USPS mail only)  
Tempe, AZ 85287-7705

With required copy to: The Office of General Counsel  
Arizona State University  
300 East University Drive, Ste. 335  
PO Box 877405 (USPS mail only)  
Tempe, AZ 85287-7405

To City: City of Mesa  
Attn: City Manager  
20 East Main Street  
P.O. Box 1466 (USPS mail only)  
Mesa, Arizona 85211

With required copy to: City of Mesa  
Attn: City Attorney  
20 East Main Street  
P.O. Box 1466 (USPS mail only)  
Mesa, Arizona 85211

Either Party may change such address by written notice in the manner specified above for the giving of notices to the other. Notice shall be deemed received as of the date such notice is (i) delivered to the party intended to receive such notice, (ii) delivered to the then designated address of the party to receive such notice, (iii) rejected or other refusal to accept at the then designated address of the party to receive such notice, (iv) undeliverable because of a changed address of which no notice was given, or (v) five (5) days following deposit in the United States mail, if served by certified mail, return receipt requested. Notices by a Party may be given by the legal counsel to such party and/or an authorized agent of such party. In this regard, any notice to be given by or on behalf of Lessor under this Lease shall be effective if given by Lessor's legal counsel and/or Lessor's property manager. In no event shall notices be transmitted by facsimile or electronic mail.

30. **Lessor's Right to Perform Lessee's Covenants:** If Lessee shall at any time fail to pay any sum in accordance with the provisions of this Lease, or shall fail to make any other payment or perform any other act on its part to be made or performed, then Lessor, after seven (7) days written notice to Lessee following any other grace period or extensions allowed in this Lease (or without notice in case of emergency) and without Waiving, or releasing Lessee from any obligation of Lessee contained in this Lease, may, but shall be under no obligation to: (a) pay any sum payable by Lessee pursuant to the provisions of this Lease; or (b) make any other payment or perform any other act on Lessee's part to be made or performed as in this Lease provided; and may enter upon the Premises for any such purpose, and take all such action, as may be necessary. All sums so paid by Lessor and all costs and expenses, including reasonable attorneys' fees, incurred by Lessor in connection with the performance of any such act shall be paid by Lessee to Lessor on demand, together with interest thereon at the Default Rate from the respective dates of Lessor's making of each such payment or incurring of each such cost and expense, including reasonable attorney's fees, until repaid by Lessee in full.

31. **Waiver:** No Waiver of any default by either Party under this Lease will be implied from any omission by either Party to take action on account of such default if such default persists or is repeated, and no express Waiver will affect any default other than the default specified in the Waiver, and then such Waiver will be operative only for the time and to the extent expressly stated. A Waiver by either Party of any provision of this Lease will not be construed as a Waiver of any subsequent breach of the same provision, nor will the consent or approval by either Party to or of any act by the other be deemed to Waive or render unnecessary their consent or approval to or of any subsequent similar acts.

32. **Time:** Time is of the essence of each and every provision of this Lease.

33. **Invalidity:** If any provision of this Lease or any part of this Lease shall be determined to be invalid, unenforceable or illegal, then such provision shall be deemed severed from this Lease, and shall not affect the remaining provisions of this Lease.

34. **Attorneys' Fees:** If Lessor or Lessee files a suit against the other which is in any way connected with this Lease, the unsuccessful Party shall pay to the prevailing Party a reasonable sum for attorneys' fees, costs and disbursements, including the fees, costs and disbursements of consultants, professionals, paralegals, whether at trial, appeal and/or in bankruptcy court, all of which will be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment. To the fullest extent permitted by law, such fees, costs and disbursements will

be based upon the actual and reasonable fees, costs and disbursements incurred and not by reference to the amount in controversy. In addition, in the event either Party shall hire an attorney as a result of a breach by the other Party of any term, covenant or provision of this Lease, in addition to paying any amounts outstanding and/or performing any obligation remaining to be performed, in order to fully cure such breach or default, the Party in breach or default shall reimburse the other Party for the reasonable attorneys' fees, costs and disbursements including the fees and disbursements of consultants, professionals and paralegals incurred by the non-breaching Party in enforcing the other Party's obligations, whether or not a legal action is commenced, including the costs of preparing and presenting default notices, demand letters and similar non-judicial enforcement activities.

35. **Binding Effect:** This Lease shall inure to the benefit of and shall be binding upon the Parties, their heirs, personal representatives, successors and permitted assignees.

36. **Triple Net Lease:** It is the purpose and intent of Lessor and Lessee that this Lease be a so-called "triple net lease." As such, Lessor and Lessee intend and agree that (a) the Base Rent and Additional Rent shall be absolutely net to Lessor, so that this Lease shall yield, net to Lessor the Base Rent and Additional Rent specified in this Lease, (b) all costs, operating expenses, taxes, premiums, fees, interest, charges, expenses, reimbursements and obligations of every kind and nature whatsoever relating to the Premises, excepting only net income, transfer, estate, inheritance and transfer taxes of Lessor and amounts payable in connection with any Mortgage, which may arise or become due during or out of the Lease Term, shall be paid or discharged by Lessee, and (c) each and every obligation that may arise or be related to the Premises shall be performed by Lessee at its sole cost and expense. In addition, Lessee shall not seek, or be entitled to, any abatement, deduction, deferment or reduction of the Base Rent or Additional Rent due hereunder or set-off against the Base Rent or Additional Rent due hereunder, nor shall Lessee's obligations hereunder be otherwise affected by reason of (a) any damage to or destruction of the Premises, or any portion thereof, from whatever cause, (b) the lawful or unlawful prohibition of, or restriction upon, Lessee's use of the Premises, or any portion thereof, or the interference with such use by any person or party; or (c) for any other cause whether similar or dissimilar to any of the foregoing. Lessee hereby Waives all rights arising from any occurrence whatsoever, which may now or hereafter be conferred upon it by law (i) to modify, surrender or terminate this Lease or quit or surrender the Premises, or any portion thereof, or (ii) which would entitle Lessee to any abatement, reduction, suspension or deferment of Base Rent or Additional Rent due hereunder or other sums payable or other obligations to be performed by Lessee hereunder.

37. **Conveyance by Lessor:** In the event Lessor or any successor Lessor shall convey or otherwise dispose of the Premises, it shall, subsequent to such conveyance, be released from all liabilities and obligations imposed upon the Lessor under this Lease (except those accruing prior to such conveyance or other disposition) and such liabilities and obligations shall be binding solely upon the then owner of the Premises.

38. **Quiet Enjoyment:** So long as there is not in existence an Event of Default, Lessee may quietly have, hold and enjoy the Premises during the Lease Term, free from hindrance or molestation by Lessor and persons claiming by, through and under Lessor.

39. **Commissions:** Lessor and Lessee each represents and warrants to the other that it has had no dealings with any real estate broker, finder or agent in connection with the negotiations of this Lease. Lessor and Lessee each shall Indemnify the other for, from and against any and all claims of a real estate broker, finder or agent with whom such Party has dealt.

40. **No Partnership:** Nothing contained in this Lease shall be deemed or construed as creating an agency, partnership or joint venture relationship between Lessor and Lessee or between

Lessor and any other party, or cause Lessor to be responsible in any way for the debts or obligations of Lessee or any other party.

41. **Survival of Obligations:** Lessee's obligations set forth in this Lease shall survive the expiration or earlier termination of this Lease with respect to acts, omissions, liabilities and amounts which occurred or accrued, as the case may be, prior to the expiration or earlier termination of this Lease.

42. **Entire Agreement:** This Lease constitutes the entire agreement between Lessor and Lessee with respect to the lease of the Premises and supersedes any and all other prior written or oral agreements or understandings with respect to the Premises. This Lease may not be modified or amended in any respect except by an instrument signed in writing by both Lessor and Lessee. Any conflicts between the terms of this Lease and the IGA will be governed by the terms of this Lease.

43. **Rubbish Removal:** Lessee shall keep the Premises clean, both inside and outside, at its sole cost and expense and shall remove all trash. Lessee shall keep all accumulated rubbish in covered containers and shall have same removed regularly.

44. **Hazardous Materials:**

(a) **Use:** Lessee shall not allow any Hazardous Material to be used, generated, released, stored or disposed of on, under or about, or transported from, any of the Premises, unless such use is conducted in compliance with the Hazardous Materials Laws. Lessee shall be permitted to store and use on the Premises such Hazardous Materials in quantities as are reasonable, necessary and incidental to business operations on the Premises as described in this Lease so long as Lessee complies with applicable Hazardous Materials Laws.

(b) **Compliance with Hazardous Materials Laws:** Lessee shall comply with, and shall maintain its operations on the Premises in compliance with, all Hazardous Materials Laws. Lessee shall obtain and maintain in full force and effect all permits, licenses and other governmental approvals required for Lessee's operations on the Premises under any Hazardous Materials Laws and shall comply with all terms and conditions thereof. At Lessor's reasonable request, Lessee shall deliver copies of, or allow Lessor to inspect, all such permits, licenses and approvals at a mutually convenient time and place. In the event Lessee, any assignee or sublessee of Lessee or their respective agents, contractors, employees or licensees releases or discharges a Hazardous Material on, in or under the Premises in violation of any Hazardous Materials Law. Lessee shall perform Remedial Work reasonably required by such Hazardous Materials Laws as a result of such release or discharge. Lessor shall have the right to intervene in any governmental action or proceeding involving any Remedial Work, provided any such intervention shall be at Lessor's cost (notwithstanding any contrary provision of this Lease) if there shall exist no Event of Default during such intervention.

(c) **Compliance with Insurance Requirements:** Lessee shall comply with the requirements of Lessee's insurers regarding Hazardous Materials and with such insurers' recommendations based upon prudent industry practices regarding management of Hazardous Materials.

(d) **Notice; Reporting:** Lessee shall notify Lessor, in writing, within two (2) days after any of the following: (a) a release or discharge of any Hazardous Material, in violation of Hazardous Materials Laws; (b) Lessee's receipt of any order of a governmental agency requiring any Remedial Work to the Premises pursuant to any Hazardous Materials Laws; (c) Lessee's receipt of any warning, notice of inspection, notice of violation or alleged violation, or Lessee's receipt of notice or knowledge of any proceeding, investigation of enforcement action, relating to the Premises pursuant to any Hazardous Materials Laws; or (d) Lessee's receipt of notice or knowledge of any Claims made or threatened by any

third party against Lessee or the Premises relating to any loss or injury resulting from Hazardous Materials. Lessee shall deliver to Lessor copies of all test results, reports and business or management plans required to be filed with any governmental agency pursuant to any Hazardous Materials Laws, not less than ten (10) days in advance of any filing.

(e) **Termination; Expiration:** Upon the termination or expiration of this Lease, Lessee shall remove any equipment, improvements or storage facilities constructed or installed by Lessee in connection with any Hazardous Materials and shall, clean up, detoxify, repair and otherwise restore the Premises to a Hazardous Materials condition reasonably comparable to such condition as existed on the Effective Date.

(f) **Indemnity:** Lessee shall Indemnify Lessor for, from and against any and all Claims arising out of or in connection with any breach by Lessee, any assignee or sublessee of Lessee or their respective agents, servants, contractors or employees of any provisions of this Paragraph 44 (excluding Paragraph 44(h)) or directly or indirectly arising out of the use, generation, storage, release, disposal or transportation of Hazardous Materials by Lessee or any sublessee or assignee of Lessee, or their respective agents, contractors, employees, licensees, or invitees, on, under or about the Premises during the Lease term or Lessee's occupancy of Premises, including, but not limited to, all foreseeable damages (but not consequential damages) and the cost of any Remedial Work. Neither the consent by Lessor to the use, generation, storage, release, disposal or transportation of Hazardous Materials nor the compliance with all Hazardous Material Laws shall excuse Lessee from Lessee's indemnification obligations pursuant to this Paragraph 44(f). The foregoing indemnity shall be in addition to and not a limitation of the indemnification provisions of Paragraph 14 of this Lease.

(g) **Entry and Inspection; Cure:** Lessor and its agents, employees and contractors, shall have the right, but not the obligation, to enter the Premises at all reasonable times during normal business hours and with twenty-four (24) hours advanced notice to Lessee to inspect the same and Lessee's compliance with the terms and conditions of this Paragraph 44, or to conduct investigations and tests, subject to the rights of sublessee's of the Improvements. No prior notice to Lessee shall be required in the event of imminent danger to public health or the environment, or if Lessor has reasonable cause to believe that violations of this Paragraph 44 have occurred, or if Lessee consents at the time of entry. In all other cases, Lessor shall give at least twenty-four (24) hours prior notice to Lessee. Such entry by Lessor shall not interfere with the operation of the Premises by Lessee or the businesses conducted within the Improvements by Lessee's sublessees. In the event Lessee refuses to perform Remedial Work, without reasonable justification, Lessor shall have the right, but not the obligation, to perform any Remedial Work which is necessary or appropriate as a result of any governmental order, investigation or proceeding attributable to the acts or omissions of Lessee or any sublessee or assignee or their respective agents, servants, contractors or employees. Lessee shall pay, upon demand, as Additional Rent, all costs incurred by Lessor in remedying such violations or performing all Remedial Work, plus interest thereon at the Default Rate from the date of demand until the date received by Lessor.

(h) **Environmental Compliance by Lessor.** Lessor represents that the Premises, as of the Commencement Date, comply with all Hazardous Materials Laws. Lessor will Indemnify Lessee for, from and against any and all Claims arising out of or in connection with any breach by Lessor of any provisions of this Paragraph 44(h).

45. **Representations and Warranties of Lessee:** Lessee represents and warrants to Lessor as follows:

(a) **Authority of Lessee:** Lessee is a body corporate validly existing under the laws of the State of Arizona and is qualified to do business in the State of Arizona. The persons who have

executed this Lease on behalf of Lessee are duly authorized to do so and to fully and unconditionally bind Lessee.

(b) **Enforceability:** This Lease constitutes the legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms, subject, however, to bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws relating to or affecting the rights of creditors generally, general principles of equity, whether enforceability is considered in a proceeding in equity or at law and to the qualification that certain waivers, procedures, remedies and other provisions of this Lease may be unenforceable under or limited by applicable law; however, none of the foregoing shall prevent the practical realization to Lessor of the benefits intended by this Lease.

(c) **Litigation:** To the best of its knowledge, there are no suits, actions, proceedings or investigations pending, or to the best of its knowledge, threatened against or involving Lessee before any court, arbitrator or administrative or governmental body which might reasonably result in any material adverse change in the contemplated business, condition or operations of Lessee on the Premises.

(d) **Absence of Breaches or Defaults:** To the best of Lessee's knowledge, the execution, delivery and performance of this Lease and the documents, instruments and agreements, if any, provided for in this Lease will not result in any breach of or default under any other document, instrument or agreement to which Lessee is a party or by which Lessee is subject or bound.

46. **Representations and Warranties of Lessor:** Lessor represents and warrants to Lessee as follows:

(a) **Authority of Lessor:** Lessor is a municipal corporation, duly organized, validly existing under the laws of the State of Arizona and is qualified to do business in the State of Arizona. The persons who have executed this Lease on behalf of Lessor are duly authorized to do so.

(b) **Enforceability:** This Lease constitutes the legal, valid and binding obligation of Lessor, enforceable against Lessor in accordance with its terms, subject, however, to bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws relating to or affecting the rights of creditors generally, general principles of equity, whether enforceability is considered in a proceeding in equity or at law and to the qualification that certain waivers, procedures, remedies and other provisions of this Lease may be unenforceable under or limited by applicable law, however, none of the foregoing shall prevent the practical realization to Lessor of the benefits intended by this Lease.

(c) **Litigation:** To Lessor's actual knowledge, there are no suits, actions, proceedings or investigations pending or overtly threatened (except as may be otherwise disclosed to Lessee in writing by Lessor), that involve Lessor before any court, arbitrator or administrative or governmental body which relate to this Lease or any of the ASU Facilities, and that are reasonably expected to be determined adversely to Lessor, and if decided adversely, that would materially and adversely affect the transactions contemplated by this Lease or any of the ASU Facilities.

(d) **Absence of Breaches or Defaults:** To Lessor's actual knowledge, the execution, delivery and performance of this Lease and the documents, instruments and agreements, if any, provided for herein will not result in any breach of or default under any other document, instrument or agreement to which Lessor is a party or by which Lessor is subject or bound.

47. **Severability.** If any provision of this Lease shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect. It is the intention of Lessor and Lessee that

if any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

48. **Governing Law and Venue.** This Lease will be governed by the substantive laws of the State of Arizona without regard to any conflicts of laws principles. All provisions of this Lease have been negotiated by both Parties at arm's length and neither Party shall be deemed the scrivener of this Lease. This Lease shall not be construed for or against either Party by reason of the authorship or alleged authorship of any provision of this Lease. Any proceeding arising out of or relating to this Lease will be conducted in Maricopa County, Arizona. Each Party consents to such exclusive jurisdiction, and waives any objection it may now or hereafter have to venue or to convenience of forum.

49. **Nondiscrimination.** The Parties will comply with all applicable state and federal laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act.

50. **Conflict of Interest.** If within three (3) years after the execution of this Lease, a Party hires as an employee or agent of the other Party who was significantly involved in negotiating, securing, drafting, or creating this Lease, then the other Party may cancel this Lease as provided in A.R.S. § 38-511. Notice is also given of A.R.S. §§ 41-2517 and 41-753.

51. **Arbitration in Superior Court.** If required by A.R.S. § 12-1518, the Parties agree to make use of arbitration in disputes that are subject to mandatory arbitration pursuant to A.R.S. § 12-133.

52. **Records.** To the extent required by A.R.S. § 35-214, each Party will retain all records relating to this Lease. Each Party will make those records available at all reasonable times for inspection and audit by the other Party or the Auditor General of the State of Arizona during the Term of this Lease and for a period of five (5) years after the completion of this Lease. The records will be provided at a mutually agreeable location.

53. **Failure of Legislature to appropriate.** Notice is given of A.R.S. § 35-154.

54. **Weapons, Explosive Devices and Fireworks.** Within the Premises, Lessee prohibits the use, possession, display or storage of any weapon, explosive device or fireworks on all land and buildings owned, leased, or under the control of Lessee or its affiliated or related entities, in all Lessee residential facilities (whether managed by Lessee or another entity), in all Lessee vehicles, and at all Lessee or Lessee affiliate sponsored events and activities, except as provided in A.R.S. § 12-781, or unless written permission is given by the Chief of the ASU Police Department or a designated representative.

55. **Public Records.** The Parties are subject to, and must comply with, A.R.S. §§ 39-121 through 39-127.

56. **Advertising, Publicity, Names and Marks.** A Party will not do any of the following, without, in each case, the other Party's prior written consent: (i) use any names, service marks, trademarks, trade names, logos, or other identifying names, domain names, or identifying marks of the other Party ("**Other Party's Marks**"), for any reason including online, advertising, or promotional purposes; (ii) issue a press release or public statement regarding this Lease; or (iii) represent or imply any endorsement or support by the other Party of any product or service in any public or private communication. Any permitted use of any of the Other Party's Marks must comply with the other Party's requirements, including using the ® indication of a registered trademark where applicable.

57. **Tobacco-Free University.** Within the Premises, Lessee is tobacco-free. For details visit [www.asu.edu/tobaccofree](http://www.asu.edu/tobaccofree).

*Signatures of the Parties are on the following two pages.*

IN WITNESS WHEREOF, the Parties have executed this Lease to be effective as of the Effective Date.

LESSOR:

The City of Mesa, Arizona, an Arizona municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF ARIZONA )

) ss.

County of Maricopa )

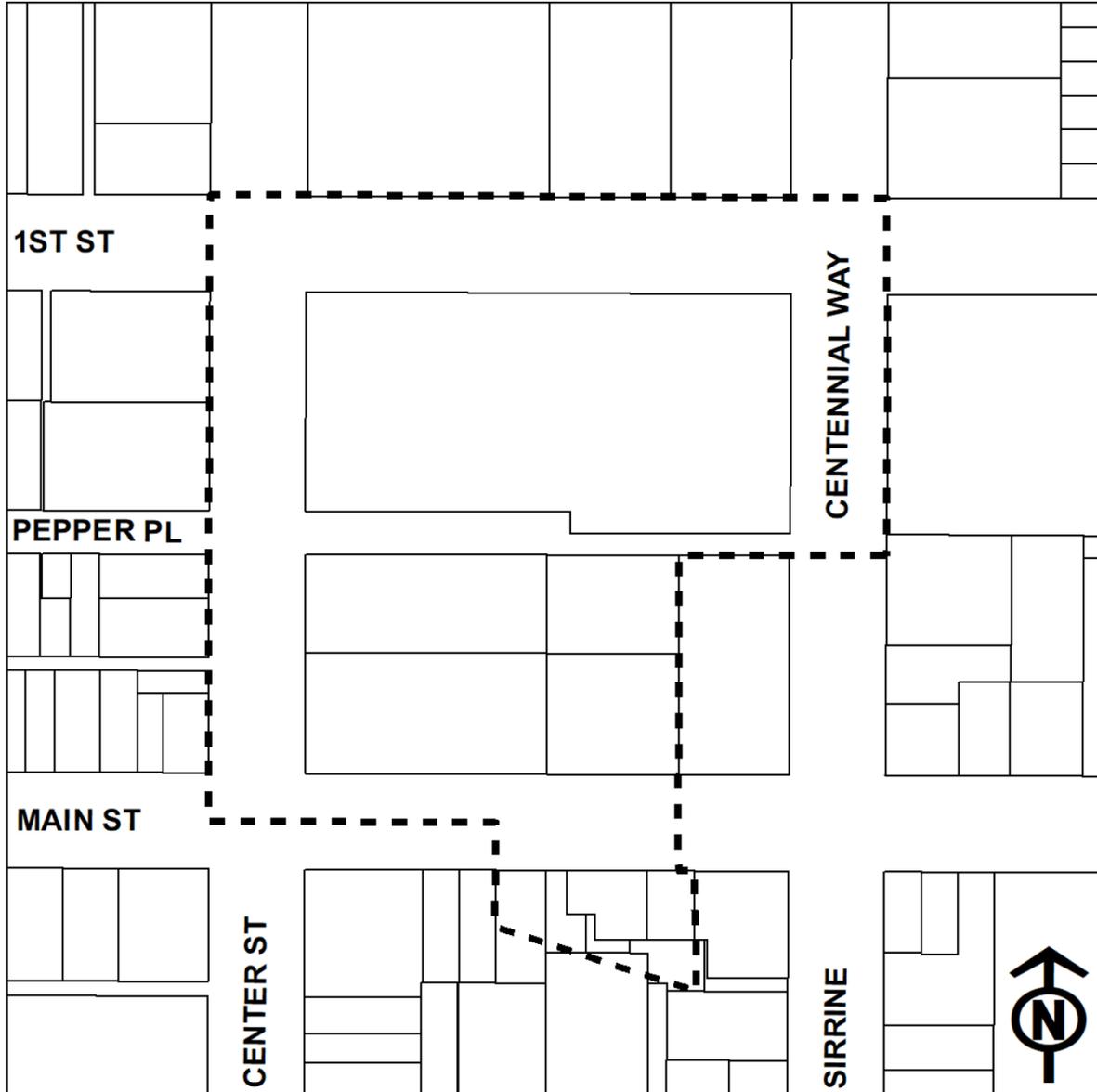
On \_\_\_\_\_, 2018, before me, \_\_\_\_\_, a Notary Public in and for said state, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument, the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said State  
My Commission Expires: \_\_\_\_\_

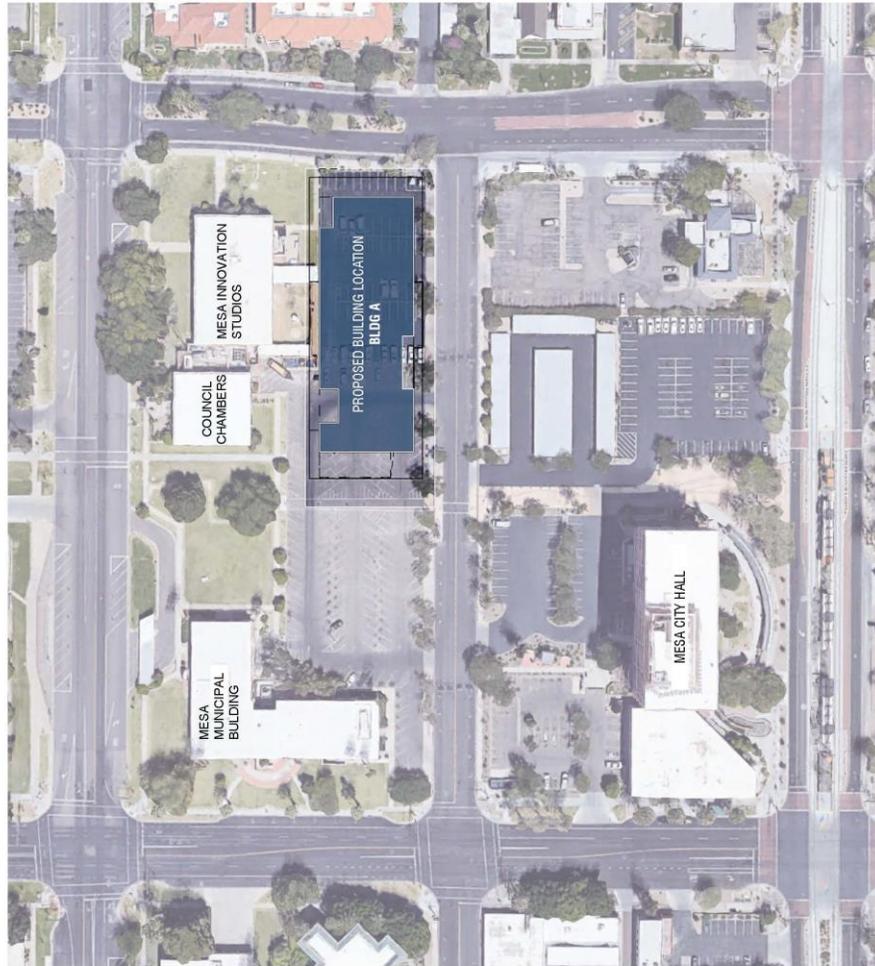


**Exhibit A**  
*Depiction of City Center*



**Exhibit B**  
Depiction of Premises and Surrounding Area

**DRAFT**



NOTE: THIS EXHIBIT B IS SUBJECT TO MODIFICATION PRIOR TO EXECUTION OF THE LEASE AND FOLLOWING EXECUTION OF THE LEASE, SUBJECT TO THE TERMS OF THE LEASE.



orcutt | winslow

City of Mesa / ASU : City Center Master Plan

**Exhibit C**  
*Schedule of Completion*

Project Design: August 2018-October 2019  
Construction Commencement: Fall/Winter 2019  
Construction Completion: Late Spring 2021

**Exhibit D**

*Intergovernmental Agreement dated March 1, 2018*