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**Scharf-Norton Center for Constitutional Litigation at the  
GOLDWATER INSTITUTE**

Christina Sandefur (027983)  
Veronica Thorson (030292)  
500 E. Coronado Rd.  
Phoenix, AZ 85004  
(602) 462-5000  
[litigation@goldwaterinstitute.org](mailto:litigation@goldwaterinstitute.org)  
*Attorneys for Plaintiffs*

**IN THE SUPERIOR COURT OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA**

DARCIE SCHIRES; ANDREW AKERS; and GARY  
WHITMAN,

Plaintiffs,

vs.

CATHY CARLAT, in her official capacity as Mayor of  
the City of Peoria; VICKI HUNT, in her official  
capacity as City of Peoria Councilmember for the  
Acacia District; CARLO LEONE, in his official  
capacity as City of Peoria Councilmember for the Pine  
District; MICHAEL FINN, in his official capacity as  
Councilmember for the City of Peoria for the Palo Verde  
District; JON EDWARDS, in his official capacity as  
Councilmember for the City of Peoria for the Willow  
District; BRIDGET BINSBACHER, in her official  
capacity as Councilmember for the City of Peoria for the  
Mesquite District; and BILL PATENA, in his official  
capacity as Councilmember for the City of Peoria for the  
Ironwood District; CITY OF PEORIA, a municipal  
corporation of the State of Arizona;

Defendants.

Case No. CV2016-013699

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

## **Introduction**

1. Plaintiffs Darcie Schires, Andrew Akers, and Gary Whitman, residents and taxpayers of Peoria, Arizona, bring this complaint for declaratory and injunctive relief challenging the City of Peoria's unconstitutional gifts of their taxpayer dollars to two private businesses without being guaranteed in return any direct benefits that serve a general public purpose, as required by article IX, section 7 of the Arizona Constitution (the "Gift Clause").

2. The City of Peoria ("the City") has pledged to give up to \$1.875 million to Huntington University ("Huntington"). In exchange, Peoria taxpayers do not receive lower tuition, admission preference, or any other benefit. Rather, Huntington promises only to enroll students, receive accreditation, and do other things it would do in the ordinary course of business. In short, the City is forcing taxpayers to pay a private business to run a business for itself.

3. Additionally, the City has pledged nearly \$738,000 to Arrowhead Equities LLC ("Arrowhead"), a private real-estate investment firm and Huntington's landlord, to renovate property Arrowhead owns, which Arrowhead will lease to Huntington for profit.

4. Plaintiffs seek to enforce the Arizona Constitution's limitation on government expenditures of public money for authentic and traditional public purposes to prevent unjust enrichment of favored interests to the detriment of taxpayers.

## **Parties, Jurisdiction, and Venue**

5. Plaintiff Darcie Schires is now and has been a resident and taxpayer of the City since 2005. She is a wife, mother of two, and business owner.

6. Plaintiff Andrew Akers has resided in Maricopa County since 1963 and has been a City of Peoria resident and taxpayer since 2011. He is a technical manager at Honeywell International in the Phoenix area.

7. Plaintiff Gary Whitman is a Peoria resident and taxpayer.

8. As City of Peoria taxpayers, Plaintiffs Schires, Akers, and Whitman are responsible for paying property, sales, and other taxes and will bear a share of the burden for replenishing the Peoria public coffers for revenues lost from the unlawful expenditures the City is making to and for the benefit

of Huntington and Arrowhead. Because their taxes finance the City's subsidies to Huntington and Arrowhead, Plaintiffs are directly harmed by the City's illegal expenditure of public money.

9. Defendant Cathy Carlat is mayor of the City of Peoria and shares governing authority with the Peoria City Council and is responsible for approving and executing the contracts complained of in this action. She is sued in her official capacity only.

10. Defendants Vicki Hunt (Acacia District), Carlo Leone (Pine District), Michael Finn (Palo Verde District), Jon Edwards (Willow District), Bridget Binsbacher (Mesquite District), and Bill Patena (Ironwood District) are members of the Peoria City Council, which is the governing body for the City of Peoria. City Council members are responsible for approving and executing the contracts complained of in this action and are sued in their official capacities only.

11. Defendant City of Peoria is a municipal corporation organized under the laws of the State of Arizona.

12. Jurisdiction is proper pursuant to ARIZ. CONST. art. VI, § 14, and A.R.S. §§ 12-123, 12-1801, and 12-1831.

13. Venue is proper pursuant to A.R.S. § 12-401.

### **Facts Common to All Claims**

#### **Huntington University**

14. Huntington is a private Christian college with graduate and undergraduate programs in 70 academic concentrations. Huntington charges approximately \$24,500 per year for full-time tuition.

15. Huntington's main campus is located in northeast Indiana. However, Huntington recently received taxpayer funds from the City to open a branch campus in Peoria that will offer one program, in digital media arts.

16. On July 7, 2015, the Peoria City Council authorized the City Manager to approve an Economic Development Activities Agreement with Huntington (the "Huntington Agreement"), a private corporation, to develop a branch campus in Peoria.

17. To fund the agreement, the Council approved the use of General Fund Reserves and a budget adjustment in the amount of \$900,000 from the Half-Cent Sales Tax Fund contingency to the

Half-Cent Sales Tax Fund Economic Development Programs account.

18. On December 1, 2015, the Peoria City Council authorized the City Manager to execute an amendment to the Huntington Agreement. The amendment gave Huntington more flexibility in choosing its campus location—with a preference for properties located in an Economic Development Implementation Strategy (“EDIS”) Investment Zone—and greater flexibility in allowable reimbursements for Huntington’s expenses, including lease cost reimbursement for its campus.

19. The City and Huntington executed the Amended and Restated Huntington Agreement on January 25, 2016, and it was recorded as document number 2016-0276347 in the Maricopa County Recorder’s Office. A true and correct copy of the Amended and Restated Huntington Agreement is attached hereto as Exhibit A.

20. Under the Huntington Agreement, the City will pay Huntington up to \$1.875 million for completing each of three performance thresholds.

21. To receive the **first** payment of \$900,000, Huntington must (a) appoint campus leadership; (b) receive approval for degree programs from the Higher Learning Commission and the Arizona State Board for Private Post-Secondary Education; (c) obtain approval from the federal government for federal student financial aid; (d) submit a marketing plan to the City; (e) submit a final list of available undergraduate programs; (f) purchase property or sign a seven-year lease in Peoria; (g) submit a faculty plan and enrollment estimates for the first five years of the project; (h) submit an executed articulation agreement between Huntington and the Maricopa County Community College district for all majors offered by Huntington; (i) accept students for the 2016–2017 academic year, to commence actual coursework in the fall for one of three Digital Media Arts (“DMA”) majors; and (j) give the City a detailed accounting and summary report of its program expenses.

22. To receive the **second** payment of \$550,000, (a) Huntington must offer coursework to 100 students—seated at the campus and enrolled in DMA coursework—for the 2017–2018 academic year; (b) the students must complete part of the semester coursework; and (c) Huntington must give the City a detailed accounting and summary report of its program expenses. Even if Huntington fails to enroll 100 students, it may nevertheless receive a pro-rata share of the \$550,000 second payment based



on the actual number of students it enrolls.

23. To receive the *third* payment of \$425,000, (a) Huntington must offer coursework to 150 students—seated at the campus and enrolled in DMA programs—for the 2018–2019 academic year; (b) the students must complete part of the semester coursework; and (c) Huntington must give the City a detailed accounting and summary report of its program expenses. If Huntington fails to enroll 150 students, it may receive a pro-rata share of the \$425,000 third payment, based on the actual number of students it enrolls.

24. All three payments to Huntington will be paid directly from the City’s public funds.

25. Additionally, the Huntington Agreement gives Huntington a right to review any universities the City pursues and recruits to locate in Peoria through the end of year three of the Huntington Agreement, and the City promises to refrain from engaging with, and/or financially supporting, any other universities that would compete with Huntington.

26. Huntington’s additional obligations under the agreement—participating in unspecified “economic development activities” with the City and investing \$2.5 million in its own campus in the first three years—are *not* tethered to any of the three performance thresholds Huntington must meet in order to receive the above-referenced payments from the City.

27. Huntington is already behind on upholding its end of the bargain. On May 15, 2016, the Peoria City Council unanimously authorized the City Manager to execute the First Amendment to the Huntington Agreement. That amendment permitted Huntington to delay performance, giving it an additional 90 days to meet its first performance threshold requirements, and an additional semester each to meet its second and third performance threshold requirements.

#### **Arrowhead Equities LLC**

30. Arrowhead Equities LLC is an Arizona commercial real estate company and the owner of the 30,000 square-foot property at 8385 West Mariners Way in Peoria, Arizona (“The Property”).

31. On or about December 24, 2015, Arrowhead, as landlord, entered into a lease with Huntington for the Property.

32. On March 15, 2016, the Peoria City Council adopted Resolution 2016-23, authorizing the

City Manager to execute an Economic Development Activities Agreement (the “Arrowhead Agreement”) with Arrowhead.

33. To fund the Arrowhead Agreement, the Council approved a budget amendment in the amount of \$737,596 from the Half-Cent Sales Tax Fund Contingency account to the Arrowhead Equities LLC, Half-Cent Sales Tax Fund, Economic Development Projects account.

34. Under the Arrowhead Agreement, Arrowhead will complete tenant improvements to the Property no later than October 15, 2016, for lease to Huntington as its branch campus. A true and correct copy of the Arrowhead Agreement is attached hereto as Exhibit B.

35. Under the Arrowhead Agreement, the City will pay Arrowhead \$737,596, an amount equal to half of Arrowhead’s tenant-improvement expenses for the Huntington campus, if Arrowhead complies with five performance criteria over the course of ten years: (a) Huntington must remain continuously open for business on a full-time basis (subject to reasonable interruptions due to casualty or remodeling); (b) Arrowhead must comply with applicable municipal, state, and federal laws; (c) Arrowhead must comply with applicable building, fire, and safety requirements; (d) Arrowhead must comply with all of its obligations under its lease with Huntington; and (e) Arrowhead must comply with its obligations under the Arrowhead Agreement.

36. Arrowhead will receive an initial disbursement of \$221,280 upon satisfaction of all five criteria, and, for continuing to comply with the criteria, Arrowhead will receive additional disbursements of \$73,760 beginning on the fourth anniversary of the initial disbursement date and annually thereafter, until the City has disbursed the full amount to Arrowhead.

37. Each of the payments to Arrowhead—\$737,596 in total—will be paid directly from the City’s public funds.

**Count One: Huntington Deal violates the Gift Clause**

38. Plaintiffs hereby incorporate by reference all allegations in the preceding paragraphs.

39. Article IX, section 7 of the Arizona Constitution (the “Gift Clause”) makes it illegal for the City of Peoria to “make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation.”

40. An expenditure of taxpayer money violates the Gift Clause unless (1) it serves a public purpose and (2) the consideration taxpayers receive in exchange for their money is not “grossly disproportionate.” *See Turken v. Gordon*, 223 Ariz. 342, 347–48, 224 P.3d 158, 163–64 (2010).

41. The City’s agreement to give up to \$1.875 million in taxpayer money to Huntington, a private business, does not serve a public purpose because Huntington has not promised to satisfy the need or contribute to the convenience of the city at large. The City’s hopes that the Huntington Deal will bring economic benefits to the City are at best indirect benefits, not contractual obligations, which do not qualify as consideration for purposes of the Gift Clause.

42. The \$1.875 million in taxpayer funds promised to Huntington also violates the Gift Clause because the consideration the City receives in exchange for its payments is grossly disproportionate. Taxpayers will not receive any product, service, or other benefit—such as admission or employment preferences or reduced tuition—in exchange for up to \$1.875 million in taxpayer funds the City has pledged to Huntington.

43. Huntington’s promises to obtain accreditation, offer classes, and enroll students are not valuable consideration to taxpayers at large. They are things Huntington would do in the ordinary course of business for private profit. The Huntington Agreement forces taxpayers to pay a private business to run itself.

44. Huntington’s agreements to participate in unspecified “economic development activities” with the City and to invest \$2.5 million in its campus in the first three years of operation do not serve the public and are not tethered to the performance thresholds in the Huntington Agreement—meaning Huntington will receive payment even if it fails to perform these tasks.

45. The City’s agreement to give Huntington a right to review any university candidates the City pursues and recruits and the City’s promise to refrain from engaging with and/or financially supporting universities that would compete with Huntington denies residents the benefits of open competition to the benefit of Huntington.

46. Because the Huntington Agreement does not serve a public purpose, any expenditure by the City pursuant to its provisions is an unlawful gift of public funds in violation of the Arizona

Constitution's Gift Clause.

47. Because the City will receive nothing of direct value in return for its gift of taxpayer money to Huntington, a private corporation, the payment of up to \$1.875 million under the Huntington Agreement is grossly disproportionate and violates the Arizona Constitution's Gift Clause.

48. Because Plaintiffs will be required to pay a share of the cost of replenishing the public treasury for the illegal expenditure of public funds for the benefit of Huntington, Plaintiffs are directly injured by the illegal Huntington Agreement.

49. Accordingly, Plaintiffs are entitled to declaratory and injunctive relief preventing payment under, or execution of, the Huntington Agreement.

**Count Two: Arrowhead Deal violates the Gift Clause**

50. Plaintiffs incorporate the allegations in the preceding paragraphs.

51. Peoria's agreement to give \$737,596 in taxpayer money to Arrowhead, a private real-estate firm, does not serve a public purpose because Arrowhead has not promised to satisfy any need of, or contribute to the convenience of, the City or its taxpayers.

52. The tenant improvements to Arrowhead's property do not satisfy the need or contribute to the convenience of the City because the facility is not intended for public use. Taxpayers and residents will not have access to the property as they would a public park, a roadway, or other public entity. Instead, the improvements will solely benefit Huntington.

53. Receiving taxpayer money to complete the tenant improvements also directly benefits Arrowhead, which will profit from leasing its facility to Huntington.

54. The \$737,596 in taxpayer funds promised to Arrowhead in the Arrowhead Agreement also violates the Gift Clause because the consideration the City receives in exchange ~~for~~ is grossly disproportionate.

55. In exchange for the taxpayer money, Arrowhead has merely promised to improve its facility to Huntington's satisfaction and to lease its facility to Huntington.

56. Tenant improvements that benefit private businesses do not provide any direct value to taxpayers. The City does not own the building and will not receive any value from the transaction.

57. Because the City will receive nothing of direct value in return for its gift of taxpayer money to Arrowhead, a private corporation, the payment of \$737,596 under the Arrowhead Agreement is grossly disproportionate and violates the Arizona Constitution's Gift Clause. Because Plaintiffs will be required to pay a share of the cost of replenishing the public treasury for the illegal expenditure of public funds for the benefit of Arrowhead, Plaintiffs are directly injured by the illegal Arrowhead Agreement.

58. Accordingly, Plaintiffs are entitled to declaratory and injunctive relief preventing execution of the Arrowhead Agreement.

### **Request for Relief**

For their relief, Plaintiffs request that this Court take the following actions:

59. Declare that the Huntington Agreement, including all amendments named in this Complaint, constitutes an unlawful gift of public funds in violation of the Arizona Constitution's Gift Clause;

60. Declare that the Arrowhead Agreement constitutes an unlawful gift of public funds in violation of the Arizona Constitution's Gift Clause;

61. Declare that City of Peoria Resolution 2016-23 is unconstitutional and enjoin its further effect;

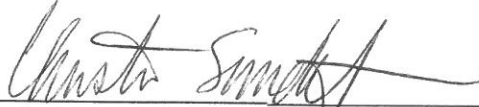
62. Preliminarily and permanently enjoin Defendants and their officials, agents, and employees, from making any payments or otherwise performing under the Huntington Agreement;

63. Preliminarily and permanently enjoin Defendants and their officials, agents, and employees, from making any payments or otherwise performing under the Arrowhead Agreement;

64. Award costs and attorney fees to Plaintiffs pursuant to A.R.S. § 12-341 and the private attorney general doctrine;

65. Award such other and additional relief as may be just and equitable.

**RESPECTFULLY SUBMITTED** this 12th day of October, 2016 by:

A handwritten signature in cursive script, appearing to read "Christina Sandefur", written over a horizontal line.

Christina Sandefur (027985)

Veronica Thorson (030292)

**Scharf-Norton Center for Constitutional Litigation  
at the GOLDWATER INSTITUTE**

*Attorneys for Plaintiffs*

**Exhibit A**



AMENDED AND RESTATED  
ECONOMIC DEVELOPMENT ACTIVITIES  
AGREEMENT BETWEEN  
THE CITY OF PEORIA, ARIZONA  
AND HUNTINGTON UNIVERSITY

This Amended and Restated Economic Development Activities Agreement ("Agreement") is entered into on January 25, 2016 ("Effective Date") between the City of Peoria, Arizona, an Arizona municipal corporation ("City") and Huntington University, an Indiana non-profit corporation ("HU"); each entity is separately referred to as a "Party" and collectively they are referred to as the "Parties."

RECITALS

A. On October 19, 2010, the City adopted an Economic Development Implementation Strategy ("EDIS") which provides an implementation-based plan for achieving the economic development goals of the City;

B. One of the strategies to implement the EDIS is through the City-adopted Economic Development Incentive and Investment Policy ("EDIIP") and accompanying Economic Development Incentive and Investment Policy Guidelines ("EDIIP Guidelines"), which provide a framework for evaluating City financial incentives and investment towards the retention and expansion of existing local businesses and attraction and expansion of targeted industries within the City in a manner that is consistent with applicable laws;

C. The City is authorized pursuant to Arizona Revised Statutes, §§ 9-500.5 and 9-500.11 to negotiate and enter into development agreements that include expenditures for economic development;

D. HU has submitted a proposal to the City with a request for public incentives and investment to develop an accredited additional university campus location (the "Peoria Campus") offering undergraduate degrees in digital media arts programs (the "Project"), a recognized STEM discipline, which is a key component in the City's EDIIP;

E. The City has contracted with Elliott D. Pollack and Company to conduct an economic impact analysis for the Project, and this study shows the Project results in a positive economic impact for the City;

F. The City has reviewed HU's request and determined that the Project qualifies and should be approved under the EDIIP;

G. The City has concluded that the Project will benefit the public interest and promote the public welfare of the citizens in the City and that the City and its residents will receive an equitable or proportional economic return in exchange for the incentives that will be provided by the City under this Agreement;

H. On July 7, 2015, the City and HU entered into that certain Economic Development Activities Agreement Between The City of Peoria, Arizona and Huntington University recorded on \_\_\_\_\_, 2015 in the Maricopa County Recorder's Office as document number 2015-\_\_\_\_\_ (the "Original Agreement") addressing, among other things, public incentives and investments to develop an accredited university campus location;

I. Since entering into the Original Agreement, HU has discovered, and the City has concurred, that it is in the best interests of the Project to broaden the potential location of the Peoria Campus beyond the location within the City of Peoria specified in the Original Agreement. Therefore, the Parties have agreed to enter into this Agreement to amend the language regarding the Peoria Campus location and make certain minor edits to the Original Agreement. Except for these limited changes, all other terms and conditions of the Original Agreement will remain in effect; and

J. The Parties acknowledge that the activities described in this Agreement and related to the Project are economic development activities within the meaning of the State of Arizona's laws concerning such matters, and that all expenditures by the City pursuant to this Agreement constitute the appropriation and expenditure of public monies for and in connection with economic development activities. To this end, the City and HU are entering into this Agreement pursuant to A.R.S. § 9-500.11 to facilitate development consistent with the City's General Plan, its zoning ordinances, the EDIS, EDIIP and EDIIP Guidelines;

#### AGREEMENT

NOW THEREFORE, in consideration of the mutual promises contained herein, the Parties agree to amend and restate the Original Agreement in its entirety as follows:

1. Description of the Project.

HU is a fully accredited, nationally recognized liberal arts university. *U.S. News and World Report* consistently ranks HU in the top tier of Midwestern comprehensive colleges and in the top 10% in the Midwest for over 10 years. *FORBES* lists HU among the Top 10% of colleges and universities in the United States while the Princeton Review ranks Huntington among the Best Midwestern Colleges. HU is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools, and its digital media arts undergraduate degree programs are fully accredited and nationally recognized.

HU and the City believe this Project will be of great value to the City of Peoria and the region, not only in the area of higher education and community education, but also supporting economic development and job growth through technology commercialization efforts, assisting business, as well as entrepreneurs. To do this, HU will be developing the Peoria Campus to launch digital media arts degree programs on a property within the incorporated boundaries of the City of Peoria, Arizona with a preference for properties within an EDIS Investment Zone (as defined in the EDIS), including at least the following degree programs: Broadcast Fusion Media, Film Production, Graphic Design, Digital Animation and Web Development. Support for HU's Peoria Campus ranges from school districts including the Peoria Unified School District, to non-profit entrepreneurial entities such as BioAccel, as well as to Quincea's, and the Social Enterprise Initiative.

## 2. City Financial Incentives and Investment.

The City will provide a post-performance financial incentive package to HU over a period of three (3) years which financial incentive package is directly tied to performance thresholds that must be achieved by HU in order for HU to receive financial assistance from the City. The performance thresholds and incentive amounts are as follows:

(a) Performance Threshold 1 (also known as Year 1 which will include academic year 2015-2016)<sup>1</sup> includes the following specific performance requirements:

- i. HU will appoint campus leadership in Peoria, Arizona.
- ii. The Higher Learning Commission and the Arizona State Board for Private Post Secondary Education approve HU's application to offer degree programs in Arizona, and more specifically degree programs at the Peoria Campus. The undergraduate degree programs to be approved for the Peoria Campus by these entities will include at least the following: Broadcast Fusion Media, Film Production, Graphic Design, Digital Animation and Web Development (referred to collectively herein as the "Program").
- iii. HU will obtain approval from the U.S. Department of Education and the U.S. Veterans Administration in order to permit HU students in Arizona to be eligible for receipt of federal grants and loans.
- iv. HU will submit to Peoria a University-approved marketing plan that will include final tuition and enrollment projections for the first five years of the Peoria Campus Project. These projections will not limit the actual student enrollments required by this Agreement.
- v. HU will submit to Peoria a final list of undergraduate programs that will be offered to students at the Peoria Campus, which list will include AT LEAST the STEM Program degrees referenced in subsection 2(a)(ii).
- vi. HU will sign a long-term facility lease on a property within the incorporated boundaries of the City of Peoria with a minimum seven (7) year leasehold term. The initial leased space will be for not less than 15,000 square feet. A copy of the executed lease, together with any amendments, shall be provided to the City.
- vii. HU will submit to the City a University-approved and funded faculty and staff plan along with post-high school seated enrollment estimates for the first five (5) years of the Project. In addition, HU will submit a University-approved and funded faculty and staff plan along with post-

<sup>1</sup> Academic Year as defined herein for each Performance Threshold refers to the usual academic school year calendar adopted by HU University for use on its main campus located in Huntington Indiana; and is a period running roughly from August through May of any given year.

high school online enrollment and high school dual enrollment estimates for the first five (5) years of the Project.

- viii. HU will submit to Peoria executed articulation agreements between HU and the Maricopa County Community College district for all majors offered at the Peoria Campus.
- ix. HU will complete subsections 2(a)(i-viii) above and will accept students for academic year 2016-2017, to commence actual coursework on or in the Fall semester for at least the following scheduled Digital Media Arts majors: (1) Broadcast Fusion Media; (2) Film Production; and (3) Graphic Design.
- x. HU will complete all matters specified in subsections 2(a)(i-ix), and will provide Peoria with a detailed accounting of expenses for the Program related to: (1) Tenant improvements or lease costs, including rental payments; (2) Fixtures, furniture, equipment and technology for classrooms, lab and studio development; (3) Marketing and student recruitment costs; (4) Software licensing costs; and (5) For any other tangible thing for which HU seeks reimbursement from Peoria (the "Other Costs"), so long as HU seeks preapproval and receives authorization from the City for the Other Costs. Further, subject to the City's preapproval and authorization, HU may, at the City's discretion, be eligible for reimbursement for reasonable business related travel costs and consultant expenses as set forth in 2(d), *infra*. Each expense, including preapproved business related travel costs, consultant expenses, and Other Costs, will be itemized and supported by an invoice that includes the date, the payee and the amount of the expenditure.

In addition, HU will provide the City with a summary report of its expenditures and should the City request additional detail on any expenditures set forth in the summary report, HU will promptly (within 30 days) submit all necessary back-up documentation evidencing payment by HU of those certain expenses and expenditures.

Once all subparts of 2(a)(i-x) are met, then the later of 30 days after receiving said accounting, or 30 days after further documentation reasonably requested by the City is received from HU, the City will, pursuant to Section 3(e) pay HU an amount not to exceed \$900,000.

(b) Performance Threshold Two (also known as Year 2 which includes academic year 2016 - 2017) includes the following specific performance requirements:

- i. HU will offer coursework at the Peoria Campus to at least one hundred (100) students enrolled in its first year of actual operations offering digital media arts programs commencing the second semester of its 2016-2017 academic year. The students included in this performance measure will be post-high school graduates who are seated at the HU Peoria Campus and enrolled in

coursework in pursuit of a digital media arts undergraduate major to be applied towards a Bachelor of Arts or Bachelor of Science degree. Further, each such student will complete all or part of the semester's coursework for which the student is registered in order to fulfill this performance measurement. Additional students i.e., dual enrollment, online or any other type of distance learning, will not be counted in the one hundred (100) student performance requirement set forth in this subsection.

- ii. HU will, prior to July 1, 2017, complete all matters specified in subsections 2(b)(i-ii), and will provide Peoria with a detailed accounting of its expenses for the Program related to: (1) Tenant improvements or lease costs, including rental payments; (2) Fixtures, furniture, equipment and technology for classrooms, lab and studio development; (3) Marketing and student recruitment costs; (4) Software licensing costs; and (5) For any other tangible thing for which HU seeks reimbursement from Peoria (the "Other Costs"), so long as HU seeks preapproval and receives authorization from the City for the Other Costs. Further, subject to the City's preapproval and authorization, HU may, at the City's discretion, be eligible for reimbursement for reasonable business related travel costs and consultant expenses as set forth in 2(d), *infra*. Each expense, including preapproved business related travel costs, consultant expenses, and Other Costs, will be itemized and supported by an invoice that includes the date, the payee and the amount of the expenditure.

In addition, HU will provide the City with a summary report of its expenditures and should the City request additional detail on any expenditures set forth in the summary report, HU will promptly (within 30 days) submit all necessary back-up documentation evidencing payment by HU of those certain expenses and expenditures.

Once all requirements in subsections 2(b)(i-ii) are met, then the later of 30 days after receiving said accounting, or 30 days after further documentation reasonably requested by the City is received from HU, the City will, pursuant to Section 3(e) pay HU an amount not to exceed \$550,000. If 100 students of the type required herein are not seated and do not complete Year 2, then HU may request a pro rata share of \$550,000, based upon the number of eligible students completing the academic year. For example, if fifty (50) post high school seated students complete the academic year during Year 2, then the City would pay HU fifty percent (50%) of \$550,000 or \$275,000 for Year 2.

- (c) Performance Threshold 3 (also known as Year 3 which will include academic year 2017-2018) includes the following specific performance requirements:

- i. In its second year of actual operations (academic year 2017 - 2018) HU, Peoria Campus, will offer coursework to at least one hundred fifty (150) students in digital media arts programs. The students included in this performance measure will be post-high school graduates who are seated at the HU Peoria Campus and enrolled in coursework in pursuit of a digital media art major to be applied



towards a Bachelor of Arts or Bachelor of Science degree. Further, each such student will complete all or part of the semester's coursework for which the student is registered in order to fulfill this performance measurement. Additional students i.e., dual enrollment, online or any other type of distance learning, will not be counted in the one hundred fifty (150) student performance requirement set forth in this sub-paragraph.

- ii. HU will, prior to July 1, 2018, complete all matters specified in subsections 2(c)(i-ii), and will provide Peoria with a detailed accounting of its expenses for Program related to: (1) Tenant improvements or lease costs, including rental payments; (2) Fixtures, furniture, equipment and technology for classrooms, lab and studio development; (3) Marketing and student recruitment costs; (4) Software licensing costs; and (5) For any other tangible thing for which HU seeks reimbursement from Peoria (the "Other Costs"), so long as HU seeks preapproval and receives authorization from the City for the Other Costs. Further, subject to the City's preapproval and authorization, HU may, at the City's discretion, be eligible for reimbursement for reasonable business related travel costs and consultant expenses as set forth in 2(d), *infra*. Each expense, including preapproved business related travel costs, consultant expenses, and Other Costs, will be itemized and supported by an invoice that includes the date, the payee and the amount of the expenditure.

In addition, HU will provide the City with a summary report of its expenditures and should the City request additional detail on any expenditures set forth in the summary report, HU will promptly (within 30 days) submit all necessary back-up documentation evidencing payment by HU of those certain expenses and expenditures.

If the performance requirements set forth in subsections 2(c)(i-ii) are met, then the later of 30 days after receiving said accounting, or 30 days after further documentation reasonably requested by the City is received from HU, then pursuant to Section 3(e) the City will pay HU an amount not to exceed the sum of \$425,000. If 150 students of the type required herein are not seated and do not complete Year 3, then HU may request a pro rata share of \$425,000, based upon the number of students completing the academic year. (See example of calculation at paragraph 2(b), *supra*.)

(d) The total City incentives made to HU Peoria campus pursuant to this Agreement will not exceed the sum of \$1,875,000. Moreover, all incentives paid by the City pursuant to this Agreement will be for tenant improvements related to the Project's Program specific lab and studio development furniture, fixture or equipment costs, marketing and student recruitment expense, software licensing costs and those preapproved and preauthorized business related travel costs, consultant expenses and Other Costs. Further, subject to the following requirements, business related travel costs, consultant expenses and Other Costs related specifically to the business of developing and growing the Peoria Campus may be reimbursable only with the City's prior written approval. It is specifically understood by HU that any travel cost, consultant expense, or Other Cost is subject to pre-approval and authorization by the City before incurring the expense and that the City's determination regarding any such potentially reimbursable request is final, same being within the City's sole and exclusive discretion. Moreover, HU agrees that any and all reimbursement requests

of any kind or nature will relate to costs accrued by HU solely for expenses directly related to the Peoria Campus for use as a four-year liberal arts college, including such uses as teaching, college courses, and when classes are not in session for any related college administrative uses, college recruiting, student lounge, special events, or similar collegiate uses. This provision is intended to meet the requirements of Article IX, Section 10 of the Arizona Constitution. If the improved space is used by any outside entity unrelated to campus life or student activities, then the user shall pay a commercially reasonable rent for use of the improved space.

3. HU and City Obligations and Verification.

(a) HU will participate in economic development activities with the City for the attraction of City Targeted Industries for high-wage and technically-skilled jobs, including the development of customized work force development plans and programs for targeted industries sought by the City as part of its business attraction efforts. Such activities will include participation in meetings with business prospects, the creation of custom training programs to meet workforce development needs, and marketing activities.

(b) If prior to the end of 84 months (7 years) from the Effective Date of this Agreement, HU engages in any similar project with another Arizona municipality, such action will be presumed to be competition with the City's Project. In the event of such competition, HU will repay the City all of the financial assistance/incentives it has received from the City to the date of such competition with interest at the statutory judgment rate.

(c) Upon HU's request, the City will review tenant improvement plans for the Peoria Campus (the "Premises") on a priority basis at no cost to HU, and subject to all applicable laws, including laws involving posting and the conduct of public meetings. Upon the City's determination that HU has submitted final and complete plans for tenant improvements for the Premises that comply with all applicable laws, ordinances and requirements, and that are otherwise to the satisfaction of the City, the City will issue tenant improvement permits for the improvements to be built in or on the Premises. Consistent with the issuance of such permits, the City will provide a single point of contact with the City to coordinate timely permitting and will hold pre-submittal meetings to reduce the number of reviews required, to ensure timely completion of this and any future phases of the tenant improvements for the Premises.

(d) HU will submit to the City documentation relating to each performance threshold contained in Section 2, which documentation will be in a form and manner established by the City. The City may request additional documentation from HU, as necessary, to verify that a performance threshold has been achieved.

(e) Within 30 days following the City verifying that all components of a performance threshold have been met, the City will submit payment to HU in the amount corresponding to those specific performance thresholds required for any of the three scheduled periodic payments. Nothing herein grants HU a right nor does it create a duty in Peoria to accelerate the payment related to any performance threshold(s).

(f) If during the Term of this Agreement HU does not achieve an academic year in which 150 post high school seated students are enrolled and taking classes in an accredited digital media arts program then HU agrees to repay the City for all financial assistance/incentives HU received from the City pursuant to this Agreement.



Moreover, should HU fail to meet an average required Performance Measure Threshold of 150 seated post-high school graduates during any year following Year 3, i.e., in Years 4- 7, then HU will repay the City a pro rata amount of the City funding paid to HU under the terms of this Agreement, but in no event will the total principal amount of repayment set forth in this Paragraph exceed the total amount/incentives paid by the City to HU. For example, if in Year 4 the enrollment is 147 students, then assuming the full amount of possible incentives (i.e., \$1,875,000) was, in fact, paid by the City to HU, then HU would owe the City \$6,616 ( $\$1,875,000 \div 850$  (the total of required enrolled students for the Term of the Agreement, Years 2-7)), = \$2,206/student) for Year 4.

4. Additional HU Obligations and Duties.

(a) The City and HU will work together to achieve the Enrollment Requirements in order to maximize the economic impact to the City from the financial support required by this Agreement. This Agreement to work together does not, however, impact the Enrollment Requirements set forth herein and HU remains solely responsible for meeting said requirements. Furthermore, should the City pursue and recruit other universities to Peoria, through the end of year three (3), the City agrees to first review those candidates with HU and to engage and/or financially support only those universities willing to collaborate and not compete with HU. Moreover, HU acknowledges the presence of Trine's campus in Peoria and agrees that said presence will not impact its Enrollment Requirements.

(b) HU will devote and invest 2.5 million dollars (\$2,500,000) for the development of the HU Peoria Campus during years 1-3. This investment by HU will be program specific to the digital media arts undergraduate degree programs offered at the HU Peoria Campus. Moreover, HU will annually, in each of the first 3 years, provide the City with a detailed summary report of these expenditures, and if requested by the City, HU will provide specific back-up documentation related to its investment which will include but is not limited to payroll information, invoices, payment records and any other evidence of payment as reasonably required by the City, documenting at least a total \$2,500,000 investment in the HU Peoria Campus for Years 1-3.

5. Term. This Agreement shall commence upon the date when both Parties have executed this Agreement (the "Effective Date"). Unless terminated earlier as provided herein, the term of this Agreement shall be 7 years starting from the Effective Date.

6. Breach, Cure, Remedies, and Termination.

(a) In the event that a Party fails to perform any obligation imposed by this Agreement, the non-breaching Party shall provide written notice of such breach to the other Party. The Party receiving the written notice will have ten (10) business days after receipt of such written notice within which to remedy such breach unless additional time is reasonably required to remedy the breach, in which event the Party shall cure the breach within thirty (30) business days.

(b) If the Party in breach fails to remedy the breach in a timely and reasonable manner as provided in Subsection (a), the Parties agree that any Party who provided written notice of such breach may cancel and terminate this Agreement by providing

written notice of termination to the other Party. In the event of termination, the Parties shall be fully and completely released from all of their respective rights, duties, obligations, and liabilities under this Agreement, except as otherwise set forth herein.

(c) In addition to the termination rights under 6 (a) and (b) above, (i) each Party shall also have the right, in its sole and unfettered discretion, to terminate this Agreement in the event that any or all of the Parties reach an impasse in negotiations under this Agreement for any reason whatsoever; (ii) the City shall have the right to terminate this Agreement for conflict of interest pursuant to A.R.S. § 38-511; (iii) the Parties each shall have the right to terminate this Agreement if at any time any such Party reasonably determines that the Project is not feasible financially or for other business reasons with the express understanding that HU's financial investment in the Peoria Campus will be greater than or equal to the incentives received from the City should it terminate this Agreement within the first 3 years of the Agreement and absent such investment, HU will have no right to terminate pursuant to the voluntary provisions of this Section 6; and (iv) this Agreement may be terminated at any time upon the mutual written agreement of the Parties. In the event of any termination under the preceding sentence, the Party exercising the termination right shall provide written notice of termination and the applicable basis above to the other Party, whereupon the Parties shall, except as otherwise provided herein, be fully and completely released from all of their respective rights, duties, obligations, and liabilities under this Agreement. Nothing herein shall prevent an action for Breach which Breach occurred prior to a notice terminating the Agreement. Nor will any Termination provision(s), herein, affect HU's enrollment requirements or its duty to reimburse the City for City assistance or incentives as set forth in Paragraph 3(f) of this Agreement.

7. Assignment. No Party may assign this Agreement without first obtaining the advance written approval of the other Party, which approval may be granted or withheld in the sole and unfettered discretion of such other Party. The City agrees that, notwithstanding the foregoing, HU may assign without the prior written approval of the City, but with thirty (30) days prior written notice to the City, its respective rights, duties, obligations, and liabilities under this Agreement to a limited liability company, corporation, trust, or partnership of which HU owns the majority beneficial interest and has operational control, but any such assignment will not affect HU's requirements, duties and potential liabilities pursuant to this Agreement; HU remaining solely responsible for compliance with the terms of this Agreement.

8. Representations and Warranties / Limitations.

(a) HU represents and warrants that it is an Indiana not-for-profit corporation duly formed and validly existing, in good standing, and authorized to operate under the laws of the State of Arizona.

(b) HU represents and warrants that the person(s) executing this Agreement on behalf of HU has/have full right, power, and authority to execute this Agreement and bind HU hereunder.

(c) HU shall comply with all applicable federal, state and local regulations, codes and laws regarding its operations. Nothing in this Agreement constitutes an exemption or grant of a variance from applicable codes and laws.

(d) City represents and warrants that the person(s) executing this Agreement on behalf of City has full right, power, and authority to execute this Agreement and bind the City hereunder.

9. General Provisions.

(a) Applicable Law and Venue. The laws of the State of Arizona will govern the interpretation and enforcement of this Agreement, without regard to conflicts of laws principles. Any mediation, arbitration, or legal proceedings initiated to enforce the terms and conditions of this Agreement will be conducted in Peoria, Arizona, or in the Maricopa County Superior Court or the United States District Court for the District of Arizona, as appropriate.

(b) Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of its rights or remedies will not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

(c) Specific Performance as Exclusive Remedy. Subject to HU's right to terminate this Agreement in accordance with Section 6, HU's exclusive remedy for an uncured City breach of this Agreement is to institute an action for specific performance of the terms of this Agreement, and in no event shall HU have the right, and HU expressly waives the right to seek monetary damages of any kind (including but not limited to actual damages, economic damages, consequential damages, or lost profits) from the City. In the event of a default by the City under this Agreement or any action related to this Agreement.

(d) Indemnity. HU shall indemnify, protect, defend, and hold harmless the City, and its officials, officers, employees, representatives, and agents (collectively, "Indemnified Parties") from and against any and all losses, liabilities, damages, claims, actions, causes of action or costs (including reasonable attorneys' fees and costs) (collectively, the "Liabilities") directly or indirectly arising from the negligent acts, errors, omissions or willful misconduct of HU, its officers, employees, representatives, members, contractors, invitees and agents hereunder or from the Project, excluding any such Liabilities arising from the negligent acts, errors, omissions or willful misconduct of the City. This indemnity obligation will survive any assignment or termination of this Agreement.

(e) Notices, Demands, and Communications Between the Parties. All notices, demands, and communications between the Parties under this Agreement shall be given either by (i) personal service, (ii) delivery by a reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, (iii) facsimile or email with a hard copy sent by United States mail; or (iv) by mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to:

To City:

City Manager  
City of Peoria

P.O. Box 4038  
Peoria, Arizona 85380-4038

With a copy to: Economic Development Services Director  
City of Peoria  
P.O. Box 4038  
Peoria, Arizona 85380-4038

With a copy to: City Attorney  
City of Peoria  
P.O. Box 4038  
Peoria, Arizona 85380-4038

To Huntington: Huntington University  
Attn: President Emberton  
2303 College Avenue  
Huntington, Indiana 46750

With copy to: Huntington University  
Attn: Jeff Berggren  
8765 W. Kelton Ln 83, Ste. 140  
Peoria, Arizona 85382

With copy to: Delaney Hartburg Roth & Garrott LLP  
General Counsel  
533 Warren Street  
Huntington, IN 46750

Notices personally delivered, sent by fax or email with a confirmation by United States mail or delivered by document delivery service shall be deemed effective on delivery (personally or by a reputable commercial overnight courier service) or on the second business day following deposit of the confirmation (for a fax or email) in the United States mail. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as any Party may from time to time designate by giving notice in accordance with this subsection.

(f) Nonliability of City Officials and Employees. No elected official, officer, employee, agent, or contractor of the City will be personally liable to HU in the event of any default or breach by the City or for any amount which may become due to HU on any City obligations arising by the terms of this Agreement.

(g) Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against any Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The part and paragraph headings used in this Agreement are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement.

(h) Acknowledgment. HU acknowledges that this Agreement is subject to the provisions of the Arizona Constitution, Article IX, Section 10 pertaining to aid of religious

institutions. HU has made an independent evaluation of compliance with these provisions and City makes no warranties of such compliance.

(i) Entire Agreement, Waivers, and Amendments. This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Party to be charged, and all amendments and modifications hereto must be in writing and signed by the appropriate authorities of both the City and HU.

J) Counterparts; Signatures. This Agreement may be executed in counterparts, each of which, after all the Parties hereto have signed this Agreement, shall be deemed to be an original, and such counterparts shall constitute one and the same instrument. Facsimile or electronically scanned signatures shall have the same force and effect as original signatures.

(k) Successors. This Agreement shall be binding upon and shall inure to the benefit of the permitted successors of each of the Parties hereto.

(l) Severability. In the event any section or portion of this Agreement shall be held, found, or determined to be unenforceable or invalid for any reason whatsoever, the remaining provisions shall remain in effect, and the Parties hereto shall take further actions as may be reasonably necessary and available to them to effectuate the intent of the Parties as to all provisions set forth in this Agreement.

(m) Time is of the Essence. Time is of the essence for each of the Parties' obligations under this Agreement.

(n) Recitals. The recitals set forth above are incorporated herein by this reference.

(o) Attorneys' Fees. The prevailing Party or Parties in any action to enforce this Agreement shall be entitled to recover reasonable attorneys' fees and costs from the other Party or Parties (including fees and costs in any subsequent action or proceeding to enforce any judgment entered pursuant to an action on this Agreement).

(p) No Third Party Beneficiaries. This Agreement is made and entered into solely for the benefit of the City and HU. No other person shall have any right of action or claim under or by reason of this Agreement.

(q) No Partnership or Joint Venture. Nothing in this Agreement is intended to or does establish the Parties as partners, joint venturers, or principal and agent with each other.

*[Signature page follows]*

IN WITNESS WHEREOF, the City and HU have executed this Agreement through their representatives duly authorized to execute this document and bind their respective entities to the terms and obligations contained in this Agreement on the Effective Date.

HUNTINGTON UNIVERSITY;

Its: *President*

THE CITY OF PEORIA:

*Carl Swenson*  
Carl Swenson, City Manager

ATTEST:

*Rhonda Geriminsky*  
Rhonda Geriminsky, City Clerk



APPROVED AS TO FORM:

*Stephen M. Kemp*  
Stephen M. Kemp, City Attorney

**Exhibit B**



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## ECONOMIC DEVELOPMENT ACTIVITIES AGREEMENT

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This ECONOMIC DEVELOPMENT ACTIVITIES AGREEMENT ("Agreement") is entered into to be effective as of the 15<sup>th</sup> day of March, 2016 (the "Effective Date"), by and between the CITY OF PEORIA, a municipal corporation of the State of Arizona (the "City") and ARROWHEAD EQUITIES LLC, an Arizona limited liability company ("Arrowhead"). The City and Arrowhead are each a "Party" to this Agreement and may be referred to herein collectively as "Parties."

1. **Recitals.** As background to this Agreement, the Parties recite, acknowledge and confirm the following, each of which shall be a material term and provision of this Agreement:

A. On December 20, 2010, the City adopted an Economic Development Implementation Strategy ("EDIS") which provides an implementation-based plan for achieving the economic development goals of the City.

B. One of the strategies to implement the EDIS is through the City-adopted Economic Development Incentive and Investment Policy ("EDIIP") and accompanying Economic Development Incentive and Investment Policy Guidelines ("EDIIP Guidelines"), which provide a framework for evaluating City financial incentives and investment towards the retention and expansion of existing local businesses and attraction of certain new businesses within the City in a manner that is consistent with applicable laws.

C. In furtherance of these objectives, the City has identified its P83 District (the "District") as an EDIS Investment Zone, and has developed a P83 District Building Reuse Program (the "Program") and accompanying City of Peoria P83 District Building Reuse Program Guidelines (the "Program Guidelines") to reposition unused or underutilized properties in order to influence infill development opportunities within the District, and to encourage a more diverse use of existing vacant buildings in the District that includes professional office, entertainment and retail tenants as an alternative to restaurant uses that have a historical failure rate in the District.

D. One of the challenges facing targeted properties within the District is the extensive amount of tenant improvement costs associated with converting existing building interiors into commercial office, retail or entertainment spaces, which conversion thereafter is intended to promote commercial reinvestment activities through the District, to increase daytime foot traffic in the District, and ultimately to enhance the overall quality of life for the City's residents by providing both tangible and intangible economic benefits.

E. Arrowhead, as "Landlord," has entered into a lease dated December 24, 2015 (the "Lease") with Huntington University ("Tenant") to improve, and thereafter operate in, an existing approximate 30,000 square foot building (the former Dolce Salon & Spa) located at 8385 West Mariners Way, in the District (the "Premises"). Arrowhead has disclosed that Tenant intends to occupy the Premises primarily as an institution of higher learning, including the offering of digital media arts programs to college students, as an educational use of the nature that is consistent with the objectives of the Program (the "Required Use"). Arrowhead further has represented that the preliminary capital investment from Arrowhead and Tenant will be in excess of \$6,700,000.00 including building acquisition, architectural services, tenant improvements, furnishings, fixtures and equipment, interior and exterior signage, and other costs related to acquiring, equipping and fixturing the Premises.

F. The City has found and determined that the construction of the proposed tenant improvements at the Premises by Arrowhead, and Tenant's operation of its business from the Premises, is exactly the sort of "re-use" of a presently unused or underutilized property and conversion to an educational space that is the ultimate objective of the Program.

G. According to an Elliott Pollack study, during its first year of operations, Huntington University will generate 12 jobs with \$694,400 in wages and \$1.7 million in economic output. Over a five year period, the annual fiscal impacts of construction and ongoing operations of Huntington University campus will generate an estimated \$719,000 for the State, \$199,930 for the County and \$206,630 for the City. In total, the university would generate more than \$1.1 million in tax revenues for the State and local governments.

H. The City and Arrowhead are entering into this Agreement pursuant to A.R.S. Section 9-500.11. The Parties hereto desire to enter into this Agreement to facilitate development consistent with (i) the City's General Plan, (ii) its zoning ordinances, (iii) the EDIS, (iv) the EDIIP, (v) the EDIIP Guidelines, (vi) the Program, and (vii) the Program Guidelines. The Parties acknowledge that the activities described in this Agreement and related to Tenant's educational reuse of the Premises are economic development activities within the meaning of the State of Arizona's laws concerning such matters, including but not necessarily limited to A.R.S. Section 9-500.11, and that all "expenditures" (as defined in A.R.S. Section 9-500.11) by the City pursuant to this Agreement constitute the appropriation and expenditure of public monies for and in connection with economic development activities as defined in A.R.S. Section 9-500.11.

I. The City, in the exercise of its legislative functions, and finding in such legislative capacity that the benefits conferred upon Arrowhead by this Agreement are not grossly disproportionate to the benefits being received by the City, by its Resolution No. 2016-23, adopted on March 15, 2016, has authorized the execution and performance of this Agreement and has otherwise taken all action required by law to enter into this Agreement and make it binding upon the City.

2. Agreements. In consideration of the mutual promises and representations set forth herein and in the recitals hereto, the City and Arrowhead agree as follows:

A. Tenant Improvements. Arrowhead will cause to be constructed the tenant improvements at and within the Premises generally in accordance with the schedule attached to this Agreement as Exhibit A ("Tenant Improvements"). Arrowhead will cause the completion of construction of the Tenant Improvements (established by the issuance of a certificate of occupancy for the Premises issued by the City) no later than seven (7) months from the Effective Date, so that Tenant may be open for business to the general public on a full-time basis no later than October 15, 2016.

B. Program Criteria. Arrowhead, as conditions precedent to its eligibility for reimbursement by the City, will have complied with each of the following (collectively, the "Program Criteria"):

1. The City's Economic Services Development Department ("Department") will have determined the suitability of each of the Tenant Improvements or architectural expense for which reimbursement is requested.

2. No reimbursement will be made for any item or charge that is deemed by the Department, in its sole discretion, to be extravagant, exorbitant, excessive or overpriced; that has been supplied, provided or performed prior to the Effective Date; that is for FF&E (furnishings, fixtures and equipment, as that term is understood in the education industry); or that has been supplied, provided or performed by Arrowhead or its affiliates unless consistent with the budget approved by the City.

3. Arrowhead will have supplied to the Department satisfactory evidence of prior payment of all such items for which reimbursement is requested, together with receipts and lien waivers for such work or material as may be requested by the Department.

4. Arrowhead will have caused the completion of construction of all of the scheduled Tenant Improvements, materially in accordance with all approved plans and specifications.

5. The Premises will have passed all fire and building inspections.

6. Arrowhead will have caused the Premises to be ready to be open for business by Tenant for the Required Use on a full-time basis by October 15, 2016 ("Opening").

C. Performance Criteria. In order to receive reimbursement of the Reimbursable Amount (as defined in Section 3 below), Arrowhead will be in compliance with each of the following (the "Performance Criteria") at the time of any reimbursement by the City:

1. Tenant will have been open for business to the public for the Required Use on a full-time basis continuously and without interruption since the Opening (subject to reasonable periods of closure arising from or required in connection with casualty or remodeling, provided that repairs and other construction work are prosecuted diligently and without interruption).

2. Arrowhead is in material compliance with all applicable municipal, state and federal laws (including but not limited to being current with respect to all permit and sales tax obligations).

3. The Premises is in material compliance with all applicable building, fire and safety requirements and has passed applicable building, fire, and safety inspections.

4. Arrowhead will be in compliance with all of its obligations under the Lease.

5. Arrowhead will not be in default or breach of any of its obligations under this Agreement, and all of Arrowhead's representations and warranties to the City shall be and remain true and correct.

3. **Reimbursable Amount and Form of Reimbursement.** The City has calculated that the reimbursement available to Arrowhead upon satisfaction of the Program Criteria is (and shall not exceed) Seven Hundred and Thirty-Seven Thousand, Five Hundred Ninety-Six and no/100 Dollars (\$737,596.00), an amount equal to one-half of Arrowhead's approved tenant improvement and architectural expenses (the "Reimbursable Amount"). The Reimbursable Amount will be reimbursed to Arrowhead as follows:

A. The City will make an initial reimbursement to Arrowhead in the amount of Two Hundred and Twenty-One Thousand, Two Hundred Eighty and no/100 Dollars (\$221,280.00) (the "Initial Reimbursement") upon satisfaction by Arrowhead of all of the Program Criteria.

B. At the time of payment of the Initial Reimbursement to Arrowhead by the City (the "Initial Reimbursement Date"), Arrowhead shall deliver to the City a Deed of Trust in the form attached to this Agreement as Exhibit B (the "Deed of Trust"). The City shall cause the Deed of Trust to be recorded promptly upon the payment to Arrowhead of the Initial Reimbursement.

1. The Deed of Trust may be subordinated only to a first lien for commercial financing from an institutional lender, provided that the such lien for financing, together with the Initial Reimbursement, cannot exceed 125% of the value of the Property.

2. At any time prior to the fourth anniversary of the Initial Reimbursement Date, and further provided that Arrowhead is not in default of any of its

obligations under this Agreement, Arrowhead may substitute collateral of equal or greater value (that is, the amount of net equity in favor of Arrowhead) as reasonably determined and approved by the City Manager. Substitute collateral may consist only of real property, an unconditional letter of credit issued by a national banking association, registered securities or cash as reasonably approved by the City, together with all applicable security agreements, pledge agreements, deeds of trust, mortgages, financing statements and similar documents that may be required by the City in order to secure and perfect the City's lien in such substitute collateral, and in forms approved by the City Attorney in his reasonable commercial discretion. Upon the approval by and delivery to the City of such substitute collateral, the City will release the lien of the Deed of Trust.

3. If there is an Event of Default by Arrowhead prior to the first anniversary of the Initial Reimbursement Date, Arrowhead shall repay the entire Initial Reimbursement (or \$221,280.00), to the City promptly upon demand. In the event of Arrowhead's failure to repay \$221,280.00 as required by this section, the City shall have all of its remedies at law and in equity to recover such amount.

4. If there is an Event of Default by Arrowhead after the first anniversary of the Initial Reimbursement Date but prior to the second anniversary of the Initial Reimbursement Date, Arrowhead shall repay the sum of One Hundred and Forty-Seven Thousand, Five Hundred Twenty Dollars (\$147,520.00), to the City promptly upon demand. In the event of Arrowhead's failure to repay \$147,520.00 as required by this section, the City shall have all of its remedies at law and in equity to recover such amount.

5. If there is an Event of Default by Arrowhead after the second anniversary of the Initial Reimbursement Date but prior to the third anniversary of the Initial Reimbursement Date, Arrowhead shall repay the sum of Seventy-Nine Thousand Dollars (\$73,760.00) to the City promptly upon demand. In the event of Arrowhead's failure to repay \$73,760.00 as required by this section, the City shall have all of its remedies available at law to recover such amount.

6. If there is not Event of Default by Arrowhead on the third anniversary of the Initial Reimbursement Date, the City shall promptly release the Deed of Trust or such other lien or liens as may exist with respect to any substitute collateral.

C. As long as Arrowhead is in material compliance with (or has caused the compliance with) all the Performance Criteria from and after the Initial Reimbursement Date, the City will make an additional reimbursement in the amount of \$73,760.00 to Arrowhead on the fourth anniversary of the Initial Reimbursement Date, and in the same amount on each subsequent anniversary of the Initial Reimbursement Date, until the Reimbursement Amount has been reimbursed in full to Arrowhead. At any time that there is an Event of Default by Arrowhead, the City shall have no further obligation to make any further reimbursements to Arrowhead pursuant to this Agreement; provided, however, that all reimbursements made to Arrowhead prior to such Event of Default shall belong to Arrowhead and are not subject to recall or recapture by the City.



D. Upon each anniversary of the Initial Reimbursement Date, Arrowhead shall deliver to the City a certification that Arrowhead has materially complied with (or caused the material compliance with) all of the terms and provisions of Section 2(C) of this Agreement as of the date of the certification, and the delivery of such certification shall be a condition to the obligation of the City to make the reimbursements described in Section 3(C) of this Agreement.

4. **Term.** Unless terminated earlier by the City due to the occurrence of an Event of Default by Arrowhead (or its permitted successors and assigns), the term of this Agreement ("Term") shall begin on the Effective Date and continue through and including the tenth (10<sup>th</sup>) anniversary of the Initial Reimbursement Date (the "Termination Date").

5. **Notices.** Unless otherwise specifically provided herein, or unless written notice of a change of address has been previously given pursuant hereto, all notices, demands or other communication given hereunder (each, a "Notice") shall be in writing and shall be deemed to have been duly delivered upon (i) personal delivery, (ii) upon delivery by a recognized overnight courier (e.g., Federal Express, United Parcel Service) for next business day delivery, or (iii) as of the second business day after mailing by United States mail, postage prepaid, by certified mail, return receipt requested, addressed as follows:

To Arrowhead:	Arrowhead Equities LLC 1333 North Greenfield Road Suite 104 Mesa, Arizona 85205
To the City:	City Economic Development Dept. 8401 West Monroe Street Peoria, Arizona 85345
Copy to:	City Attorney 8401 West Monroe Street Peoria, Arizona 85345

Communications may be made by facsimile or by electronic or digital means (for example, email), but such communications shall not constitute "Notice" as required by this Agreement unless also sent by one of the methods specified above, and shall be deemed only to be courtesies to the recipient.

6. **Unintended Delay; Extensions.** If and to the extent that Arrowhead's performance of this Agreement is impaired or delayed by war, fire, casualty, acts of God or other similar causes beyond or outside the control of Arrowhead (each, an "Unintended Delay"), then the Termination Date shall be equitably extended (that is, by one day for each day of Unintended Delay) as necessary. In no event will Unintended Delay include any delay resulting from general economic or market conditions, or from the unavailability for any reason of particular contractors, subcontractors, vendors,

investors or lenders, it being agreed that Arrowhead will bear all risks of delay which are not Unintended Delay. In the event of the occurrence of any such Unintended Delay, Arrowhead shall, within thirty (30) days after Arrowhead knows of any such Unintended Delay, first notify the City of the specific delay in writing and claim the right to an extension for the period of the Unintended Delay. Notwithstanding the foregoing, the Department, in its sole discretion, may extend the time for Arrowhead's performance for reasonable intervals as requested by Arrowhead.

7. **Representations and Warranties.** As of the Effective Date:

A. Arrowhead represents and warrants to the City that it is a limited liability company duly formed and validly existing under the laws of the State of Arizona and is in good standing in the State of Arizona. If Arrowhead assigns or transfers the Property under the terms of this Agreement, City recognizes and agrees that Arrowhead may not continue its existence for the entire Term; provided, however, that Arrowhead agrees to maintain its existence as a limited liability company until the Deed of Trust has been released in accordance with the terms of this Agreement.

B. Arrowhead represents and warrants to the City that the person executing this Agreement on behalf of Arrowhead has full right, power, and authority to execute this Agreement and bind Arrowhead hereunder.

C. Arrowhead represents and warrants to the City that the Lease is in full force and effect, with no defaults by either the Landlord or the Tenant.

D. Arrowhead represents and warrants to the City that it is in material compliance with all applicable federal, state and local regulations, codes and laws regarding its ownership of the Premises and its construction and development activities on and at the Premises. Arrowhead agrees and acknowledges that nothing in this Agreement constitutes an exemption (or grant of a variance) to Arrowhead from applicable codes and laws.

E. The City represents and warrants to Arrowhead that the person(s) executing this Agreement on behalf of the City has full right, power, and authority to execute this Agreement and bind the City hereunder.

8. **Default.** In the event any Party fails to comply with any terms, conditions and obligations under this Agreement which are applicable to such Party, such Party shall be deemed to be in default under this Agreement. It is expressly agreed by Arrowhead that a failure by Arrowhead to comply with the Program Criteria and the Performance Criteria will be and constitute a default under this Agreement. The failure of any Party to cure a default within thirty (30) days after receipt of written notice from the other Party shall be an "Event of Default."

9. **Remedies.**

A. If the City is in default and fails to cure its Event of Default within the time period described in Section 8 above, then, in that event and as Arrowhead's sole



and exclusive remedy, Arrowhead shall have the right to seek specific performance of the City's obligations contained herein or to pursue those remedies detailed in this Agreement.

B. If Arrowhead is in default and fails to cure its Event of Default within the time period described in Section 8 above, then, in that event and as the City's sole and exclusive remedies, the City shall have the following rights and remedies: (i) if the Event of Default occurs on or prior to the third anniversary of the Initial Reimbursement Date, the City's rights and remedies are set forth in Sections 3(b)(3), (4), and (5); and (ii) if the Event of Default occurs after the third anniversary of the Initial Reimbursement Date, the City's rights and remedies are set forth in Section 3(C). The City's remedies under this Agreement are not exclusive, and the City may exercise one or more remedies concurrently, although the City shall be entitled to a single recovery. Further, the Parties agree and acknowledge that the City has no obligation to seek foreclosure of the Deed of Trust or any other lien granted with respect to substituted collateral.

10. Assignment.

A. Arrowhead shall not assign any right or obligation in this Agreement other than to a subsidiary or affiliate of Arrowhead, or to an entity that acquires the entirety of Arrowhead's interest in the Premises, without the City's express written consent, which consent may be granted, conditioned or delayed in the City's sole and absolute discretion. In order to be effective, any such assignment must contain an express written agreement and assumption by the assignee agreeing to be unconditionally liable for Arrowhead's obligations contained herein. Any such assignment shall relieve Arrowhead of its obligations in this Agreement.

B. Notwithstanding the foregoing, Arrowhead may assign to its Manager (Par Time Equities LLC, an Arizona limited liability company, or "Manager") its rights to receive payments of the Reimbursable Amount. Arrowhead and Manager agree and acknowledge that such assignment shall not relieve Arrowhead of any of its obligations in this Agreement and that the Manager's right to receive any assigned payments are conditioned upon the satisfaction of and compliance with the Program Criteria and Performance Criteria required by this Agreement by Arrowhead, its successors and assigns.

11. Additional Matters.

A. City's Right to Terminate. This Agreement is subject to termination by the City pursuant to the provisions of A.R.S. 38-511.

B. Effective Date. This Agreement is entered into and effective as of the Effective Date.

C. Recitals. The recitals set forth in Paragraph A through I, inclusive, of this Agreement are incorporated in this Agreement by reference as if fully set forth herein.

D. City Processes. Nothing in this Agreement shall preclude the City from the reasonable exercise of its normal zoning, platting and review processes, or its enforcement of public health and safety.

E. No Exemption. Nothing in this Agreement exempts Arrowhead from payment of any sales tax, rental tax, use tax or any other municipal fees or charges.

F. Severability. The City and Arrowhead each believes that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring the City to do any act in violation of any applicable constitutional provision, law, regulation, City code or City charter), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed Agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

G. No Waiver. The failure of any Party to exercise any right, power or remedy given to it under this Agreement, or to insist upon strict compliance with it, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach, nor a waiver by either Party of its rights at any time to require exact and strict compliance with all of the terms of this Agreement. The rights or remedies under this Agreement are exclusive of any other rights or remedies which may be granted by law.

H. Entire Agreement; Amendments; Counterparts. This Agreement constitutes the entire Agreement between the City and Arrowhead with respect to its subject matter, and all agreements, oral or written, entered into prior to this Agreement are revoked and superseded by this Agreement. This Agreement may not be changed, modified or rescinded, except in writing, signed by all Parties and any attempt at oral modification of this Agreement shall be void and of no effect. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.

I. Attorney's Fees. In the event of any dispute between the Parties in connection with this Agreement, the Party prevailing in such action or proceeding shall be entitled to recover from the other Party all of its costs and fees, including reasonable attorneys' fees; provided, however, that no such amount shall be awarded, owed or

payable until (i) the court in question has made a finding that one or the other party is the "prevailing party" in such proceeding, and (ii) a final, non-appealable order of judgment is entered by a court of competent jurisdiction, or where applicable, the mandate of an appellate court of competent jurisdiction shall issue.

J. Governing Law; Choice of Forum. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed solely and exclusively by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action, or the City elects such forum in its sole election). The Parties irrevocably consent to the sole and exclusive jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 11(J). The provisions of this Section 11(J) have been specifically bargained for by the City and constitute additional consideration to the City for its entering into, and agreeing to be bound by, this Agreement.

K. No Personal Liability. No member, agent, representative, official, officer, or employee of any Party shall be personally liable to any Party, or any successor-in-interest, in the event of any default or breach by a Party or for any amount which may become due to another Party or any successor in interest or on any obligation under the terms of this Agreement.

L. No Partnership. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Arrowhead and the City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a Party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

M. No Recording. Neither Party shall record this Agreement nor any memorandum hereof in the Maricopa County records.

*= Signatures are on the following two (2) pages. =*

IN WITNESS WHEREOF, the Parties have executed this Agreement through their representatives duly authorized to execute this document and bind their respective entities to the terms and obligations herein contained as of the Effective Date.

CITY OF PEORIA, an Arizona  
municipal corporation

By: [Redacted Signature]  
Carl Swenson, City Manager

ATTEST:

By: [Redacted Signature]  
City Clerk



APPROVED AS TO FORM:

By: [Redacted Signature]  
City Attorney

STATE OF ARIZONA       )  
                                      ) ss.  
County of Maricopa       )

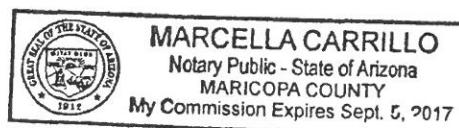
On this, the 23<sup>rd</sup> day of March, 2016, before me, the undersigned Notary Public, personally appeared Carl Swenson, who acknowledged himself to be the City Manager of the City of Peoria, a municipal corporation of the State of Arizona, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Redacted Signature]  
Notary Public

My Commission Expires:

9/5/17



ARROWHEAD EQUITIES LLC, an  
Arizona limited liability company

By: Par Times Equities, LLC, an  
Arizona limited liability company,  
its Manager

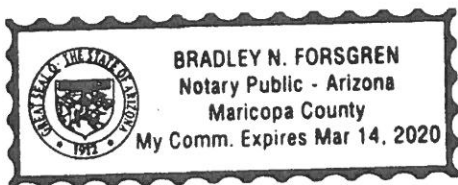
By: [REDACTED]

Name: Jeffrey Kos

Title: Manager

STATE OF ARIZONA                    )  
  ) ss.  
COUNTY OF MARICOPA            )

The foregoing instrument was acknowledged before me this 30 day of  
MARCH, 2016, by [REDACTED], the Manager of Par  
Times Equities, LLC, an Arizona limited liability company, on behalf of the company, as  
Manager of Arrowhead Equities, LLC.



[REDACTED]  
Notary Public

My commission expires:

MAR 14, 2020

EXHIBIT A

Schedule of Tenant Improvements  
and Listing of Approved Reimbursement Amount

## EXHIBIT A

### *TI Construction Budget (Huntington University)*

	Square Footage	Price/Bldg SF	Total
LAND	Land/SF		
<b>PRODUCTION COSTS:</b>			
Hard Construction Costs:			
Offsite Work			\$0
Site Work			\$50,000
HU Building	30,000		\$0
Tenant Improvements		\$31.50	\$945,192
<b>Total Hard Costs:</b>	30,000		\$995,192
Soft Construction Costs:			
Architect & Engineer	\$5		\$150,000
Legal, Title & Closing	\$0		\$0
Permits & Fees (City, SRP, SWG, CL)	\$2.33		\$70,000
Survey & Appraisal	\$0		
Construction Inspection	\$0.17		\$5,000
Taxes & Insurance	\$0		
Project Management	\$5		\$150,000
Marketing/Leasing	\$0		\$0
Sales Commission	\$0		\$0
Contingency	\$3.50		\$105,000
<b>Total Soft Costs:</b>	\$16		\$480,000
<b>TOTAL PRODUCTION COSTS:</b>	30,000	\$49	\$1,475,192
<b>FINANCING</b>			
Construction Interest	\$0		\$0
Financing Fees	\$0		\$0
<b>TOTAL FINANCING COSTS</b>	\$0		\$0
<b>TOTAL PROJECT COSTS</b>	30,000	\$49	\$1,475,192

2/22/2016



EXHIBIT B

Form of Deed of Trust

When recorded mail to:

City Clerk  
City of Peoria  
8401 West Monroe Street  
Peoria, Arizona 85345

=====

**DEED OF TRUST**

=====

**DATE:** \_\_\_\_\_, 20\_\_

**TRUSTOR:** ARROWHEAD EQUITIES LLC, an Arizona limited liability  
company  
1333 North Greenfield Road, Suite 104  
Mesa, Arizona 85205

**BENEFICIARY:** CITY OF PEORIA, ARIZONA, a municipal corporation  
8401 West Monroe Street  
Peoria, Arizona 85345

**TRUSTEE:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PROPERTY:** Property located in Maricopa County, State of Arizona,  
which is more particularly described on Exhibit "A" hereof,  
together with all buildings, improvements and fixtures thereon.

**THIS DEED OF TRUST**, is made on the above date among the Trustor, Trustee and Beneficiary.

**WITNESSETH:** That Trustor irrevocably grants and conveys to Trustee in Trust, and for the benefit of Beneficiary, with Power of Sale, the above described real property and all buildings, improvements and fixtures located thereon or hereafter erected thereon (all of which shall be hereinafter collectively called the "Property"); subject, however, to existing taxes, assessments, liens, encumbrances, covenants, conditions, restrictions, rights of way and easements of record.

**FOR THE PURPOSE OF SECURING:**

Performance by Trustor of each agreement of Trustor contained in this Deed of Trust and performance and observance by Trustor of each covenant, provision and agreement contained in that certain Economic Development Activities Agreement

between Trustor and Beneficiary dated March \_\_, 2016 (the "Agreement"). The maximum principal amount of money secured by this Deed of Trust under the Agreement is Two Hundred and Twenty-One Thousand, Two Hundred Eighty and no/100 Dollars (\$221,280.00), exclusive of trustee's fees and other costs and expenses of foreclosure. In addition, the Agreement provides Trustor with the right to substitute other collateral for the Property under certain conditions described in more detail therein.

**TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:**

1. Not to create or permit to be created any mortgage, lien, pledge or encumbrance on the Property; not to initiate or permit any zoning reclassification or to use the Property in a manner that would result in such use becoming a non-conforming use under applicable zoning law.

2. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses of Beneficiary and Trustee, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear or be named, and in any suit brought by Beneficiary or Trustee to foreclose this Deed of Trust.

3. To pay before delinquent all costs, fees and expenses of this Trust including, without limiting the generality of the foregoing, the fees of Trustee for issuance of any Deed of Release and Reconveyance, and all lawful charges, costs and expenses in the event of reinstatement of this Deed of Trust following a default hereof or a default of the obligations secured hereby. Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation to do so and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof.

4. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, together with interest from date of expenditure at fifteen percent (15%) per annum. Any amounts so paid by Beneficiary or Trustee shall become a debt secured by this Deed of Trust and a lien on the Property or immediately due and payable at option of Beneficiary or Trustee.

**IT IS MUTUALLY AGREED:**

5. That time is of the essence of this Deed of Trust, and that by accepting performance of Trustor's obligations hereunder after the due date for such performance, Beneficiary does not waive its right either to require timely performance of subsequent obligations or to declare default for failure by Trustor to timely perform.

6. That upon written request of Beneficiary stating that all obligations secured hereby have been fulfilled, and upon surrender of this Deed of Trust to Trustee for cancellation, and upon payment of its fees, Trustee shall release and reconvey, without covenant or warranty, express or implied, the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person, or persons legally entitled thereto."

7. That Trustor shall not, other than as set forth in the Agreement or without the prior written consent of Beneficiary, (which consent shall not be unreasonably withheld) sell, convey, lease, mortgage, pledge, encumber, grant easements or rights of way over or upon or otherwise transfer the Property or a part thereof or interest therein, or attempt to do any of the same, or hypothecate any of the income of the Property and in the event Trustor shall commit any act specified in this Section, then Beneficiary may, in addition to the other rights and remedies otherwise available to Beneficiary hereunder, without further demand, protest or notice of any kind to Trustor, declare Trustor to be in default hereunder.

8. That upon default by Trustor in performance of any agreement hereunder, Beneficiary may elect to cause the Property or in the Agreement, to be sold under this Deed of Trust. Trustee shall record and give notice of trustee's sale in the manner required by law, and after the lapse of such time as may then be required by law, Trustee shall sell, in the manner required by law, the Property at public auction at the time and place fixed by it in said notice of trustee's sale to the highest bidder for cash in lawful money of the United States, payable as may then be required by law. Trustee may postpone or continue the sale by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee shall deliver to such purchaser its deed conveying the Property so sold, but without any covenant or warranty, expressed or implied. Any persons, including Trustor, Trustee, or Beneficiary, may purchase at such sale. After deducting all costs, fees, and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale and reasonable attorney's fees, Trustee shall apply the proceeds of sale to payment of: (i) all sums then secured hereby and all other sums due under the terms hereof, with accrued interest; and (ii) the remainder, if any, to the person or persons legally entitled thereto, as provided in A.R.S. § 33 812. Beneficiary may foreclose this Deed of Trust as a realty mortgage. No election of any of the remedies available to Beneficiary hereunder shall foreclose the election of any other remedy hereunder or under any of the agreements between Beneficiary and Trustor.

9. That Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee herein shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers, and duties. Trustee may resign by mailing or delivering notice thereof to Beneficiary and Trustor.

10. That this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and

assigns. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.

11. That Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

12. The undersigned Trustor requests that a copy of any notice of trustee's sale hereunder be mailed to its address hereinbefore set forth.

13. That Trustee may resign by mailing or delivering notice thereof to Beneficiary and Trustor. Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee herein shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers and duties.

14. That in this Deed of Trust, wherever the context so requires the masculine gender includes the feminine and neuter, and the singular number includes the plural.

15. That the trust relationship created by this Deed of Trust is limited solely to the creation and enforcement of a security interest in real property. All of Trustee's duties, whether fiduciary or otherwise, are strictly limited to those duties imposed by this instrument and A.R.S. §33-801 et seq., inclusive, and no additional duties, burdens or responsibilities are or shall be placed on Trustee.

16. Upon the filing of a petition in bankruptcy by Trustor (or against Trustor, in which Trustor acquiesces or which is not dismissed within thirty (30) days of the filing thereof, or upon the adjudication of Trustor to be insolvent or the sequestration of any of its property in legal proceedings, or if Trustor shall file a petition for an arrangement or reorganization pursuant to the Federal Bankruptcy Act or any similar statute now or hereafter in effect, or if Trustor shall make an assignment for the benefit of creditors or shall admit in writing the inability to pay its debts as such become due, or if a receiver, trustee, conservator or liquidator or all or any part of its property shall be appointed, Beneficiary may proceed to enforce the rights available to it under the Deed of Trust as provided for in the event of default.

17. In the event it becomes necessary for the Beneficiary to employ legal counsel or take legal action to collect the indebtedness secured by this Deed of Trust, to enforce any provision of this Deed of Trust or to protect any of Beneficiary's rights under this Deed of Trust, Trustor agrees to pay to Beneficiary, in addition to taxable costs of any legal proceeding or action and other sums due and payable pursuant hereto, reasonable attorneys' fees actually incurred, and all costs of preparation and conduct of such proceedings, including costs of title searches and title policy commitments, all of which shall be a lien upon the property and secured hereby.

18. Should any term, provision, covenant or condition of this Deed of Trust be held to be void or invalid, the same shall not affect any other term, provision, covenant or condition of this Deed of Trust. Furthermore, should this instrument be or become ineffective as a Deed of Trust, then these presents shall be construed and enforced as a realty mortgage with the Trustor being the mortgagor, the Beneficiary being the mortgagee.

19. The Deed of Trust shall be governed by and interpreted under the laws of the State of Arizona.

20. Trustor shall not be entitled to rezone any part or all of the Property, nor modify or consent to any modification to any stipulations or conditions to zoning without the prior written consent to Beneficiary, which consent may be withheld in Beneficiary's sole and absolute discretion. No plan, documents or other matters submitted to governmental authorities in connection with or as a condition to zoning for the Property shall be submitted without the prior written approval of Beneficiary. Without Beneficiary's prior written consent, Trustor shall not enter in to any agreements or contracts with any governmental or quasi-governmental agency which may affect or impair the Property's development, regardless of whether such agreements or contracts do not affect title or are subordinate to this Deed of Trust.

21. The captions of the Sections hereof are for convenience only and shall not govern or influence the interpretation hereof. This Deed of Trust is the result of negotiations between Trustor and Beneficiary and, accordingly, shall not be construed for or against either such party regardless of which party drafted this Deed of Trust or any portion thereof.

22. No notice, consent, approval, or other communication provided for herein or given in connection herewith shall be validly given, made, delivered or served unless it is in writing and delivered personally, sent by overnight courier, sent by telephone facsimile or sent by registered or certified United States mail, postage prepaid, with return receipt requested, to the addresses set forth for each party on page one.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first above written

ARROWHEAD EQUITIES LLC, an  
Arizona limited liability company

By: Par Times Equities, LLC, an  
Arizona limited liability company,  
its Manager

By: 

Name: Jeffrey Kosz

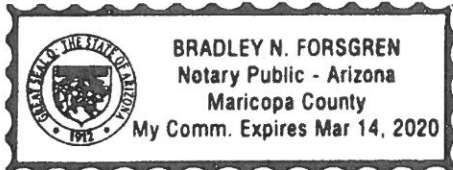
Title: Manager





STATE OF ARIZONA                    )  
  ) ss.  
COUNTY OF MARICOPA            )

The foregoing instrument was acknowledged before me this 30 day of MARCH, 2016, by JEFFREY KOST, the Manager of Par Times Equities, LLC, an Arizona limited liability company, on behalf of the company, as Manager of Arrowhead Equities, LLC.



  
Notary Public

My commission expires:

MAR 14, 2020