

**THIRD AMENDMENT  
to the  
LEASE AGREEMENT**

This Third Amendment to the Lease Agreement (“Third Amendment”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by and between the City of Mesa, a municipal corporation (“Landlord”), and Benedictine University, an Illinois not-for-profit corporation (the “Benedictine” or “Tenant”). Landlord and tenant may be referred to jointly as “Parties,” and each separately as “Party.”

**RECITALS**

- A. Landlord and Tenant entered into that certain Lease Agreement with Option to Purchase effective November 5, 2012 (the “Lease Agreement”) for real property, including parking lots, and any and all improvements then-existing and improvements Landlord agreed to complete located at what is commonly known as 225 E. Main Street, Mesa, Arizona (the “Premises.”)
- B. Landlord and Tenant entered into that First Amendment to the Lease Agreement with Option to Purchase (the “First Amendment”), effective January 1, 2017, which, among other things, provided for a reduction in the minimum Premises Rent due under the Lease Agreement to support increased enrollment, expanded program offerings, and facilitate Tenant-funded improvements to the Premises.
- C. At Landlord’s request, and in order to permit Landlord to enter into a development agreement (the “Mixed-Use Development Agreement”) and lease (the “Ground and Air Lease”) with a developer (the “Mixed-Use Developer”) for the construction of the Mixed-Use Development on the Adjacent Parking Lot (the “Mixed-Use Development”), Tenant released its leasehold interest and option to purchase the Adjacent Parking Lot, effective November 28, 2017, as provided in the Second Amendment to the Lease Agreement with Option to Purchase (the “Second Amendment”). Landlord, with Mixed-Use Developer (the term “Mixed-Use Developer” includes all permitted successors), intends to enter into the “Fifth Amendment to the Mixed-Use Development” and an “Amended and Restated Ground and Air Lease.” Landlord and Tenant desire to reinstate Tenant’s right restore to its leasehold and option to purchase the Adjacent Parking Lot if the Mixed-Use Developer fails to commence construction of the Mixed-Use Development and the Amended and Restated Ground and Air Lease is terminated.
- D. Tenant intends to invest additional monies to expand existing programs, develop new programs, and hire new teachers which will attract new students and create more opportunities and jobs for the citizens of the City of Mesa. In order to facilitate the expansion of existing programs, the development of new programs and the hiring of new teachers, Tenant has requested and needs a reduction in the Premises Rent to invest in such efforts.

- E. Landlord is willing to extend the Term of the Lease an additional 10 years and reduce the minimum Premises Rent, under the terms of this Third Amendment to facilitate the development of new programs, the expansion of existing programs and the hiring of new teachers.
- F. Tenant has entered into an innovative educational relationship with CO+HOOTS™ to develop an innovative educational relationship that provides CO+HOOTS approximately 10,000 square feet of rent-free space in the Premises for the operation of a co-work space managed and utilized by CO+HOOTS. Under the terms of the innovative educational relationship with CO+HOOTS, CO+HOOTS will (1) collaborate with Tenant to develop a certificate in Entrepreneurship and an Entrepreneurial Leadership program; (2) provide real world experiences for Tenant's students and/or the community; (3) create no fewer than 300 jobs/business over 10 years; and (4) provide public entrepreneurship programming to occur no less often than once per week; all of which will occur over a ten (10) year period of time, with annual reporting to the City.
- G. Landlord, desires to establish a downtown innovation district that encourages and promotes employment and education to create jobs, attract employers, stimulate economic activity, and improve the economic opportunities for the residents of Mesa. Therefore, Landlord agrees to design and construct portions of the first, second, and third floors of the Premises in support of Benedictine University's innovative educational relationship with CO+HOOTS, or other comparative co-working enterprise.
- H. Landlord and Tenant will continue to work cooperatively with each other to achieve the intent of the Lease, this Third Amendment, and future amendments as deemed warranted by the Parties.
- I. The Parties understand and acknowledge that this Third Amendment is intended to promote "economic development activities" within the meaning of, and entered into in accordance with, the terms of A.R.S. § 9-500.11. The actions taken by City pursuant to this Third Amendment are for economic development activities; and the City Council hereby finds and determines these such activities will assist in the creation and retention of jobs and will improve and enhance the economic welfare of the residents of Mesa.

## **AGREEMENT**

IN CONSIDERATION of the foregoing recitals and representations and the mutual covenants and agreements and conditions in this Third Amendment, the Parties agree as follows:

1. Definitions. All capitalized words and phrases used in this Third Amendment shall have the same meanings as set forth in the Lease Agreement, unless a different definition is set forth in this Third Amendment.
2. Term. The Parties agree to extend the Term on of the Lease by an additional ten (10) years to allow Tenant time to develop new programs, expand existing programs, hire new teachers and attract new students. To effectuate this, Section 2.1 is hereby deleted in its entirety and replaced with the following:

2.1 Term. The term (the “Term”) of this Lease shall commence on the Effective Date and shall continue for that period of time that is twenty-five (25) years after the Rent Commencement Date (as defined in Section 4.1), unless terminated earlier as provided in this Lease. Accordingly, the Term will continue until midnight on July 31, 2038.

3. Premises Rent. In exchange for Tenants expanding existing programs, developing new programs, hiring new teachers and attracting new students, Landlord agrees to reduce the Premises Rent beginning August 1, 2019 and ending July 31, 2028, as stated in Exhibit F attached. The reduction of the Premises Rent beginning December 1, 2019 and ending July 31, 2022, will be 70%. The reduction of the Premises Rent beginning August 1, 2022 and ending July 31, 2025, will be 50%, and the reduction of the Premises Rent beginning August 1, 2025 and ending July 31, 2028, will be 30%. Starting on August 1, 2028, the Premises Rent shall be at the “market rate” stated in Exhibit F attached hereto. Accordingly, the Parties agree to delete in its entirety Sections 4.1(A), 4.1(B) and 4.1 (C) and add new Sections 4.1(D), 4.1(E) and 4.1(F) are as follows:

4.1(A) Years One to Four. From the Rent Commencement Date until the end of the 4<sup>th</sup> lease year, as stated in Exhibit F, attached hereto.

4.1(B). Years Five and Six. For the fifth and sixth (6<sup>th</sup>) years after the Rent Commencement Date, the Premises Rent shall be reduced by \$250,000.00 plus applicable taxes.

4.1 (C). Years Seven through Fifteen. Beginning the seventh year, August 1, 2019 through the fifteenth year, July 31, 2028, the Premises Rent, subject to Tenant expending additional monies, on the items described in (i) through (v) below, the Premises Rent shall be reduced as stated in Exhibit F attached hereto. The reduction in the Premises Rent is conditioned on the Tenant using the reduction in Premises Rent to:

- (i) expand existing programs; and
- (ii) create new Programs; and
- (iii) create new full-time teaching positions, and;
- (iv) increase new student enrollment, and
- (v) provide new scholarships for residents of Mesa.

4.1(D). Years Sixteen through Twenty. Beginning the sixteenth year, August 1, 2028 though the twentieth year, July 31, 2032, at the rate stated in Exhibit F, attached hereto.

4.1(E). Years Twenty-One through Twenty-Five. Beginning Year 21, August 1, 2033, through the end of the Term of this Lease, at a market rate, to be determined, based on a rent analysis (as stated in Exhibit F) to be conducted during the Twentieth Year, plus applicable taxes.

4.1(F). Reporting. Within sixty (60) days of the end of each Lease Year in which the Premises Rent is reduced, Tenant must submit proof to City, by providing commercially reasonable evidence of compliance with all requirements stated in Section 4.1(C). Within thirty (30) days of receiving Tenant’s proof of such compliance, City may request, and Tenant will promptly provide, additional information necessary to reasonably establish all requirements of Section 4.1(C) are being complied with.

4. Reduction in Minimum Premises Rent Subject to Terms. The Parties agree to replace the reduction in minimum Premises Rent included in the First Amendment by the reduction of the Premises Rent stated above in 4.1(C). Accordingly, Sections 3 and subsection 3.1 through 3.7 of the First Amendment shall not be applicable, and shall not be effective, as of the effective date of this Third Amendment.

5. First, Second and Third Floor Improvements. To support the partnership between the Tenant and CO+HOOTS or a comparative co-working enterprise, Landlord agrees to design and construct portions of the first, second and third floors of the Premises, not to exceed Two Million (\$2,000,000.00) Dollars, as shown on Exhibit B-1, attached hereto. Accordingly, the Parties agree to delete in its entirety Section 6.1.2 and replace it with the following and add new Sections 6.1.2.1 and 6.1.2.2 are as follows:

6.1.2 First, Second and Third Floor Improvements. Landlord, to support the innovative educational relationship between the Tenant and CO+HOOTS or a comparative co-working enterprise, agrees to design and construct portions of the first, second, and third floors of the Premises as shown on Exhibit B-1, attached hereto ("New Tenant Improvements"). The design and construction costs of the improvements shall not exceed two million (\$2,000,000.00) Dollars, in aggregate, and will generally consist of a new building entry; reception area; flexible and fixed office space; restrooms; breakroom; and mechanical, electric, and plumbing, as more fully described and depicted in Exhibit B-1. Landlord shall not commence construction of the New Tenant Improvements until Tenant provides Landlord with proof of a sublease, license or use agreement with CO+HOOTS or a comparative co-working enterprise for occupation of the New Tenant Improvements. Tenant shall be responsible for all FFE associated with the New Tenant Improvements. The Parties may mutually agree, each in its sole discretion (with the City Manager having authority on behalf of the City) to make minor adjustments to Exhibit B-1 that are consistent with the intent of the Parties and this Third Amendment.

6.1.2.1 In the event Landlord's New Tenant Improvements, as stated in Section 6.1.2 above and shown on Exhibit B-1 attached hereto, are not sufficient to support the innovative educational relationship with CO+HOOTS or a comparative co-working enterprise, Tenant shall have the option, but not the obligation to complete the buildout of the second and third floors of the Premises, at its sole cost and expense. Any improvements built by Tenant shall become the property of the Landlord upon the termination or expiration of the Lease, as amended.

6.1.2.2 In the event Tenant or CO+HOOTS terminates their innovative educational relationship for use of the New Tenant Improvements, as described in Exhibit F, within 10 years from the date of this Third Amendment, Tenant, in cooperation with Landlord, will use commercially reasonable efforts to identify a comparable co-working enterprise within three months from the date of termination of CO+HOOTS to lease, sublease, or license the New Tenant Improvements to a comparable co-working enterprise. If Tenant is successful in attracting a comparable co-working enterprise for the New Tenant Improvements, Tenant shall enter into a lease, sublease or license with the new tenant for the space. If Tenant is unable to lease, sublease, or license the New Tenant Improvements to a comparable co-working enterprise within three months of the termination of CO+HOOTS, Landlord, in cooperation with the Tenant, shall have

three months to attract a new compatible tenant for the New Tenant Improvements. If Landlord is successful in attracting a new tenant for the New Tenant Improvements, Landlord shall enter into a sublease, license or use agreement with the new tenant for the space. If the Tenant and Landlord are unable to lease, sublease, or license the New Tenant Improvements to another tenant, the New Tenant Improvements shall revert back to Tenant for Tenant's use, provided Tenant provides commercially reasonable evidence that Tenant will use the New Tenant Improvements for academic purposes that advance Tenant's academic programing.

6. Amendment to the Option to Purchase. The Parties agree to move the commencement date for the Option Term to the end of Year 20, July 31, 2033, of the amended Term of the Lease. Accordingly, the Parties agree to delete in its entirety Section 30.3 and replace it with the following:

30.3 The Option Term. Assuming this Lease is not terminated earlier, the term of the Purchase Option (the "Option Term") shall commence at 12:01 a.m. Arizona Time on August 1, 2033 (the "Option Beginning Date") and shall terminate at 5:00 p.m. Arizona Time on the last day of the Term of this Lease.

7. Restoration of Leasehold and Option to Purchase Adjacent Parking Lot. Landlord and Tenant agree that Section 6 of the Second Amendment entitled "Restoration of Leasehold Interest and Purchase Option" shall be replaced in its entirety with the following:

Restoration of Leasehold Interest and Purchase Option. Tenant's leasehold interest and Purchase Option for the Adjacent Parking Lot (as defined in the Second Amendment) shall be restored under the same terms and conditions of the Lease Agreement if both: (i) Commencement of Construction of the First Phase of the Project (as those terms are defined in the Mixed-Use Development Agreement, and amendments thereto) has not commenced on or before January 1, 2021; and (ii) all lease, lease rights, leasehold interests, and other land rights for the Adjacent Parking that Mixed-Use Developer has under the Mixed-Use Development Agreement and Ground and Air Lease or is intended and will have under the Fifth Amendment to the Mixed-Use Development and the Amended and Restated Ground and Air Lease have terminated.

8. Effect of Third Amendment. All terms and conditions of the Lease Agreement, the First Amendment, the Second Amendment not in conflict with this Third Amendment shall remain in full force and effect. Nothing in this Third Amendment is intended to preclude Tenant's option as stated in Section 13 of the Lease.

9. Severability. In the event any term or provision of this Third Amendment is held to be invalid or unenforceable, the validity of the other provisions shall not be affected, and this Third Amendment shall be construed and enforced as if it did not contain the particular term or provision that is deemed to be invalid or unenforceable.

10. Governing Law, Venue, and Jurisdiction. This Third Amendment shall be governed by the laws of Arizona. A Party shall bring any action related to a dispute arising out of this Third

Amendment or the Lease Agreement, as amended, in a court of appropriate venue and jurisdiction in Maricopa County, State of Arizona.

11. Statutory Notice Requirement. The Parties acknowledge that this Third Amendment and the Lease Agreement, as amended, are subject to cancellation by Mesa pursuant to the provisions of A.R.S. § 38-511.

12. Incorporation of Recitals. The recitals set forth herein are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.

IN WITNESS WHEREOF, the Parties have executed this Third Amendment the day and year first above written.

TENANT:

Benedictine University,  
an Illinois not-for-profit corporation

LANDLORD:

CITY OF MESA,  
a municipal corporation

By: \_\_\_\_\_  
Name: : Charlie Gregory  
Title: President

By: \_\_\_\_\_  
Name: Christopher J. Brady  
Title: City Manager

## Exhibit B-1

### NEW TENANT IMPROVEMENTS

#### First Floor

- New identifiable entry
- Access control
- Elevator improvements

#### Second Floor

- Reception area
- Open flexible office lease area
- Enclosed flexible office/conference rooms
- Employee café/breakroom
- Childcare room
- Stairway connection to third floor
- Heating and cooling
- Plumbing system
- Electric system upgrades

#### Third Floor

- Open flexible office lease area
- Enclosed flexible office/conference rooms
- Employee lounge
- Restrooms
- Stairway connection to third floor
- Heating and cooling
- Plumbing system
- Electric system upgrades

Exhibit F  
Schedule of Premises Rent

Year	Date	3rd Amendment Rent Schedule
1	8/1/2013	N/A
2	8/1/2014	N/A
3	8/1/2015	N/A
4	8/1/2016	N/A
5	8/1/2017	N/A
6	8/1/2018	N/A
7	8/1/2019	N/A
7.1	12/1/2019	\$ 133,332.00 (\$16,666.50/month)
8	8/1/2020	\$ 199,998.00
9	8/1/2021	\$ 199,998.00
10	8/1/2022	\$ 333,330.00
11	8/1/2023	\$ 333,330.00
12	8/1/2024	\$ 333,330.00
13	8/1/2025	\$ 466,662.00
14	8/1/2026	\$ 466,662.00
15	8/1/2027	\$ 466,662.00
16	8/1/2028	\$ 679,500.00
17	8/1/2029	\$ 691,500.00
18	8/1/2030	\$ 703,500.00
19	8/1/2031	\$ 716,500.00
20	8/1/2032	\$ 728,500.00
21 <sup>1</sup>	8/1/2033	Mkt Rate
22	8/1/2034	Mkt Rate
23	8/1/2035	Mkt Rate
24	8/1/2036	Mkt Rate
25	8/1/2037	Mkt Rate

<sup>1</sup> Starting in the 21st year of the Lease, the Rent shall be based on 7% of the fair market value of the Premises as follows: during Year 20 of the Lease, the Parties (if they Parties are unable to agree upon the fair market value of the Premises) shall each create a list of three appraisers and provide such list to the other Party. The appraisers on the lists shall be members of the American Institute of Real Estate Appraisers (“M.A.I.”) with at least 10 years of experience in appraising commercial real property. The Parties shall act in good faith to select one appraiser from one of the lists as the primary appraiser (the “Primary Appraiser”) and to select from the other list another appraiser to be the review appraiser (the “Review Appraiser”) (the Primary Appraiser and Review Appraiser shall be from different lists). If the Parties cannot so agree within thirty (30) days of providing the lists, either Party may, upon at least 5 days prior written notice to the other Party, apply to the American Institute of Real Estate Appraisers or to the presiding judge of the Maricopa County Arizona Superior Court, for selecting such appraisers. Within 45 days after selecting the Primary Appraiser, the Primary Appraiser shall provide the Parties with an appraisal of the Premises that determines the fair market value of the Premises. Within 15 days after receiving such appraisal, either Party may provide notice to the other Party that they disagree with the Primary Appraiser’s fair market value



of the Premises and engage the Review Appraiser to appraise the Premises. If such notice is not provided, the fair market value of the Premises shall be as stated in the Primary Appraiser's appraisal, unless the Parties agree in writing to another amount for the fair market value of the Premises. If notice that a Party disagrees with the Primary Appraiser's determination is provided, the Parties agree that the Premises shall be appraised by the Review Appraiser; and, then, within 30 days of engaging the Review Appraiser, the Review Appraiser shall provide the Parties with an appraisal of the Premises that determines the fair market value of the Premises; the Parties shall negotiate in good faith based on the two appraisals to agree upon a fair market value of the Premises that falls within the range of the two appraisals. If the Parties cannot so agree within thirty (30) days of receiving the Review Appraiser's appraisal, either Party may, upon at least 5 days prior written notice to the other Party, apply to presiding judge of the Maricopa County Arizona Superior Court, (or file suit in Maricopa County Arizona Superior Court) for a determination of the fair market value of the Premises. Each Party agrees to pay one-half (1/2) of the fees for the appraisals. The date of valuation for the appraisals shall be the date the appraisal is completed.