

AGENDA MATERIAL

DATE 12-6-22 ITEM NO. RA 24



MEMORANDUM

Date: December 1, 2022

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: Jan Lester 
County Administrator

Re: **Additional Information for the December 6, 2022 Board of Supervisors Meeting - Project Flag/American Battery Factory Lease-Purchase Agreement**

Background

On October 11, 2022, I provided the Board of Supervisors a memorandum and land appraisal regarding an economic development project known as Project Flag and informed the Board of a letter of intent to lease and purchase Pima County-owned land for construction of a battery manufacturing complex.

On November 23, 2022, I provided the Board a memorandum and term sheet outlining the details of a lease-purchase agreement with American Battery Factory (ABF), a Utah-based startup that was incubated from Utah-based energy storage company Lion Energy in 2021. I also indicated that the lease-purchase contract would be transmitted to the Board by December 1, 2022.

Attached is the lease-purchase agreement, which is scheduled for your consideration at the December 6, 2022 Board meeting. This agreement conforms to the following previously communicated primary points in the term sheet:

- The lease-purchase structure enables Pima County to require verifiable employment and wage benchmarks and other safeguards during three development phases of the project. Phase 1 benchmarks must be confirmed during the initial lease term before any sale of County land at Aerospace Research Campus (ARC) occurs.
- Lease rates and sale terms will comply with applicable Arizona Revised Statutes and the Gift Clause of the Arizona Constitution. ABF's lease of the property under the agreement requires fair market rent that has been determined by a third party appraisal of the property, and the sale price has been determined by an independent appraisal. ABF receives no direct financial incentives from Pima County and the company will construct its own facilities and onsite infrastructure.
- The lease-purchase agreement is structured to begin with an initial five-year ground lease term (with four possible five-year renewals) for 70 acres of land at ARC. The rental rate shall increase by 2.5% per annum during the remainder of each renewal term.

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cc

The Honorable Chair and Members, Pima County Board of Supervisors

Re: **Additional Information for the December 6, 2022 Board of Supervisors Meeting - Project Flag/American Battery Factory Lease-Purchase Agreement**

December 1, 2022

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- During Phase 1 of the agreement, and within 24 months of the lease execution, ABF will be required to complete construction targets, employ 300 FTEs on the site at an average annual wage of \$65,000 and be in compliance with the agreement to proceed to Phase 2.
- Phase 2 would occur within 48 months of the lease execution and require ABF to complete additional construction targets, employ 600 FTEs in aggregate on site at an average annual wage of \$65,000 and be in compliance with the agreement to proceed to Phase 3.
- Phase 3 would occur within 72 months of the lease execution and require ABF to complete additional construction targets, employ 1,000 FTEs aggregate on site at an average annual wage of \$65,000 and be in compliance with the agreement.
- If ABF completes construction of all improvements on the leased property prior to the required Phase 1 construction completion date, satisfies the Phase 1 employment requirements and is not otherwise in default under the lease for the leased property, ABF will have the option to purchase the 267 acres upon written notice to the County delivered no less than 30 months following lease execution. The purchase price, based on appraised value, will be \$78,318.00 per acre.

Recommendation

This business attraction project is expected to hire 1,000 employees and provide an estimated economic impact of \$3.1 billion in Pima County over 10 years at full build-out as planned. It is recommended that the Board of Supervisors approve the lease-purchase agreement with American Battery Factory.

JKL/anc

Attachment

- c: Carmine DeBonis, Jr., Deputy County Administrator for Public Works
Francisco García, MD, MPH, Deputy County Administrator & Chief Medical Officer
Steve Holmes, Deputy County Administrator
Heath Vescovi-Chiordi, Director, Pima County Economic Development
Jeff Teplitsky, Director, Real Property Services
Patrick Cavanaugh, Deputy Director, Pima County Economic Development

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (this “**Lease**”) is entered into as of December ____, 2022 (the “**Effective Date**”), by and between **PIMA COUNTY**, a political subdivision of the State of Arizona (“**Landlord**”), and **AMERICAN BATTERY FACTORY, INC.**, a Utah corporation (“**Tenant**”).

RECITALS

A. Landlord owns that certain unimproved real property consisting of approximately 267 acres, which is more particularly described in Exhibit A-I and generally depicted on Exhibit A-II attached hereto (collectively, the “**Project Property**”). The Project Property is located within an area designated by Landlord as an Aerospace, Defense, and Technology Business and Research Park. The Project Property has a value of approximately \$23,250,000.00.

B. Tenant is a company that develops and manufactures battery cells. Tenant desires to construct and develop upon the Project Property a facility containing at least 800,000 square feet of office space, warehouse space and manufacturing space for Tenant’s business operations, together with all infrastructure and improvements related thereto, which facility will house approximately 9GWh of battery cell production lines (collectively, the “**Project**”).

C. Based upon that certain Project Assessment dated October 5, 2022 prepared by Sun Corridor Inc. (the “**Sun Corridor Report**”), Tenant hereby represents and warrants to Landlord that Tenant’s obligations and covenants under this Lease to develop the Project will result in significant direct and indirect benefits accruing to Landlord and the general public, including, without limitation, (i) construction and installation of certain horizontal Improvements that will benefit the Project Property regardless of its use, (ii) construction of certain vertical Improvements for use as a manufacturing facility, (iii) the expansion of the employment base within Pima County, Arizona, which the Sun Corridor Report estimates will include an additional 1,000 employees of the Project and an additional approximately 1,000 indirect employees as a result of the Project, (iv) increased property values within Pima County, Arizona, (v) increased tax revenues within Pima County, Arizona, (vi) increased opportunities for commercial property development within Pima County, Arizona, (vii) incentivizing the development of adjacent properties, and (viii) otherwise improving or enhancing the economic welfare of the inhabitants of Pima County, Arizona while also establishing procedures whereby Landlord is protected in the event Tenant does not complete development of the Project as required under this Lease.

D. Tenant explored several possible sites for its operations outside of Arizona, but has agreed to locate its operation in Tucson. Tenant would not have agreed to do this without Landlord’s willingness to enter into this Lease.

E. The Pima County Board of Supervisors (the “**Board**”) has authority under A.R.S. § 11-254.04 to engage in any “activity that the board of supervisors has found and determined will assist in the creation or retention of jobs or will otherwise improve or enhance the economic welfare of the inhabitants of the county,” including specifically the “acquisition, improvement, leasing or conveyance of real or personal property.” Based on the Sun Corridor Report, which takes into account Tenant’s anticipated employment and salary levels for the Project, among other factors, the Board has determined that Tenant’s operations, and hence this Lease, will have a significant positive impact on the economic welfare of Pima County, Arizona’s inhabitants.

F. Based on the foregoing, among other things, Landlord is willing to lease to Tenant approximately 70 acres of the Project Property to enable Tenant to begin work on the Project, Landlord is willing to grant Tenant an option to purchase the Project Property, and Tenant is willing to grant Landlord

a series of options to repurchase portions of the Project Property, all upon and subject to the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant covenant and agree as follows:

1. **Basic Lease Information; Certain Definitions.** Each reference in this Lease to the information and definitions contained in this Section 1, including, without limitation, each use of the terms capitalized and defined in this Section 1, shall refer to and have the following meanings:

1.1. **Base Rent:**

Lease Year	Per Acre Base Rent	Annual Base Rent (based upon 70 acres)	Monthly Base Rent (based upon 70 acres)
1	\$6,500	\$455,000	\$37,916.67
2	\$6,663	\$466,410	\$38,867.50
3	\$6,829	\$478,030	\$39,835.83
4	\$7,000	\$490,000	\$40,833.33
5	\$7,175	\$502,250	\$41,854.17

1.2. **Calendar Year:** a successive 12-month period beginning January 1st and ending December 31st.

1.3. **Construction Commencement Date:** the date that is 270 days after the Effective Date.

1.4. **Construction Completion Date:** the second anniversary of the Effective Date.

1.5. **FTE Employees:** full-time equivalent employees determined in accordance with 26 C.F.R. 54.4980H-3.

1.6. **Hazardous Materials:** include, without limitation: (a) Those substances included within the definitions of “hazardous substances”, “hazardous materials,” “toxic substances,” or “solid waste” in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), as amended by Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act of 1976, and the Hazardous Materials Transportation Act, and in the regulations promulgated pursuant to said laws, all as amended; (b) those substances listed in the United States Department of Transportation Table (49 C.F.R. 172.101 and amendments thereto) or by the Environmental Protection Agency (of any successor agency) as hazardous substances (40 C.F.R. Part 302 and amendments thereto); (c) any material, waste or substance which is, or contains materials or substances which are, (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C. § 1251 et seq. (33 U.S.C. § 1321) or listed pursuant to Section of the Clean Water Act (33 U.S.C. § 1317); (v) flammable or explosive, (vi) radioactive materials, or (vii) toxic, corrosive, infectious, carcinogenic or mutagenic; and (d) such other substances, materials and wastes which are or become regulated as hazardous or toxic under applicable local, state or federal law, or the United States government, or which are classified as hazardous or toxic under federal, state, or local laws or regulations.

1.7. **Improvements:** all infrastructure and improvements necessary for the development and

operation of the Project, including, without limitation, the Phase I Improvements and all improvements for subsequent phases of the Project, if any.

1.8. **Landlord Option Agreement:** an option agreement in the form attached hereto as Exhibit F.

1.9. **Lease Year:** a period of 12 consecutive months. The first Lease Year commences on the Effective Date and expires on the last day of 12th full calendar month thereafter. Subsequent Lease Years begin on the first day following the end of the previous Lease Year.

1.10. **Leased Property:** approximately 70 acres of unimproved real property located within the Aerospace Research Campus in Tucson, Arizona, which is more particularly described in Exhibit B-I and generally depicted on Exhibit B-II.

1.11. **Memorandum of Landlord Option:** a memorandum of the Landlord Option Agreement, which shall be in the form provided in the Landlord Option Agreement.

1.12. **Option Exercise Deadline:** the date that is 30 months after the Effective Date.

1.13. **Option Payment:** \$50,000.00 to be paid by Tenant to Landlord upon execution of this Lease by Tenant.

1.14. **Permitted Name:** American Battery Factory.

1.15. **Permitted Use:** Tenant shall use and operate the Premises under the Permitted Name exclusively for the manufacture of battery cells, light warehousing and distribution of battery cells produced within the Premises and office uses related thereto. Subject to Landlord's consent pursuant to Section 14.1, Tenant shall have the right to invite customers and suppliers to establish facilities on the Leased Property.

1.16. **Phase I Improvements:** a Sprung Structures Power & Energy structure of at least 250,000 square feet of floor area, including, without limitation, office space for Tenant's executives and plant management staff, a manufacturing area for Tenant's first phase production line for the manufacture of battery cells and warehousing and distribution areas for such battery cells, together with all infrastructure and improvements related to the Project.

1.17. **Phase II Parcel:** has the meaning set forth in Section 18 below.

1.18. **Phase III Parcel:** has the meaning set forth in Section 18 below.

1.19. **Premises:** the Leased Property and all appurtenances thereto, and all Improvements now or hereafter constructed or located on or about the Leased Property.

1.20. **Primary Term:** the period commencing on the Effective Date and expiring at 5:00 pm MST on the day immediately prior to the 5th anniversary of the Effective Date.

1.21. **Prime Rate:** the prime rate of interest published in the Wall Street Journal or, if the Wall Street Journal no longer publishes a prime rate then a rate established by a financial institution or financial publication designated by Landlord.

1.22. **Project:** has the meaning set forth in Recital B above.

1.23. **Project Property:** has the meaning set forth in Recital A above.

1.24. **Project Property Restriction:** a document to be recorded by Landlord against the Project Property limiting use of the Project Property to the use and development of the Project and the operation thereof by Tenant, subjecting the use and development of the Project and the Project Property to the Raytheon Restrictions, limiting Tenant's ability to encumber or allow the creation of liens on or against the Project Property and including such other limitations as Landlord may determine in its reasonable discretion. The Project Property Restriction will specifically provide that the Project Property Restriction will run with the land, be binding on Landlord's successor and assigns and cannot be terminated or released without the express written consent of Landlord.

1.25. **Purchase Price:** has the meaning set forth in Section 19.2.1.

1.26. **Raytheon Restrictions:** those certain use and development restrictions set forth on Exhibit D attached hereto.

1.27. **Security Deposit:** \$50,000.00.

2. **Demise.** Landlord hereby leases to Tenant, and Tenant leases from Landlord, for the term, at the rental and upon all of the terms and conditions set forth in this Lease, the Leased Property.

3. **Term.** For purposes of this Lease, "**Term**" shall mean and refer to the Primary Term and any Renewal Terms, unless sooner terminated pursuant to any provision of this Lease.

3.1. **Primary Term.** The Primary Term of this Lease will be for the period specified in Section 1.20. The Primary Term will commence on the Effective Date. All of the terms and provisions of this Lease shall apply to Tenant during the Primary Term.

3.2. **Renewal Term.** Tenant is hereby granted and shall have four (4), five (5)-year options to renew the Term (each a "**Renewal Term**") provided that: (a) Tenant is not in default under this Lease; (b) Tenant is open and operating in the Premises; and (c) Tenant provides Landlord with written notice on a timely basis in the manner described below. The options to renew shall be exercised by Tenant, if at all, by delivering to Landlord written notice of its election to renew the term of this Lease as herein provided not earlier than 12 months and not later than six (6) months prior to the expiration date then in effect. If Tenant fails to exercise its option as required by this Section 3.2, then said option will expire automatically and this Section 3.2 shall be null and void. With regard to the multiple Renewal Term options granted herein, the second Renewal Term option cannot be exercised unless Tenant timely exercised the first Renewal Term option; the third Renewal Term option cannot be exercised unless Tenant timely exercised the the first and second Renewal Term options; and the fourth Renewal Term option cannot be exercised unless Tenant timely exercised the first, second and third Renewal Term options. For purposes of each option to renew, to the extent applicable, Base Rent for the first lease year of each Renewal Term shall be the fair market value for the Leased Property at the time of exercise, as determined by an appraisal prepared by a third-party appraiser of Landlord's selection. Base Rent for each subsequent lease year of a Renewal Term shall automatically increase by Two and 50/100ths percent (2.50%) upon the anniversary of the Effective Date. Tenant shall accept the Premises "as is" for each Renewal Term and Landlord shall have no obligation to make any improvements or alterations to the Premises during any Renewal Term. All terms and conditions of this Lease shall be applicable during the Renewal Term, if exercised by Tenant, except that Base Rent shall be as set forth in this Section 3.2.

4. **Rent.**

4.1. Base Rent. Tenant shall pay one (1) month's installment of Base Rent upon its execution of this Lease. To the extent the Effective Date is other than the first day of a calendar month, Tenant shall also pay to Landlord upon execution of this Lease, a prorated share of Base Rent for the month in which the Effective Date occurs. Commencing on the first day of the month following the Effective Date Tenant shall pay a Base Rent, which shall be the amount specified as Base Rent in Section 1.1 above, to Landlord in lawful money of the United States, without any prior notice or demand and without any offset or deduction whatsoever, in advance on the first day of each calendar month during the Term of this Lease. In the event Landlord does not have a current legal description for the Leased Property, as soon as practicable after the Effective Date, the parties shall cause a registered land surveyor licensed and in good standing with the State of Arizona to prepare a legal description for the Leased Property (the "**Legal Description**") and an ALTA/NSPS survey of the Leased Property. Upon completion of the Legal Description and the survey, Landlord shall supplement Exhibit B-I of this Lease to include the Legal Description. In addition, the columns for Annual Base Rent and Monthly Base Rent set forth in the chart in Section 1.1 above shall be updated based upon the gross acreage of the Leased Property reflected in said survey.

4.2. Additional Rent. Throughout the Term of this Lease, Tenant shall pay in advance on a monthly basis, without demand, the following costs and expenses incurred in connection with the Leased Property: (a) Real Estate Taxes; and (b) Property Insurance.

4.3. Amount of Additional Rent.

4.3.1. On the first day of January of each Calendar Year during the Term, or as soon thereafter as practicable, Landlord will furnish Tenant with Landlord's estimate of each cost item of Additional Rent referenced in Section 4.2 for the forthcoming Calendar Year. On the first day of each month during such Calendar Year, Tenant shall pay one-twelfth (1/12th) of each such estimated cost. If for any reason Landlord has not provided Tenant with Landlord's estimate of all such costs on or before the first day of January of any Calendar Year during the Term, then until the first day of the calendar month following the month in which Tenant is given Landlord's estimate of each applicable cost, Tenant shall continue to pay to Landlord on the first day of each calendar month the monthly sum payable by Tenant for the month of December of the preceding Calendar Year. The foregoing notwithstanding, Landlord shall have the right from time to time during any Calendar Year, but not more frequently than once in any Calendar Year, to notify Tenant in writing of any change in Landlord's estimate of each cost for the then current Calendar Year, in which event Tenant's Proportionate Share of each cost, as previously estimated, shall be adjusted to reflect the amount shown in such notice and shall be effective, and due from Tenant, on the first day of each month following Landlord's giving of such notice.

4.3.2. On the first day of March of each Calendar Year during the Term or as soon thereafter as reasonably practical, Landlord will furnish to Tenant a statement of the actual costs for the preceding Calendar Year. Within 30 days after the delivery of that statement, Tenant shall make a lump sum payment equal to the amount, if any, by which each actual cost exceeds the amount, if any, Tenant paid towards each estimated cost. If each actual cost is less than the amount Tenant paid toward each estimate cost, Landlord shall apply such amount to the next accruing installment(s) of Rent due hereunder. The effect of this Section is that Tenant will pay during each Calendar Year during the Term all actual costs for Real Estate Taxes and Property Insurance (said items are hereinafter sometimes collectively referred to as the "**Tenant's Share of Costs**").

4.4. Additional Rent. In addition to Base Rent, all other sums of any type or kind required to be paid by Tenant to Landlord under this Lease will be deemed to be "**Additional Rent**", whether or not

designated as such. The term “**Rent**” as used in this Lease, unless otherwise specified, shall refer collectively to Base Rent and Additional Rent, except for the taxes described in the immediately following sentence. Tenant shall pay to Landlord, in addition to the Rent as provided in this Lease, all privilege, sales, excise, rental and other taxes (except income taxes) imposed now or hereafter imposed by any governmental authority upon the Rent to be paid by Tenant to Landlord. Said payment shall be in addition to and accompanying each monthly or other payment of Rent made by Tenant to Landlord. Rent for any period during the Term which is for less than one month shall be a pro-rata portion of the monthly installment. Rent shall be paid without deduction, offset, prior notice or demand to Landlord at the address stated in Section 15 below or to such other persons or at such other places as Landlord may designate in writing. All Rent shall be paid in lawful money of the United States of America. Landlord’s acceptance of any Rent payment that is for less than the entire amount then due shall be only as an acceptance on account and shall not constitute an accord and satisfaction or a waiver by Landlord of the balance of the Rent due or a waiver of any of the remedies available to Landlord by reason of Tenant’s continuing default under this Lease.

4.5. Net Lease. Landlord and Tenant intend that this Lease be a net lease, that Landlord shall receive Base Rent, Tenant’s Share of Costs and Additional Rent as net income, and that Landlord is not intending to provide any services other than those specifically set forth in this Lease.

4.6. Interest and Late Charges; Default Rate. If Tenant fails to pay within three (3) days after the date when due, any installment of Rent, any and all such unpaid amounts shall bear interest at a rate of interest equal to the greater of (i) twelve percent (12%) per annum; or (ii) five percent (5%) over the Prime Rate (the higher rate being referred to as the “**Default Rate**”) beginning on the due date, until paid. In addition, Tenant also agrees to immediately pay Landlord Two Hundred Fifty Dollars (\$250) or two percent (2%) of the unpaid portion of Rent installment, whichever is the greater (the “**Late Charge**”) on the amount which was not paid within three (3) days after the date when due. Acceptance by Landlord of the Late Charge shall not constitute a waiver of any rights or remedies of Landlord, but merely a reimbursement for a portion of Landlord’s administrative fees for Tenant’s failure to pay amounts when due hereunder. In no event shall the Default Rate exceed the maximum rate of interest permitted under Arizona law for commercial loans.

5. **Security Deposit.**

5.1. Payment of Security Deposit. Concurrent with the execution of this Lease, Tenant has paid to Landlord the Security Deposit which shall be held by Landlord as security for the full and faithful performance by Tenant of each and every term, provision, covenant and condition of this Lease. If Tenant does not accept possession of the Leased Property or does not commence construction of the Phase I Improvements on or before the Construction Commencement Date, complete construction of the Phase I Improvements prior to the Construction Completion Date or open for business as or when required herein, then, in addition to any and all other remedies contained in this Lease, the Security Deposit shall be retained by and become the property of Landlord and shall be deemed partial consideration for reservation of the Leased Property exclusively for Tenant’s use and shall not be construed as a settlement. Should the entire Security Deposit, or any portion thereof, be appropriated and applied by Landlord, the Tenant shall, upon the written demand of Landlord, immediately remit to Landlord a sufficient amount in cash to restore the Security Deposit to the original sum, and Tenant’s failure to do so within 15 days after receipt of such demand shall constitute an Event of Default (as that term is defined below) under this Lease. The Security Deposit shall not bear interest and shall not be considered an advance payment of Rent (or any sums payable by Tenant under this Lease other than the Purchase Price) or a measure of Landlord’s damages in case of a default by Tenant.

5.2. Refund of Security Deposit. If Tenant fully, faithfully and timely complies with all the

terms, provisions, covenants and conditions of this Lease, the Security Deposit (or any balance thereof) shall be returned to Tenant, without interest, after the termination of this Lease, the removal of Tenant, the surrender of possession of the Premises and after the reconciliation of all Rent that may be due or any other sums payable by Tenant under this Lease.

6. **Delivery of Property; Construction of Phase I Improvements.**

6.1. AS-IS Delivery. Landlord shall deliver the Leased Property to Tenant in “AS-IS”, “WHERE-IS” condition on the Effective Date. Landlord makes no representations, warranties or covenants with respect to the condition of the soil or subsoil or any other condition of the Leased Property.

6.2. Construction of Phase I Improvements by Tenant. Tenant shall, at its sole cost and expense, provide and cause to be performed all work of whatever nature is necessary to complete the Phase I Improvements and the Premises and open the Premises for business for the Permitted Use (collectively, “**Tenant’s Work**”). Tenant’s Work shall be completed pursuant to and in accordance with the terms and conditions of the work letter agreement attached hereto as Exhibit C (the “**Work Letter**”).

6.3. Commencement of Construction. Tenant shall satisfy all terms and conditions for the commencement of construction of Tenant’s Work under this Lease and the Work Letter and commence construction of Tenant’s Work on or before Construction Commencement Date.

6.4. Completion of Construction. Tenant shall Substantially Complete Tenant’s Work on or before the Construction Completion Date. Failure of Tenant to timely comply with the terms of this Section 6.4 shall constitute an incurable material Event of Default by Tenant under this Lease. For purposes of this Lease and the Work Letter, the term “**Substantially Complete**” means the issuance by the applicable governmental agency or authority of a final Certificate of Occupancy, or equivalent certificate, for all Tenant’s Work.

6.5. Construction Indemnity. Tenant agrees to indemnify, defend and hold harmless Landlord for, from and against all loss, costs, damage, expenses, claim or liability, including without limitation, claims from mechanic’s liens, arising from the actions or omissions of Tenant, its agents, servants, contractors and employees on or about the Project Property in connection with the construction of the Improvements.

7. **Economic Performance.**

7.1. Employees & Salaries. As material consideration for Landlord entering into this Lease, on or before the second anniversary of the Effective Date, Tenant shall satisfy the following requirements (collectively, the “**Phase I Employment Requirements**”): (a) at all times employ at least 300 FTE Employees working full-time at the Premises; (b) the average base salary of FTE Employees working full-time at the Premises must be at least \$65,000.00 (U.S.) per year; and (c) all such FTE Employees must be full-time residents of Pima County, Arizona.

7.2. Reporting. During the Term of this Lease and continuing through any period in which Tenant owns the Project Property or any portion thereof, Tenant shall provide to Landlord quarterly reports stating the number of Tenant’s FTE Employees employed and working full-time at the Premises and the average salary of such FTE Employees for each month during the quarter (“**Employment Certificates**”). Employment Certificates shall be delivered by Tenant to Landlord no later than 30 days following the end of each calendar quarter during a Calendar Year (i.e. by each April 30th, July 30th, October 30th and January 30th). Employment Certificates shall be signed by Tenant’s Chief Financial

Officer and certify that all information contained in such Employment Certificate is true and correct. Employment Certificates shall be in such form as Landlord may require from time to time. The terms of this Section 7.2 shall survive the termination of this Lease for so long as Tenant owns the Project Property or any portion thereof.

8. **Taxes.**

8.1. Real Estate Taxes. As used in this Lease, the term “**Real Estate Taxes**” includes the following: (a) all real estate taxes, including general and special assessments, if any, which are imposed upon Landlord or assessed against the Leased Property, the Premises or the Project; (b) any taxes or assessments that Landlord is required to pay related to this Lease, the Leased Property, the Premises, the Project or the rent paid to Landlord under this Lease; (c) all government property lease excise taxes due under Title 42, Chapter 6, Article 5 of the Arizona Revised Statutes (“**ARS**”); and (d) any other present or future taxes or governmental charges that are imposed upon Landlord, or assessed against the Leased Property, the Premises or the Project, including, but not limited to, any tax levied on or measured by the rents payable by tenants of the Project which is in the nature of, or in substitution for, real estate taxes. Any income or net profits tax which may be assessed against Landlord shall be excluded. Within 30 days after execution of this Lease, the parties will execute and the Landlord will record a memorandum of this Lease in compliance with ARS § 42-6202(C)(1), and Landlord will provide the Pima County Treasurer with a copy of this Lease as required by ARS § 42-6202(C)(2).

8.2. Personal Property. Tenant shall pay, before delinquency, all property taxes and assessments on the furniture, fixtures, equipment, inventory and other property of Tenant at any time situated on or installed in the Premises and on additions and improvements in the Premises. If any of the foregoing is assessed as part of the real property of which the Premises are a part, Tenant shall pay to Landlord upon demand, as Additional Rent, the amount of such additional taxes as may be levied against the real property by reason thereof. For the purpose of determining such amount of additional taxes, figures supplied by the local assessing authority as to any amounts so assessed shall be conclusive.

9. **Operation of Premises.**

9.1. Permitted Uses. The Premises shall be used only for the Permitted Use and for no other business or purpose whatsoever without the prior written consent of Landlord, which may be granted or withheld in Landlord’s sole discretion. No act shall be done in or about the Premises that is unlawful or that will increase the rate of Property Insurance. In the event of a breach of this covenant, Tenant shall pay to Landlord all increases in Property Insurance premiums resulting from such breach upon demand, and Landlord shall have all additional remedies provided for herein to redress such breach. Tenant shall not commit or allow to be committed any waste upon the Leased Property, the Premises, the Project or any public or private nuisance or other act or thing which disturbs the quiet enjoyment of any other person or neighboring property owner, tenant or occupant. Tenant, at its expense, shall comply with all laws relating to its use and occupancy of the Premises. In addition, Tenant shall observe such reasonable rules and regulations as may be adopted by Landlord from time to time for the safety, care and cleanliness of the Premises or the Project and for the preservation of good order therein.

9.2. Laws and Regulations. Tenant represents, warrants and covenants that the operation of its business shall be conducted in strict compliance with all applicable private covenants, conditions and restrictions and all applicable federal, state and local environmental, safety and other pertinent laws, rules, regulations and ordinances (collectively sometimes referred to as “**Applicable Laws**”), including, without limitation, the Americans With Disabilities Act and the Arizonans With Disability Act (collectively the “**ADA**”) and Tenant agrees that the construction of the Premises, and any alterations necessary to the Premises, in order to comply with the ADA or such other covenants, conditions, restrictions, laws, rules,

regulations and ordinances, shall be at Tenant's sole cost and expense. Tenant represents and warrants to Landlord that there is no risk to Tenant, Tenant's visitors and others using the Premises arising from Tenant's operations. Tenant shall indemnify, defend and hold harmless Landlord from and against any claim, liability, expense, lawsuit, loss or other damage, including reasonable attorneys' fees, arising from or relating to Tenant's use of the Premises or Tenant's activities within the Project or any violations of the ADA by Tenant, its employees, subtenants, agents, guests, contractors or invitees, except to the extent caused by Landlord's grossly negligent or intentional act.

9.3. Hazardous Materials.

9.3.1. Except for ordinary and general office supplies, such as copier toner, liquid paper, glue, ink and common household materials, all of which are used, stored and disposed of in compliance with all applicable federal, state and local laws, rules and regulations and in quantities not in excess of those reasonably necessary to conduct the Permitted Use, Tenant agrees not to introduce any Hazardous Materials in, on or adjacent to the Premises or in, on or adjacent to the Leased Property or the Project Property without (a) obtaining Landlord's prior written approval, (b) providing Landlord with 60 days' prior written notice of the exact amount, nature, and manner of intended use of such Hazardous Materials, and (c) complying with all applicable federal, state and local laws, rules, regulations, policies and authorities relating to the storage, use, disposal and clean-up of Hazardous Materials, including, but not limited to, the obtaining of all proper permits.

9.3.2. Tenant shall immediately notify Landlord of any inquiry, test, investigation, or enforcement proceeding by, against or directed at Tenant or the Premises concerning Hazardous Materials. Tenant acknowledges that Landlord, as the owner of the Project Property, shall have the right, at its election, in its own name or as Tenant's agent, to negotiate, defend, approve, and appeal, at Tenant's expense, any action taken or order issued by any applicable governmental authority with regard to Hazardous Materials used, stored, disposed of or released on or from the Premises by Tenant or its agents, employees, contractors or invitees.

9.3.3. If Tenant's storage, use, disposal or release of any Hazardous Materials in, on or adjacent to the Premises or the Project results in any contamination of the Leased Property, the Premises, the Project, the Project Property, the soil, surface or groundwater thereunder or the air above or around the Leased Property, the Premises, the Project or the Project Property (a) requiring remediation under federal, state or local statutes, ordinances, regulations or policies, or (b) at levels which are unacceptable to Landlord, in Landlord's sole and absolute discretion, Tenant agrees to clean-up the contamination immediately, at Tenant's sole cost and expense. Tenant further agrees to indemnify, defend and hold Landlord harmless from and against any claims, suits, causes of action, costs, damages, loss and fees, including reasonable attorneys' fees and costs, arising out of or in connection with (y) any clean-up work, inquiry or enforcement proceeding relating to Hazardous Materials currently or hereafter used, stored, disposed of or released by Tenant or its agents, employees, contractors or invitees on or about the Leased Property, the Premises, the Project or the Project Property, and (z) the use, storage, disposal or release by Tenant or its agents, employees, contractors or invitees of any Hazardous Materials on or about the Leased Property, the Premises, the Project or the Project Property.

9.3.4. Notwithstanding any other right of entry granted to Landlord under this Lease, Landlord shall have the right to enter the Premises or to have consultants enter the Premises throughout the Term at reasonable times for the purpose of determining: (a) whether the Premises are in conformity with federal, state and local statutes, regulations, ordinances and policies, including those pertaining to the environmental condition of the Premises; (b) whether Tenant has complied with this Section 9; and (c) the corrective measures, if any, required of Tenant to ensure the safe use,

storage and disposal of Hazardous Materials. Tenant agrees to provide access and reasonable assistance for such inspections. Such inspections may include, but are not limited to, entering the Premises with machinery for the purpose of obtaining laboratory samples. Landlord shall not be limited in the number of such inspections during the Term. If, during such inspections, it is found that Tenant's use, storage, disposal or release of Hazardous Materials constitutes a violation of this Lease, in addition to any other remedies available to Landlord by reason of such violation, Tenant shall reimburse Landlord for the cost of such inspections within 10 days of receipt of a written statement therefor. If such consultants determine that the Premises are contaminated with Hazardous Materials or in violation of any applicable environmental law, Tenant shall, in a timely manner, at its expense, remove such Hazardous Materials or otherwise comply with the recommendations of such consultants to the reasonable satisfaction of Landlord and any applicable governmental agencies. If Tenant fails to do so, Landlord, at its sole discretion, may, in addition to all other remedies available to Landlord under this Lease and at law and in equity, cause the violation and the contamination to be remedied at Tenant's sole cost and expense. The right granted to Landlord herein to inspect the Premises shall not create a duty on Landlord's part to inspect the Premises, or liability of Landlord for Tenant's use, storage or disposal of Hazardous Materials, it being understood that Tenant shall be solely responsible for all liability in connection therewith.

9.3.5. Tenant shall surrender the Premises to Landlord upon the expiration or earlier termination of this Lease free of Hazardous Materials used, stored, disposed of or released on or from the Premises or the Project by Tenant or its agents, employees, contractors, sublessees, or invitees and in a condition which complies with all governmental statutes, ordinances, regulations and policies, recommendations of consultants hired by Landlord, and such other reasonable requirements as may be imposed by Landlord.

9.3.6. Tenant's obligations under this Section 9 and all indemnification obligations of Tenant under this Lease shall survive the expiration or earlier termination of this Lease.

9.4. Utilities. Tenant shall make application for and arrange for and pay or cause to be paid all charges for gas, water, electricity, light, heat, power, telephone, data, cable, sewer and all other utility services used, rendered or supplied upon or in connection with the Premises; and Tenant shall defend, indemnify and save Landlord harmless against any liability or charges on account thereof. In case any utility charges are not paid by Tenant when due, Landlord may pay the utility charges to the utility company or department furnishing the utility service, and any amounts so paid by Landlord shall be paid by Tenant to Landlord immediately upon demand by Landlord, as Additional Rent.

9.5. Additional Restrictions. In addition to all other use and development restrictions set forth in this Lease, Tenant shall develop the Leased Property, the Premises, the Project and the Project Property and utilize and operate the Project and Tenant's business on the Project Property in accordance with the Raytheon Restrictions.

10. **Maintenance, Repairs and Alterations.** Tenant may from time to time during the Term make changes, alterations, additions, substitutions or improvements to the Premises, at its sole cost and expense, as set forth below:

10.1. Maintenance. Tenant shall, at its expense throughout the Term, maintain, service, replace, and keep in good repair and condition, the Premises, mechanical equipment of the Premises and all other aspects of the Premises, including, without limitation, floors, ceilings, walls, doors, glass, plumbing, paint, heating, ventilation and air conditioning equipment, partitions, electrical equipment, wires and electrical fixtures. Tenant shall surrender the Premises, including all mechanical equipment and other aspects, upon the expiration or earlier termination of the Term in good repair and condition and broom

clean, ordinary wear and tear excepted. Landlord shall have no obligation to maintain or repair any portion of the Premises. Tenant shall repair any damage to the Premises occasioned by the removal of its trade fixtures, furnishings and equipment pursuant to Section 10.2, which repair shall include without limitation the patching and filling of holes and repair of structural damage.

10.2. Alterations. Following the completion of Tenant's Work, except for cosmetic, interior and non-structural changes which do not exceed \$25,000.00 in the aggregate per annum, Tenant shall not make or permit to be made any alterations, improvements or additions of or to the Premises or any part thereof, unless and until Tenant shall have caused plans and specifications therefor to have been prepared, at Tenant's expense, by a licensed architect and shall have obtained Landlord's written approval thereof. If such approval is granted, Tenant shall cause the work described in such approved plans and specifications to be performed, at its expense, promptly, and in a first class workmanlike manner by a licensed general contractor and in compliance with all applicable governmental and insurance requirements and the standards set forth in this Lease (including, without limitation, the provisions of Section 6 and the Work Letter), without interference with or disruption to the operations of the Project or the quiet enjoyment of any other person or neighboring property owner, tenant or occupant.

10.3. Damage from Casualty.

10.3.1. If any part of the Premises is damaged or destroyed by any cause whatsoever during the Term, Tenant will, promptly repair and replace the same at its own expense, to at least the condition existing immediately prior to the damage or destruction, and Tenant's obligations under this Lease will not terminate. If, however, (a) such damage or destruction is due to the Landlord's grossly negligent or willful acts or omissions, Tenant will have no obligation to repair or replace the Premises, Tenant may terminate this Lease upon written notice to Landlord delivered no later than 60 days following the date of such damage or destruction and Tenant will have no obligation to pay any insurance proceeds to Landlord; (b) if Tenant maintained the insurance required by Section 12 of this Lease at the time of such destruction and despite Tenant's commercially reasonable efforts, such insurance proceeds are unavailable or are insufficient to rebuild the Premises in a manner reasonably acceptable to Landlord and Tenant, Tenant may terminate this Lease upon 60 days' written notice to Landlord (but in no event later than 120 days following the date of such damage or destruction) and Tenant will, at its sole cost and expense, clean and clear the Leased Property of all debris, repair the site and install landscaping so that the Leased Property blends in reasonably well with the surroundings, and pay all remaining insurance proceeds to Landlord; and (c) if the Premises are substantially destroyed by fire or other casualty at any time during the last year of the Term such that Tenant may not reasonably operate the Premises for the Permitted Use, then Tenant may terminate this Lease by written notice given to Landlord within 60 days after the date of such damage or destruction, and Tenant will be discharged from responsibility to repair the damage, but Tenant will, at Tenant's sole cost and expense, clean and clear the Leased Property of all debris, repair the site and install landscaping so that the Leased Property blends in reasonably well with the surroundings, and pay all remaining insurance proceeds to Landlord.

10.3.2. No Base Rent or Additional Rent shall abate as a result of casualty damage or during the period of any repair or restoration unless this Lease is terminated. Tenant shall continue the operation of its business on the Premises during any period of repair or restoration to the extent reasonably practicable from the standpoint of prudent business management. Tenant shall not be entitled to any compensation or damages from Landlord for loss in the use of the whole or any part of the Premises or any inconvenience or annoyance occasioned by any damage, destruction, repair or restoration.

10.4. Performance of Work by Landlord. If Landlord shall perform any construction work at the request of Tenant or pursuant to Section 13.4, or if Tenant is required to pay Landlord for any construction work, then the cost of such work together with a fee to Landlord equal to ten percent (10%) of the cost of such work shall be payable by Tenant to Landlord within 30 days after Landlord's demand, as Additional Rent.

10.5. Miscellaneous. Upon completion of construction and prior to the time when Tenant opens for business in the Premises, both initially and subsequently after any temporary closure after casualty damage or permitted remodeling, Tenant shall not be permitted to, and shall not, open for business until the following requirements shall be satisfied: (a) Tenant has delivered to Landlord all insurance policies and mechanics' lien waivers as required by this Lease; (b) Landlord has inspected the Premises to determine whether all of Tenant's Work in the Premises is complete in accordance with the requirements of this Lease; and (c) Tenant has paid Landlord all Rent which has then accrued under this Lease. No approval by Landlord under this Lease shall make Landlord responsible for the condition of the Premises or constitute a representation by Landlord of compliance with any applicable requirements or constitute a waiver of any rights and remedies that Landlord may have under this Lease or at law or in equity. If Tenant opens the Premises in violation of the requirements of this Section, such action by Tenant shall constitute a material Event of Default under this Lease.

11. **Liens.** Nothing contained in this Lease shall be deemed or construed in any way as constituting the approval, consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer, materialman, supplier, architect, engineer or other third party for the performance of any labor or the furnishing of any materials or services for or in connection with the Leased Property, the Premises, the Project or any part thereof. To the fullest extent permitted by applicable law, notice is hereby given that Landlord shall not be liable for any labor or materials or services furnished or to be furnished to Tenant upon credit or otherwise, and that no mechanic's or other lien for any such labor, materials or service shall attach to or affect the fee or reversionary or other estate or interest of Landlord in the Property, the Premises, the Project or in this Lease. Tenant shall do all things necessary to prevent the filing of any mechanics', suppliers' or other lien against the Leased Property, the Premises, the Project, the Project Property or any part thereof by reason of work, labor, services or materials supplied or claimed to have been supplied to Tenant. If any lien shall at any time be filed against the Leased Property, the Premises, the Project, the Project Property or any part thereof, Tenant shall cause the lien to be discharged of record within 10 days after the date of filing of the lien. If Tenant shall fail to timely discharge such lien, such event shall constitute an Event of Default under this Lease and Landlord may exercise all rights and remedies under this Lease, including, without limitation, the remedies under Section 13.2 and the right of self-help under Section 13.4 to pay and discharge such lien at Tenant's cost and expense.

12. **Insurance and Indemnity.**

12.1. Tenant's Insurance. On or prior to the Effective Date, and continuing throughout the Term of this Lease, Tenant shall carry and maintain, at its sole cost and expense, the types of insurance, in the amounts specified and in the form as follows:

12.1.1. Commercial General Liability Insurance covering the Premises and Tenant's use thereof against claims for bodily injury or death, personal injury and property damage occurring upon, in or about the Premises regardless of when such claims may be made. Such insurance shall have a combined single limit of at least \$2,000,000 per occurrence and \$4,000,000 in the aggregate. The insurance coverage required under this subparagraph shall include coverage for liability hazards as defined in the policy forms and endorsements for premises and operations liability, per project and aggregate endorsements, personal injury liability, broad form property damage liability

and contractual liability arising out of this Lease. Landlord shall be an additional insured on a primary and non-contributory basis; the policy shall also include a waiver of subrogation waiving rights of subrogation against Landlord and any indemnified party under this Lease. If required by Landlord from time to time, acting in accordance with its insurance advisors, Tenant shall increase the limits of its commercial general public liability insurance to commercially reasonable amounts.

12.1.2. Statutory Workers' Compensation Insurance to comply with Applicable Law and Employer's Liability Insurance with limits of not less than \$2,000,000 for bodily injury by accident or disease. This policy shall include a waiver of subrogation waiving rights of subrogation against Landlord and any indemnified party under this Lease.

12.1.3. Special Causes of Loss Property Insurance covering Tenant's furniture, fixtures, merchandise and personal property in, on or about the Premises, and all leasehold improvements to the Premises specifically including any heating and cooling facilities serving the Premises which may be located outside the Premises. Such insurance (A) shall be written on a replacement cost basis in an amount at least equal to 100% of the replacement cost of the insured property, subject to reasonable deductibles approved by Landlord; (B) shall provide protection against perils that are covered under the Special Causes of Loss insurance form, naming Landlord and such other parties as Landlord may reasonably determine as additional loss payees as their interests may appear; and (C) business income with extra expense insurance (ISO form CP 00 30, or equivalent acceptable to Landlord) in an amount reasonably acceptable to Landlord but not less than 12 months of Rent. Tenant's obligation to provide insurance pursuant to this subparagraph shall apply to all improvements and fixtures described herein, notwithstanding that some or all of such improvements and fixtures may have been installed by Tenant, Landlord, a prior Tenant or any other party at any time before or after the delivery of the Premises to Tenant.

12.1.4. Business Auto and Truckers Policy with minimum limits of \$1,000,000 per accident including coverage for the loading and unloading of trailers, and include Landlord and any indemnified party under this Lease as additional insureds. This policy shall include a waiver of subrogation waiving rights of subrogation against Landlord and any indemnified party under this Lease.

12.1.5. Umbrella and/or Excess insurance with minimum policy limits of \$20,000,000 per occurrence and in the aggregate on a per location basis. Policy limits required can be met with any combination of primary, umbrella or excess policies of insurance.

12.1.6. Premises Pollution Legal Liability Insurance with an annual limit of not less than \$2,000,000 per pollution incident and \$2,000,000 policy aggregate, which coverage shall be maintained continuously during the Term and continue for a period of three (3) years after the expiration of the Term of this Lease. If such policy contains a retroactive date, such date shall be prior to the Effective Date. This policy shall cover liability arising out of Tenant's operations and include coverage for on and off-site remediation costs, third-party bodily injury and property damage, associated legal defense, and non-owned disposal site liability.

12.2. Landlord's Property Insurance. Landlord shall obtain and keep in force during the Term the types of insurance, in the amounts specified and in the form as follows (collectively, the "**Property Insurance**"):

12.2.1. Commercial General Liability insurance written on an occurrence basis insuring Landlord against any liability arising out of the ownership, use, occupancy, or maintenance of the Project, including the Common Areas. Such insurance shall have a combined single limit of

liability of at least \$2,000,000.

12.2.2. A policy or policies of insurance covering loss or damage to the Premises, in the amount of the full replacement value thereof, exclusive of footings and foundations, providing protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, and special extended perils (special form), including plate glass coverage. Tenant understands and agrees that the insurance described in this Section 12.2.2 will not cover Tenant's personal property, merchandise, stock in trade, trade fixtures or equipment in or about the Premises.

12.2.3. Such other policies as Landlord may determine from time to time.

12.3. General Insurance Requirements. Insurance required hereunder shall be in companies rated "A-XII" or better by AM Best Co., in Best's Key guide. On or prior to the Effective Date, Tenant shall deliver to Landlord copies of policies of liability insurance required under Section 12.1 or at Landlord's election, certificates with endorsements evidencing the existence and amounts of such insurance, and naming Landlord, any indemnified party under this Lease and such other parties as Landlord may require, as additional insureds on a primary non-contributory basis thereunder. All such policies and certificates of insurance shall be on forms reasonably acceptable to Landlord and shall state explicitly that such insurance shall not be cancelable or subject to reduction of coverage or other modification except upon at least 30 days' advance written notice by the insurer to Landlord. All deductible amounts in the insurance required to be carried by Tenant hereunder shall be subject to Landlord's reasonable approval. Tenant shall furnish Landlord with renewals or "binders" thereof, or Landlord may order such insurance and charge the cost thereof to Tenant, which amount shall be payable by Tenant upon demand. Tenant shall not do or permit to be done anything which shall invalidate the insurance policies referred to in Section 12.2. Either party may provide any required insurance under a so-called blanket policy or policies covering other parties and locations and may maintain the required coverage by a so-called umbrella policy or policies, so long as the required coverage is not thereby diminished. Landlord's cost for maintaining the Property Insurance shall be reimbursed by Tenant as part of Tenant's Share of Costs.

12.4. Waiver of Subrogation. Notwithstanding any other provision in this Lease to the contrary, Tenant and Landlord each hereby waives any and all rights of recovery against the other, or against the officers, partners, employees, members, managers, agents, and representatives of the other, for loss of or damage to such waiving party or its property or the property of others under its control, where such loss or damage is insured against and actually covered (or where such loss or damage is required hereunder to be insured against and if so insured would have been covered) under any property insurance policy in force at the time of such loss or damage, but such waiver extends only to the extent of the actual insurance coverage or the coverage that would have applied if the insurance that is required hereunder had been obtained. Tenant and Landlord shall, upon obtaining the policies of insurance required under this Lease, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.

12.5. Indemnity. Tenant shall indemnify, defend and hold harmless Landlord from and against any and all claims arising from Tenant's use of the Leased Property, the Premises, from the conduct of Tenant's business or from any activity, work, or things done, permitted, or suffered by Tenant in or about the Leased Property, the Premises or elsewhere, and shall further indemnify, defend and hold harmless Landlord from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease or arising from any negligence of Tenant, or any of the Tenant's agents, contractors, sublessees, invitees or employees, and from and against all costs, attorneys' fees, expenses, and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon, except to the extent occurring as a result of the sole

gross negligence or willful misconduct of the Landlord or its employees, agents or contractors. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons, in, upon, or about the Leased Property and the Premises arising from any cause other than the sole gross negligence or willful misconduct of the Landlord or its employees, agents or contractors, and Tenant hereby waives all claims in respect thereof against Landlord. Without limiting the generality of the foregoing, Tenant acknowledges and agrees that the decision as to whether to include dock locks, dock restraints or other safety-related equipment, fixtures or improvements in any building or elsewhere in the Premises or Project, shall solely be the responsibility of Tenant, and Tenant shall indemnify, defend and hold harmless Landlord from and against any and all claims, damages, causes of action, demands, penalties, costs, liabilities, losses, and expenses (including reasonable attorneys' fees and expenses at the trial and appellate levels) resulting from actual or threatened claims by third parties occasioned by injuries to any person and damage to, or theft or loss of, property occurring in or about the Premises, any building or the Project to the extent caused or alleged to be caused by the failure of any such safety-related equipment, fixtures or improvements to be installed or maintained at the Premises, any building or the Project.

12.6. Exemption of Landlord from Liability.

12.6.1. Except to the extent occurring as a result of the gross negligence or willful misconduct of the Landlord or its employees, agents or contractors, Tenant hereby agrees that Landlord and its agents shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the goods, wares, merchandise, equipment or other property of Tenant, Tenant's employees, invitees, customers, or any other person in or about the Premises, nor shall Landlord be liable for injury to the person of Tenant, Tenant's employees, agents or contractors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction, or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or light fixtures, or from any other cause whether said damage or injury results from conditions arising upon the Premises or upon other portions of any building, or from other portions of the Premises, or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant.

12.6.2. No Board members, supervisors, employees, agents, contractors or other individual affiliated with Landlord shall be subject to personal liability with respect to any of the covenants or conditions of this Lease. Tenant shall look solely to the equity of the Landlord in the Leased Property, and the rents, issues and profits derived therefrom, and to no other assets of Landlord, for the satisfaction of the remedies of Tenant in the event of a breach by the Landlord. Tenant will not seek recourse against any Board member, supervisor, employee, agent, contractor or other individual affiliated with Landlord or any of their personal assets for such satisfaction.

13. **Default/Termination.** Either party may present written notice of default or non-performance to the other party.

13.1. Tenant Default. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Tenant (each an "**Event of Default**"):

13.1.1. failure to pay Base Rent, Additional Rent or other sum required under this Lease within three (3) days after its due date;

13.1.2. failure to furnish any statement required under this Lease within 10 days after its due date;

13.1.3. failure to maintain any insurance required under this Lease; (iv) abandonment or cessation of operation of the Premises for the Permitted Use for seven (7) or more consecutive days;

13.1.4. the assignment, mortgaging or encumbrance of all or any portion of Tenant's interest in, to or under this Lease or in or to the Premises without Landlord's prior written consent, or the sublease of all or any portion of the Premises in violation of this Lease;

13.1.5. causing or failure to prevent the recordation of any lien or other encumbrances against the Leased Property, the Premises, the Project Property or any portion thereof;

13.1.6. Tenant's making of any general assignment or general arrangement for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within 60 days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within 30 days; or the attachment, execution, or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within 30 days;

13.1.7. any default in any other obligation of Tenant under this Lease where such default is not remedied within 15 days after written notice of the default by Landlord or its agent; except that, if any non-monetary default shall reasonably require more than 15 days to cure, Tenant shall be allowed such longer period, not to exceed 30 days from the date of Landlord's default notice to Tenant, as is necessary to effect such cure, so long as Tenant's efforts to cure are commenced within the initial 15-day period and are diligently pursued to completion;

13.1.8. any guarantor or indemnitor of this Lease, dies, dissolves (including, without limitation, administrative dissolution), revokes, or otherwise terminates, or purports to revoke or otherwise terminate (by operation of law or otherwise), any guaranties or indemnities, including, without limitation the Environmental Indemnity, under this Lease.

13.2. Remedies. At any time following the occurrence of an Event of Default, with or without notice or demand and without limiting Landlord in the exercise of any other right or remedy which Landlord may have by reason of such default or breach, Landlord may:

13.2.1. Terminate this Lease by any lawful means, in which case Tenant shall immediately surrender possession of the Premises to Landlord. In such event, Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, the cost of recovering possession of the Premises; expenses of reletting, including necessary completion, renovation and alteration of the Premises, reasonable attorneys' fees, and any real estate commission actually paid; the "worth at the time of award" established by the court having jurisdiction thereof of the amount by which the unpaid Rent and other charges due for the balance of the Term after the time of Tenant's default exceeds the amount of such rental loss for the same period that Tenant proves by clear and convincing evidence could have been reasonably avoided; and that portion of the leasing commission paid by Landlord applicable to the unexpired term of this Lease. For purposes of this Section 13.2.1, "worth at the time of award" of the amount referred to above shall be computed by discounting each amount by a rate equal to the Prime Rate at the time of the award, but in no event more than an annual rate of seven percent (7%).

13.2.2. Re-enter the Premises, without terminating this Lease, and remove any property from the Premises, in which case Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the Rent and all other amounts due hereunder as they become due. No re-entry or taking possession of the Premises by Landlord pursuant to this Section 13.2.2 or other action on Landlord's part shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. Landlord's election not to terminate this Lease pursuant to this Section 13.2.2 or pursuant to any other provision of this Lease shall not preclude Landlord from subsequently electing to terminate this Lease or pursuing any of its other remedies.

13.2.3. Maintain Tenant's right to possession, in which case this Lease shall continue in effect, whether or not Tenant shall have abandoned the Leased Property or the Premises. In such event Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the Rent and all other amounts due hereunder as they become due.

13.2.4. Immediately terminate the Tenant Purchase Option, with or without terminating the Lease;

13.2.5. Pursue any other remedy, at law or in equity, now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease or the termination of Tenant's right to possession shall not relieve Tenant from liability under any indemnity provision of this Lease as to matters occurring or accruing during the Term hereof or by reason of Tenant's occupancy of the Premises.

Landlord's remedies set forth in this Lease shall be deemed cumulative and not exclusive. Notwithstanding anything to the contrary set forth in this Lease, Tenant's failure to perform any obligation under this Lease two (2) or more times in any 12-month period shall constitute an immediate default (without the expiration of any applicable grace or notice or cure period), and Landlord thereupon may exercise any remedy set forth in this Section 13.2 without affording Tenant any opportunity to cure such default.

13.3. Landlord Default. Landlord shall in no event be in default in the performance of any of its obligations in this Lease contained unless and until Landlord shall have failed to perform such obligation within 30 days, or such additional time as is reasonably required to correct any such default, after notice by Tenant to Landlord properly specifying in what manner Landlord has failed to perform any such obligation. In no event shall Landlord be liable for any punitive or consequential damages or for any criminal acts of third parties.

13.4. Self-Help. If Tenant shall default in the performance of any Lease covenant, Landlord may, at Landlord's option after the expiration of any applicable notice and cure period, perform the covenant for the account of Tenant, and all costs and expenses incurred by Landlord, plus interest thereon at the Default Rate from the date paid by Landlord to the date of payment thereof by Tenant, shall be immediately paid by Tenant to Landlord as Additional Rent. The taking of such action by Landlord shall not be considered as a cure of such Default by Tenant or to prevent Landlord from pursuing any remedy it is otherwise entitled to in connection with such Default.

14. **Assignment and Transfers.**

14.1. General Prohibition. Tenant shall not voluntarily, involuntarily or by operation of law, assign, mortgage or otherwise encumber, all or any part of Tenant's interest in this Lease, the Leased Property or in the Premises or sublet the whole or any part of the Leased Property, the Premises or license

concessions or lease portions of or within the Leased Property or the Premises or allow any other person to occupy any portion of the Leased Property or Premises (any and all of which are herein referred to as a “**Transfer**”), without, in each and every case, the prior written consent of Landlord which may be given or withheld in its sole and absolute discretion. Any Transfer which is made without prior written consent of Landlord shall be null and void and of no force or effect whatsoever. If this Lease or the Premises or any portion thereof or interest therein is Transferred, Landlord may collect Rent from the transferee and shall not be deemed to be a waiver of Landlord’s rights to enforce Tenant’s covenants or the covenants or the acceptance of the Transferee as tenant, or a release of Tenant from the performance of any obligations or covenants on the part of Tenant to be performed. Notwithstanding any Transfer, Tenant or any guarantor or indemnitor of this Lease shall remain fully liable for the performance of all terms, covenants and provisions of this Lease. Any violation of this Lease by any Transferee shall be deemed to be a violation of this Lease by Tenant.

14.2. Corporate or Partnership Transactions. If Tenant or the guarantor or indemnitor of this Lease, if any, is a corporation the stock of which is not traded on any national securities exchange or nationally in the National Association of Securities Dealers over the counter market, then the merger, consolidation or reorganization of such corporation and/or the sale, issuance, or transfer, cumulatively or in one transaction, of any voting stock, by Tenant or the guarantor of this Lease or the stockholders of record of either as of the date of this Lease, which results in a change in the voting control of Tenant or the guarantor or indemnitor of this Lease shall constitute a Transfer of this Lease for all purposes. If Tenant or the guarantor or indemnitor of this Lease, if any, is a joint venture, partnership, limited liability company, other association or entity, then for purposes of this Lease, the sale, issuance or transfer, cumulatively or in one transaction, of either voting control of or a twenty-five percent (25%) or greater interest, or the termination of any joint venture, partnership, limited liability company, other association or entity, shall constitute a Transfer.

14.3. Miscellaneous Provisions. No Transfer, and no indulgence granted by Landlord to any assignee or sublessee, shall in any way impair the continuing primary liability (which after an assignment shall be joint and several with the assignee) of Tenant hereunder, and no approval in a particular instance shall be deemed to be a waiver of the obligation to obtain Landlord’s approval in any other case. Each assignee shall execute a written assumption agreement by which the assignee assumes all of the obligations of the “tenant” under this Lease for Landlord’s benefit. If for any approved assignment or sublease Tenant receives rent or other consideration, either initially or over the term of the assignment or sublease, in excess of the Rent required hereunder, or in case of a sublease of part of the Premises, in excess of the portion of such Rent fairly allocable to such part, after appropriate adjustments to assure that all other payments called for hereunder are appropriately taken into account, to pay to Landlord as Additional Rent the full excess of each such payment of rent or other consideration received by Tenant promptly after its receipt.

15. **Notices.** Except as otherwise specifically provided, all notices, requests, demands and other communications hereunder must be given in writing and either: (i) personally served on the party to whom it is given; (ii) mailed by registered or certified mail, postage prepaid, return receipt requested; (iii) sent by a nationally recognized overnight courier service such as Federal Express; or (iv) sent by email transmission. All notices will be deemed delivered and received upon the earliest of: (a) actual receipt; (b) the third day after the day of mailing; (c) the next business day after the date of deposit with a nationally recognized overnight courier service; or (d) the business day that such notice is sent by email, or if not sent on a business day, the next business day; provided, however, the sender of such email does not receive a response indicating the message was rejected or otherwise undeliverable. Any notices received on a Saturday, Sunday, or on a holiday in the State of Arizona or the United States will be deemed received on the next succeeding business day. The designated address of each party will be:

If to Landlord: Pima County Administrator
130 West Congress, 10th Floor
Tucson, Arizona 85701
Attn: Carmine DeBonis
Email: Carmine.BeBonis@pima.gov

With a copy to: Pima County Attorney's Office
32 North Stone Avenue, Suite 2100
Tucson, Arizona 85701
Attn: Chief Civil Deputy Attorney
Email: Sam.Brown@pcao.pima.gov

If to Tenant: American Battery Factory Inc.
735 Auto Mall Drive
American Fork, UT 84003
Attn: CEO

With a copy to: American Battery Factory
735 Auto Mall Drive
American Fork, UT 84003
Attn: General Counsel

or such other address as that party, from time to time, may specify by notice to the other party given in the manner provided herein. The inability to deliver notice because of a changed address of which no notice was given, or the rejection or other refusal to accept any notice, will be deemed to be the effective receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept.

16. **Holding Over.** If Tenant remains in possession of the Leased Property, Premises or any part thereof after the expiration or earlier termination of the Term of this Lease, without the written consent of Landlord, such occupancy shall be a tenancy at sufferance, for which Tenant shall pay a Base Rent equal to twice the Base Rent in effect immediately prior to the expiration or termination of the Term, plus all other charges payable hereunder, and upon all the terms hereof applicable to such a tenancy at sufferance. If Tenant fails to surrender the Leased Property, the Premises or any portion thereof in a timely manner upon the expiration or earlier termination of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall indemnify and hold Landlord harmless from loss or liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any proposed new tenant related to such failure.

17. **Excuse for Non-Performance.** Each party hereto shall be excused from performing any obligation or undertaking provided in this Lease, except the obligations of Tenant to pay Rent due under the applicable provisions of this Lease, in the event and so long as, the performance of any such obligation is prevented or delayed, retarded or hindered by act of God, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strike, lockout, action of labor unions, order of government or civil or military or naval authorities, or any other cause whether similar or dissimilar to the foregoing not within the reasonable control of such party. Notwithstanding the foregoing, the lack of funds required to perform an act or to pay for the material, workmen or other items required for such action shall never be an excuse for non-payment and this Section shall not apply to extend the commencement of construction beyond the Construction Commencement Date or the completion of construction beyond the Construction Completion Date.

18. **Determination of Phase II and Phase III Parcels.** No later than December 31, 2023, Tenant and Landlord will mutually agree in writing on: (a) the number and location of contiguous acres of real property within the Project Property that will comprise the “**Phase II Parcel**”; and (b) the number and location of contiguous acres of real property within the Project Property that will comprise the “**Phase III Parcel**”.

19. **Tenant Purchase Option.**

19.1. Grant of Purchase Option. In consideration for the payment of the Option Payment by Tenant to Landlord upon execution of this Lease, Landlord hereby conditionally grants to Tenant the right and option to purchase the Project Property in accordance with the terms and conditions set forth in this Section 19 (the “**Tenant Purchase Option**”). Accordingly, this Lease also constitutes an option agreement between Landlord and Tenant for the purchase and sale of the Project Property.

19.2. Term of Tenant Purchase Option. The term of the Tenant Purchase Option and Tenant’s right to purchase the Project Property pursuant thereto shall commence on the Effective Date and shall automatically expire if not exercised on or before the Option Exercise Deadline, unless sooner terminated pursuant to the terms of Section 19.4.

19.3. Purchase Price; Calculation; Payment. The purchase price for the Project Property (the “**Purchase Price**”) pursuant to the Tenant Purchase Option shall be an amount equal to \$78,318.00 per gross acre of the Project Property as reflected on the Survey (as defined below). The Purchase Price shall be payable by Tenant as follows: (a) the Option Payment shall be credited against the Purchase Price, (b) to the extent not previously applied by Landlord pursuant to the terms of the Lease, the Security Deposit, or such portion thereof then on deposit with Landlord as of the Closing Date, shall be credited against the Purchase Price, and (c) subject to any adjustments provided for in this Section 19, on or before the Closing Date (as defined below), Tenant shall deposit into Escrow by wire transfer or other immediately available federal funds, the balance of the Purchase Price plus Tenant’s share of prorations and other Closing costs required in this Section 19 (collectively, the “**Closing Funds**”).

19.4. Tenant Purchase Option Conditions. Notwithstanding anything to the contrary set forth in this Section 19, the Tenant Purchase Option shall be expressly subject to and conditioned upon Tenant’s Work being Substantially Complete on or before the Construction Completion Date, Tenant timely satisfying the Phase I Employment Requirements and that no Event of Default by Tenant has occurred under this Lease or event which, with notice, the passage of time or both would constitute an Event of Default under this Lease as of the date of the Exercise Notice (as defined below). In the event the foregoing conditions are not satisfied, the Tenant Purchase Option will automatically terminate and be of no further force or effect, Landlord shall be entitled to retain the Option Payment and neither Landlord nor Tenant will have any further rights or obligations under this Section 19.

19.5. Exercise of Tenant Purchase Option; Survey. Subject to Tenant’s satisfaction of the requirements of this Section 19, Tenant may elect to purchase the entire Project Property by delivering written notice of such election (the “**Exercise Notice**”) to Landlord. Upon Landlord’s receipt of the Exercise Notice, Landlord and Tenant shall cause to be opened an escrow (the “**Escrow**”) for the purchase and sale of the Project Property with a title company or escrow agent located in the State of Arizona and mutually agreeable to Tenant and Landlord (“**Escrow Agent**”). As soon as practicable following (but in no event before) Tenant’s delivery of the Exercise Notice, Tenant shall cause to be performed, at Tenant’s sole cost and expense, an ALTA/NSPS land title survey of the Project Property (the “**Survey**”), which Survey shall be prepared by a registered land surveyor licensed and in good standing with the State of Arizona. The Survey be certified to Tenant and Landlord and shall include the gross acreage of the Project Property, which shall be used for purposes of calculating the Purchase Price.

Tenant shall promptly provide a copy of the Survey to Landlord and a copy to Escrow Agent.

19.6. Closing; Conveyance. The closing of the purchase and sale of the Project Property pursuant to the Tenant Purchase Option (the “**Closing**”) shall occur on the date that is 60 days after the date of the Exercise Notice (the “**Closing Date**”), or such other date as Tenant and Landlord may agree in writing. At the Closing, Landlord will convey to Tenant title to the Project Property by a duly executed and acknowledged Special Warranty Deed in the form attached hereto as Exhibit E (the “**Deed**”) and incorporated herein by reference, subject to all matters of record, including, without limitation the Project Property Restriction, all conditions reflected on the Survey and all conditions a physical inspection the Project Property would reveal.

19.7. Seller Closing Deliveries. On or before the Closing Date, Landlord shall deliver or cause to be delivered into Escrow the following:

19.7.1. An original executed and acknowledged Deed transferring the Project Property;

19.7.2. An original executed and acknowledged Project Property Restriction.

19.7.3. An original executed and acknowledged Landlord Option Agreement;

19.7.4. An original executed and acknowledged Memorandum of Landlord Option;

19.7.5. Landlord’s original executed agreement terminating this Lease (the “**Lease Termination Agreement**”), which Lease Termination Agreement shall be in such form as Landlord may reasonably determine.

19.7.6. A non-foreign affidavit in the form required by Escrow Agent;

19.7.7. Such proof of Landlord’s authority or authorization to convey the Project Property as may be required by Escrow Agent, including, without limitation, proof of the power and authority of the individual(s) executing or delivering any instruments, documents, or certificates on behalf of Landlord to act for and bind Landlord; and

19.7.8. Such other documents and instruments, signed and properly acknowledged (if appropriate) by Landlord, as may be reasonably required by Escrow Agent or otherwise in order to effectuate the provisions of this Section 19 and the Closing of the transaction contemplated herein.

19.8. Buyer Closing Deliveries. On or before the Closing Date, Tenant shall deliver the or cause to be delivered into Escrow the following:

19.8.1. Immediately available U.S. funds in the amount of the Closing Funds;

19.8.2. An original executed and acknowledged Landlord Option Agreement;

19.8.3. An original executed and acknowledged Memorandum of Landlord Option;

19.8.4. Tenant’s original executed Lease Termination Agreement

19.8.5. Such proof of Tenant’s authority or authorization to acquire the Project Property as may be required by Escrow Agent, including, without limitation, proof of the power and authority of the individual(s) executing or delivering any instruments, documents, or certificates

on behalf of Tenant to act for and bind Tenant; and

19.8.6. Such other documents and instruments, signed and properly acknowledged (if appropriate) by Tenant, as may be reasonably required by Escrow Agent or otherwise in order to effectuate the provisions of this Section 19 and the Closing of the transaction contemplated herein.

19.9. Closing Costs. Property taxes will not be prorated as the Project Property is not taxed under the ownership of Landlord. At the Closing, Tenant shall pay the cost of any title insurance policy Tenant elects to obtain and the cost of all endorsements or additional coverage related thereto. Landlord and Tenant shall each bear the costs of its own legal counsel. All escrow fees and costs, and all recording costs, shall be divided equally between Tenant and Landlord. Any other costs associated with the Closing will be borne by the parties in accordance with custom in Pima County, Arizona, as determined by Escrow Agent, unless otherwise specified in this Section 19.

20. **Cancellation for Conflict of Interest**. This Lease may be cancelled for conflict of interest pursuant to A.R.S. § 38-511, the provisions of which are incorporated in this Lease by this reference.

21. **Non-Discrimination**. Tenant will comply with applicable local, state and federal laws, rules and regulations concerning equal employment opportunity and non-discrimination; and with all provisions and requirements of Arizona Executive Order 75-5, as amended by Executive Order 2009-09, which is incorporated into this Lease by this reference.

22. **Non-Appropriation**. Landlord's performance of its obligations under this Lease may be dependent upon the appropriation of funds by the Board or the availability of funding from other sources. Should the Board fail to appropriate the necessary funds, or if funding is otherwise not available to Landlord for the purpose of fulfilling Landlord's obligations under this Lease, Landlord will be relieved of that obligation and Landlord or Tenant may terminate this Lease, in which case neither Landlord nor Tenant shall have any further rights or obligations hereunder other than those which specifically survive the termination of this Lease.

23. **Miscellaneous**.

23.1. Estoppel Certificate; Financial Statements. Upon 10 days' prior written request by Landlord, Tenant shall deliver to Landlord the following:

23.1.1. A balance sheet, income statement, statement of changes in equity, statement of consolidated cash flows and such other financial information as may be reasonably request requested. Non-audited financial statements shall be certified to Landlord and Landlord's lender, if applicable, as being accurate and complete in all material respects (the "**Certified Statements**"). The Certified Statements shall be signed by an officer, authorized agent, partner, manager or managing member of the Tenant.

23.1.2. A statement certifying (a) that this Lease is unmodified and in full force and effect, or if there has been any modification thereof that this Lease is in full force and effect as modified and stating the nature of the modification; (b) that Landlord is not in default under this Lease and no event has occurred which, after notice or expiration of time or both, would constitute a default (or if any such default or event exists, the specific nature and extent thereof); (c) the dates to which the Base Rent, Additional Rent and other charges have been paid in advance, if any; and (d) any other information concerning this Lease or the Premises which Landlord may reasonably request (the "**Estoppel Certificate**").

23.1.3. Any financial information and Estoppel Certificate delivered pursuant to this Section 23.1 may be provided to any prospective purchaser, holder or prospective holder of any encumbrance and relied upon by Landlord, any prospective purchaser, holder or prospective holder of any encumbrance. If Tenant fails to deliver the Estoppel Certificate required by this Section within 10 days after Landlord has requested such statements, such failure shall constitute an Event of Default and, in addition to Landlord's remedies hereunder, Tenant shall be deemed to have certified that this Lease is in full force and effect, that Landlord is not in default under this Lease and all other matters described in the Estoppel Certificate.

23.2. Landlord's Liability. The term "Landlord" as used herein shall mean only the owner or owners at the time in question of the fee title of the Leased Property. In the event of any transfer of such title or interest, Landlord herein named (and in case of any subsequent transfers the then grantor) shall be released from and after the date of such transfer of all liability as respects Landlord's obligations thereafter to be performed, so long as any funds in the possession of Landlord or the then grantor at the time of such transfer, in which Tenant has an interest, shall be delivered to the grantee. The obligations contained in this Lease to be performed by Landlord shall, subject to the foregoing, be binding on Landlord's successors and assigns, only during their respective periods of ownership.

23.3. Severability. The invalidity of any provision of this Lease as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

23.4. Interest on Past-Due Obligations. Except as expressly herein provided, any amount due to Landlord not paid when due shall bear interest at the Default Rate from the date due. Payment of such interest shall not excuse or cure any default by Tenant under this Lease.

23.5. Time of Essence. Except as specifically otherwise set forth in this Lease, time is of the essence with respect to each and every obligation of Tenant hereunder.

23.6. Captions. Section and paragraph captions are not a part hereof.

23.7. Incorporation of Prior Agreements; Amendments. This Lease contains all agreements of the parties with respect to any matter mentioned herein and expressly supersedes and renders null and void any letter of intent that may have been previously executed between the parties relating to the Leased Property or the Premises. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification.

23.8. Persons. The word "person" and the word "persons", wherever used in this Lease, shall both include individuals, partnerships, firms, trusts, corporations, limited liability companies and/or any other form of business entity.

23.9. Remedies Not Exclusive. The various rights, options, elections, powers, and remedies of Landlord contained in this Lease shall be construed as cumulative and no one of them shall be exclusive of any of the others, or of any other legal and equitable remedy which Landlord might otherwise have in the event of breach or default in the terms hereof, and the exercise of one right or remedy by Landlord shall not impair its rights to any other right or remedy until all obligations imposed upon the other party have been fully performed.

23.10. No Partnership. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant, and neither the method of computation of

Rent nor any other provision contained in this Lease nor any acts of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

23.11. No Waiver. No waiver of any default hereunder shall be implied from any omission by either party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver, and then only for the time and to the extent therein stated. The acceptance by Landlord of Rent or other payments with knowledge of the breach of any of the covenants of this Lease by Tenant shall not be deemed a waiver of any such breach. One or more waivers of any breach of any covenant, term or condition of this Lease shall not be construed as a waiver of any subsequent breach of the same covenant term or condition. The consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent or approval to or of any subsequent similar acts by Tenant. To be effective, any express waiver must be in writing.

23.12. Lease Contains All Agreements. This Lease contain all conditions, covenants and agreements between Landlord and Tenant relating in any manner to the Project and to the rental, use and occupancy of the Premises and the other matters set forth in this Lease. No prior or contemporaneous agreement or understanding pertaining to the Project or the Premises shall be valid or of any force or effect, and the conditions, covenants and agreements of this Lease cannot be altered, changed, modified, or added to, except in writing signed by Landlord and Tenant. Landlord and Tenant intend that this Lease supersedes all such prior or contemporaneous agreements and that this Lease constitutes the final, exclusive and complete embodiment of their agreement. No representation, inducement, understanding or anything of any nature whatsoever, made, stated or represented on Landlord's behalf, either orally or in writing (except this Lease), has induced Tenant to enter into this Lease.

23.13. Brokers Landlord and Tenant each represent and warrant to the other that neither of them has employed or dealt with any broker, agent or finder in carrying on the negotiations relating to this Lease. In the event of a breach of the foregoing representation and warranty by a party (the "**Defaulting Party**"), the Defaulting Party shall indemnify and hold the other party harmless from and against any claim or claims, damages or expenses (including any claims for brokerage or other commissions asserted by any broker, agent, or finder fees) which may arise as a result of such breach.

23.14. Partial Invalidity. Any provision or provisions of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and the remaining provisions hereof shall nevertheless remain in full force and effect.

23.15. Other Agreements. Any default by Tenant under any instrument, undertaking or agreement executed by Tenant in favor of or with Landlord relating to this Lease or in the tenancy created hereby shall constitute a breach of this Lease and entitle Landlord to pursue each of all its rights and remedies hereunder and at law.

23.16. Waiver of Trial by Jury. To the extent permitted by law, Landlord and Tenant mutually waive trial by jury with respect to any action brought by either party under or in connection with this Lease, the Leased Property, the Premises and/or the Project.

23.17. Authority. If Tenant signs as a corporation, each of the persons executing this Lease on behalf of Tenant represents and warrants that Tenant is a duly organized and existing corporation, that Tenant has been and is qualified to do business in the State of Arizona, that the corporation has full right and authority to enter into this Lease, and that all persons signing on behalf of the corporation were authorized to do so by appropriate corporate actions. If Tenant signs as a partnership, limited liability company, trust, or other legal entity, each of the persons executing this Lease on behalf of Tenant

represents and warrants that Tenant has complied with all applicable laws, rules, and governmental regulations relative to its right to do business in the State of Arizona, that such entity has the full right and authority to enter into this Lease, and that all persons signing on behalf of the Tenant were authorized to do so by any and all necessary or appropriate partnership, limited liability company, trust, or other actions. Tenant agrees to provide to Landlord evidence of the foregoing items upon the execution of this Lease.

23.18. Attorneys' Fees and Legal Expenses. In any action or proceeding brought by either party against the other under this Lease, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, and other reasonable legal expenses and court costs incurred by such party in such action or proceeding as the court may find to be reasonable.

23.19. Exhibits. Each reference in this Lease or in any Exhibit to this Lease shall mean the Exhibits attached to this Lease, all of which are incorporated in this Lease by reference.

23.20. Choice of Law. This Lease shall be governed and construed in accordance with the laws of the State of Arizona, without regard to its principles of conflicts of laws. Landlord and Tenant hereby agree that the proper venue for any legal proceedings arising out of this Lease shall be Pima County, Arizona, and each party hereto consents to the jurisdiction of the state or federal courts located in Pima County, Arizona.

23.21. Environmental Indemnity. Simultaneously with the execution of this Lease and as an express condition of the effectiveness hereof, Tenant shall provide to Landlord an Environmental Indemnity Agreement in form and substance as set forth on Exhibit F attached hereto (the "**Environmental Indemnity**"), executed by Tenant.

23.22. Construction. This Lease will not be construed more strictly against one party hereto than against any other party hereto merely by virtue of the fact that it may have been prepared by counsel for one of the parties. Each party represents that it has had the opportunity to have its own legal counsel review and participate in the completion of this Lease.

23.23. Anti-Terrorism. Tenant represents, warrants and covenants that: (i) it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by an Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) it is not executing this Lease, directly or indirectly on behalf of, or instigating or facilitating this Lease, directly or indirectly on behalf of, any such person, group, entity, or nation. Tenant hereby agrees to defend, indemnify, and hold harmless Landlord from and against any and all claims, damages, losses, risks, liabilities, and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing representations, warranties and covenants.

23.24. Exhibits. The Exhibits referenced below are attached hereto and incorporated in this Lease by reference:

- | | |
|--------------|---|
| Exhibit A-I | Legal Description of the Project Property |
| Exhibit A-II | Depiction of the Project Property |
| Exhibit B-I | Legal Description of the Leased Property |
| Exhibit B-II | Depiction of the Leased Property |
| Exhibit C | Work Letter Agreement |
| Exhibit D | Raytheon Restrictions |

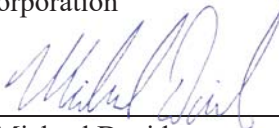
Exhibit E Form of Deed
Exhibit F Form of Landlord Option Agreement
Exhibit G Form of Environmental Indemnity Agreement

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, Landlord and Tenant have executed this Ground Lease Agreement as of the Effective Date.

TENANT:

AMERICAN BATTERY FACTORY, INC.,
a Utah corporation

By: 
Name: Michael Davidson
Its: COO

LANDLORD:

PIMA COUNTY,
a political subdivision of the State of Arizona


By: _____
Name: _____
Its: Chair of the Board of Supervisors

Date: _____

ATTEST:

Clerk of the Board of Supervisors

APPROVED AS TO CONTENT:



Director of Economic Development

APPROVED AS TO FORM:



Deputy County Attorney

EXHIBIT A-I

LEGAL DESCRIPTION OF THE PROJECT PROPERTY



EXHIBIT "A"
LEGAL DESCRIPTION

A portion of the South half of Section 31, Township 15 South, Range 14 East, Gila & Salt River Meridian, Pima County, Arizona, more particularly described as follows:

Parcel 1

All that portion of Parcels 1 and 2 as described in Docket 13527 at Page 129 (Sequence No. 20120890518) lying south and southwest of the south right of way line of Aerospace Parkway and south and southeast of the southeast right of way line of Raytheon Parkway as described in Establishment Proceeding No. 3029 Sequence 20182610078.

Parcel 2

The southeast quarter of said Section 31, excluding the south 30.00 feet as described in Sequence No. 20120890524 and excluding any portion lying within Cassini Drive (Rocketeer Drive), Raytheon Parkway and Aerospace Parkway as described in Establishment Proceeding No. 3029 Sequence 20182610078.

Parcel 3

The northeast quarter of the northeast quarter of the southwest quarter of said Section 31 as described in Sequence No. 20141770173, excluding any portion of Cassini Drive (Rocketeer Drive) as defined in Sequence No. 20172720480 and Establishment Proceeding No. 3029 Sequence 20182610078.

Parcel 4

All that portion of Government Lot 3 and the northwest quarter of the northeast quarter of the southwest quarter of said Section 31 as described in Docket 2374 at Page 224.

Parcel 5

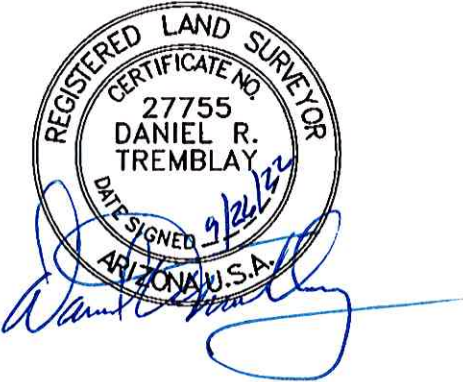
All of Parcels 1 and 2 as described in Docket 5006 at Page 730 excluding any portion as described in Docket 10738 at Page 1495.

Parcel 6

All that portion of Government Lot 4 and the southwest quarter of said Section 31 as described in Docket 5381 at Page 113.

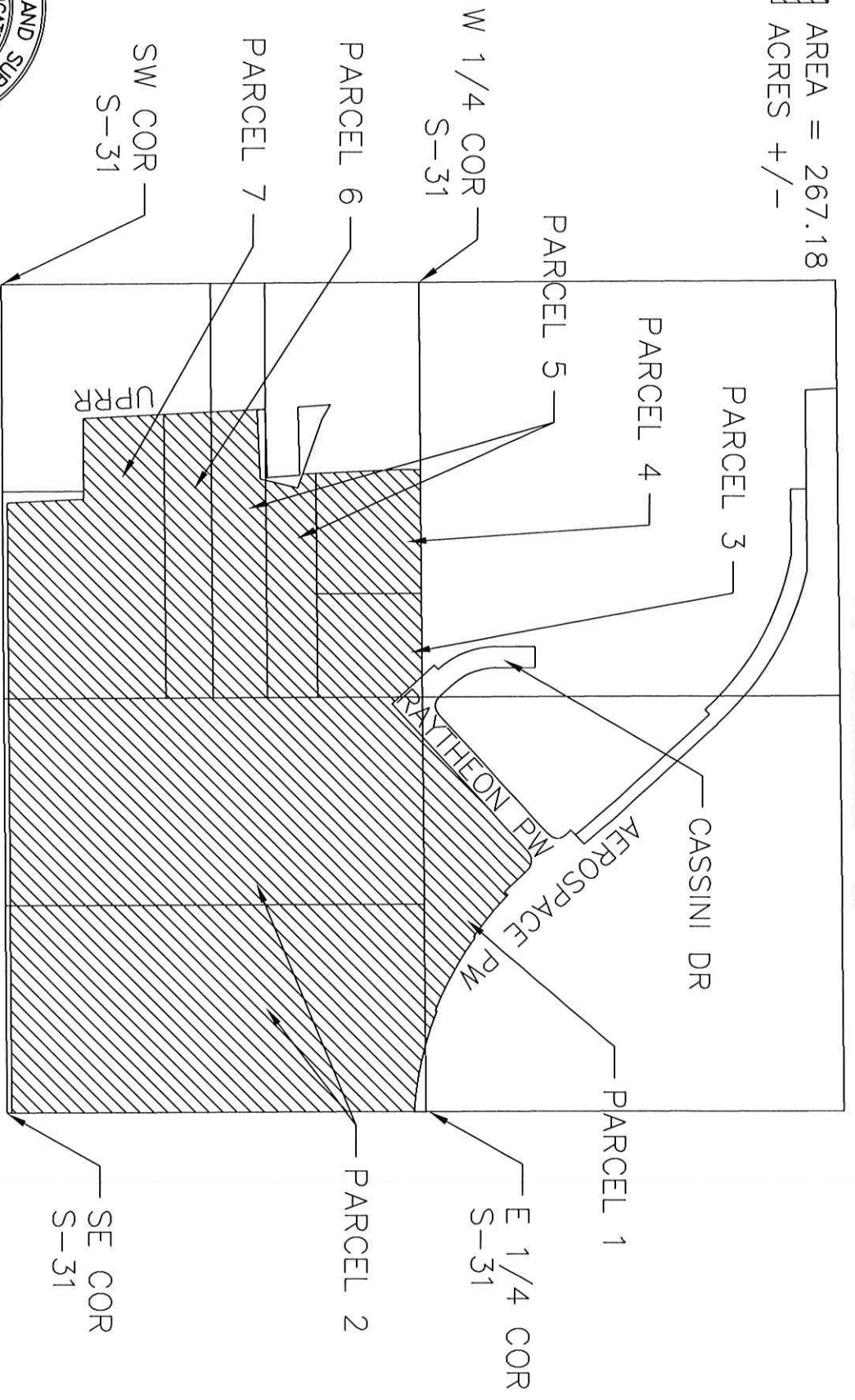
Parcel 7

All that portion of Government Lot 4 and the southwest quarter of said Section 31 as described in Docket 3743 at Page 200.



DEPICTION OF EXHIBIT "A"

AREA = 267.18
ACRES +/-



PIMA COUNTY SURVEY
 A PORTION OF SECTION 31,
 TOWNSHIP 15 SOUTH, RANGE 14 EAST, GILA AND SALT RIVER MERIDIAN,
 PIMA COUNTY, ARIZONA



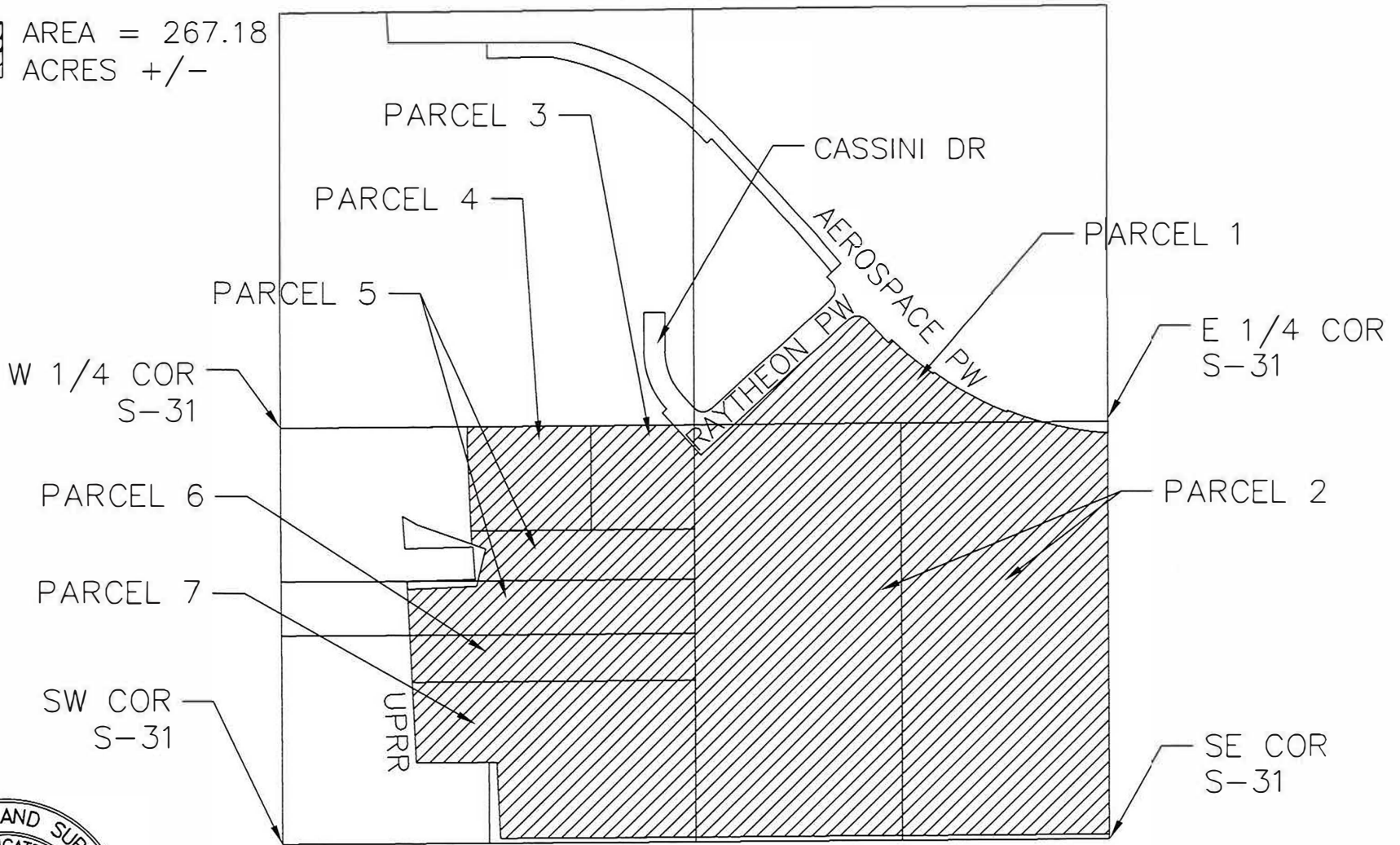
Scale: 1" = 1000' Date: 23 September 2022 Drawn By: All Sheet 3 of 3

EXHIBIT A-II

DEPICTION OF THE PROJECT PROPERTY

DEPICTION OF LARGER PARCEL

 AREA = 267.18
ACRES +/-



PIMA COUNTY SURVEY

A PORTION OF SECTION 31,
TOWNSHIP 15 SOUTH, RANGE 14 EAST, GILA AND SALT RIVER MERIDIAN,
PIMA COUNTY, ARIZONA

EXHIBIT B-1

LEGAL DESCRIPTION OF THE LEASED PROPERTY



Department of Transportation
Survey Section

29 November 2022

EXHIBIT "A"
LEGAL DESCRIPTION

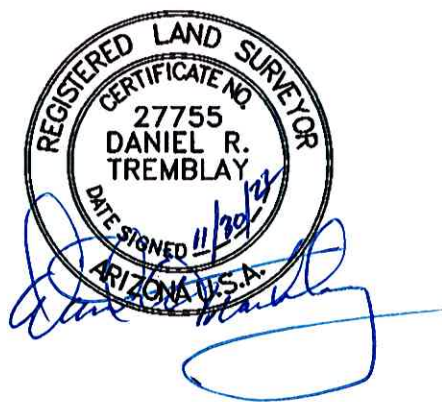
A portion of the East half of Section 31, Township 15 South, Range 14 East, Gila & Salt River Meridian, Pima County, Arizona, more particularly described as follows:

All that portion of Parcels 1 and 2 as described in Docket 13527 at Page 129 (Sequence No. 20120890518) lying south and southwest of the south right of way line of Aerospace Parkway and south and southeast of the southeast right of way line of Raytheon Parkway as described in Establishment Proceeding No. 3029 Sequence 20182610078.

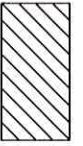
And,

A portion of Parcel 1 and Parcel 2 as described in Sequence No. 20120890524 more particularly described as follows:

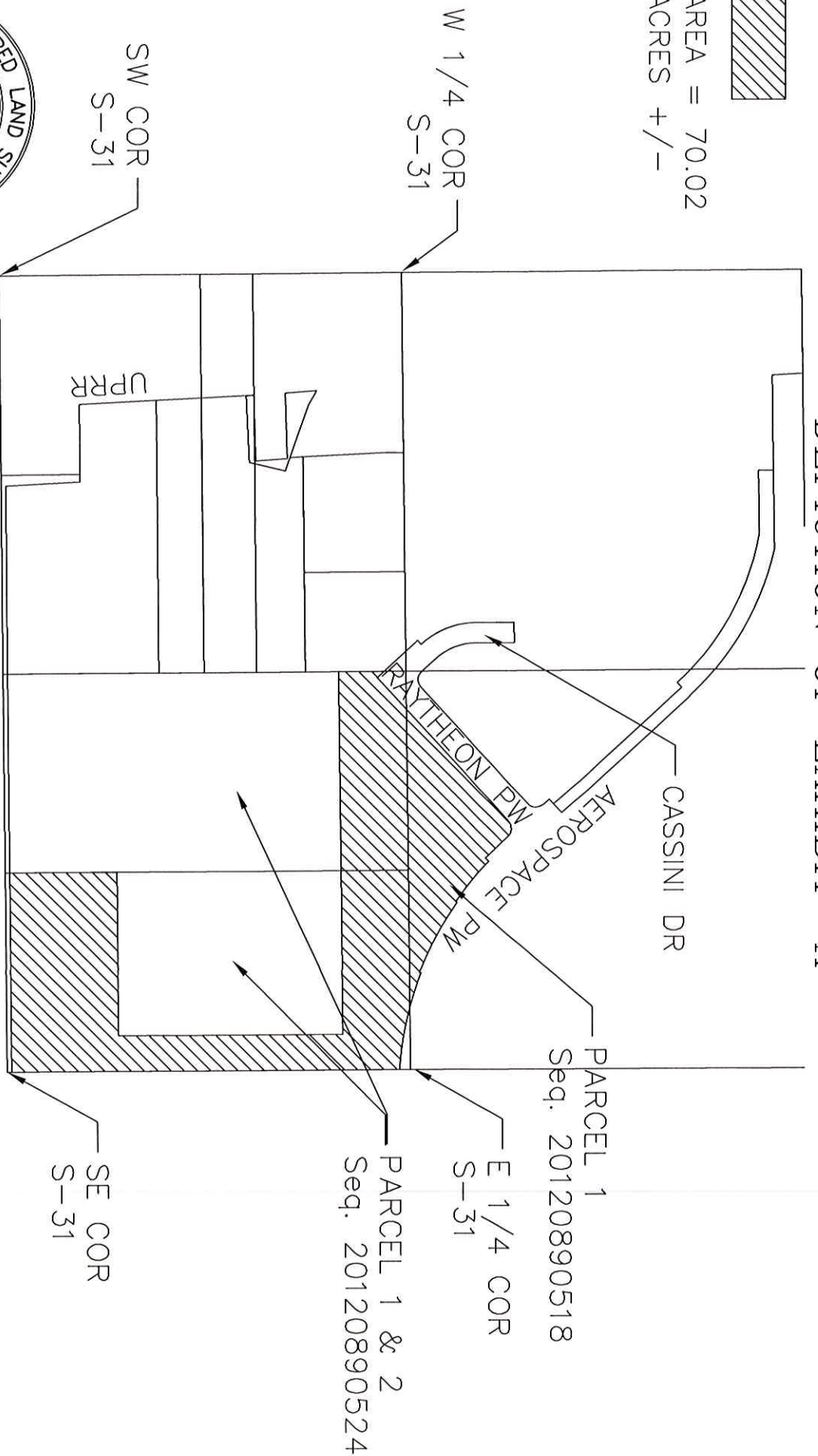
The north 447.14 feet of Parcel 1, and the north 447.14 feet, the south 710.00 feet and the east 237.33 feet of Parcel 2, excluding any portion lying within Cassini Drive (Rocketeer Drive), Raytheon Parkway and Aerospace Parkway as described in Establishment Proceeding No. 3029 Sequence 20182610078.



DEPICTION OF EXHIBIT "A"



AREA = 70.02
ACRES +/-



PIMA COUNTY SURVEY

A PORTION OF PARCEL 1, SEQ. 20120890518 AND PARCELS 1 & 2,
SEQ. 20120890524, WITHIN SECTION 31,
TOWNSHIP 15 SOUTH, RANGE 14 EAST, GILA AND SALT RIVER MERIDIAN,
PIMA COUNTY, ARIZONA



Scale: 1" = 1000'

Date: 29 November 2022

Drawn By: AJI

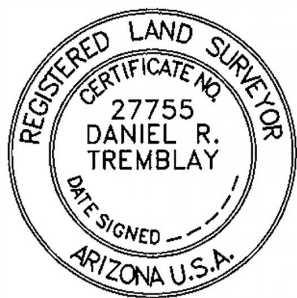
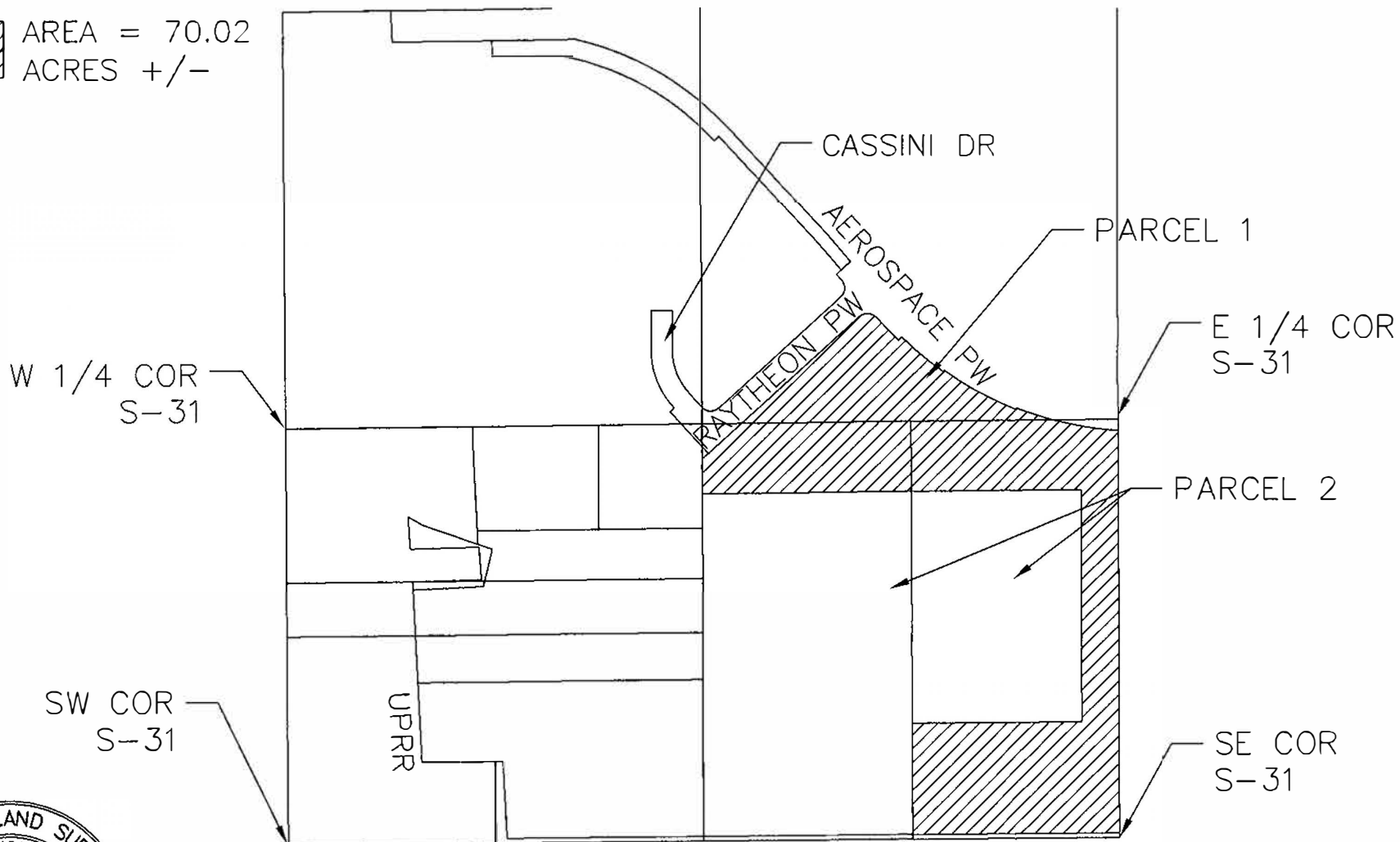
Sheet 2 of 2

EXHIBIT B-II

DEPICTION OF THE LEASED PROPERTY

DEPICTION OF PHASE I

 AREA = 70.02
ACRES +/-



PIMA COUNTY SURVEY

A PORTION OF SECTION 31,
TOWNSHIP 15 SOUTH, RANGE 14 EAST, GILA AND SALT RIVER MERIDIAN,
PIMA COUNTY, ARIZONA

Scale: 1" = 1000'

Date: 29 November 2022

Drawn By: AJI

Sheet 2 of 2

EXHIBIT C

WORK LETTER AGREEMENT

EXHIBIT C

WORK LETTER AGREEMENT

This Work Letter Agreement (this “**Work Letter**”) supplements that certain Ground Lease Agreement (the “**Lease**”) between **PIMA COUNTY**, a political subdivision of the State of Arizona, as Landlord, and **AMERICAN BATTERY FACTORY, INC.**, a Utah corporation, as Tenant, which relates to the Leased Property described in the Lease. All capitalized terms used and not specifically defined herein shall have the same meanings set forth in the Lease.

1. **Tenant’s Work.** TENANT SHALL BE SOLELY AND EXCLUSIVELY RESPONSIBLE FOR THE PERFORMANCE AND COMPLETION OF TENANT’S WORK, INCLUDING, WITHOUT LIMITATION, ALL COSTS RELATED THERETO. TENANT’S WORK SHALL BE PERFORMED IN ACCORDANCE WITH THE FOLLOWING TERMS AND CONDITIONS.

a. Tenant’s Contractor. Prior to commencement of construction of Tenant’s Work, Tenant shall enter into a construction contract with _____ (“**Contractor**”). Tenant shall be solely responsible for causing Tenant’s Work to be performed by Contractor and any and all subcontractors, suppliers and the like performing services or providing materials for Tenant and/or Contractor.

b. Contractor’s Agreement. All of Tenant’s contractors, including, without limitation, Contractor (as defined in the Work Letter) and any sub-contractors, constructing any alterations, improvements (including Tenant’s Work), additions, utility installations upon the Leased Property, the Premises or any portion thereof, or removing any improvements or fixtures from the Leased Property or the Premises shall sign a “Contractor’s Agreement” in the form attached hereto as Exhibit A, to be provided to Landlord prior to commencement of any such work. All such contractors and subcontractors shall be licensed, bonded and in good standing with the Arizona Registrar of Contractors. Contractor(s)/sub-contractor(s) who do not currently have a certificate of insurance on file with Landlord shall provide Landlord with a certificate of insurance in which the commercial general liability coverage shall not be less than \$1,000,000, combined single limit, naming Landlord and such additional parties as Landlord may determine as additional insureds. It shall be the obligation of Tenant to provide Landlord with a copy of its certificate of occupancy on or prior to the Construction Completion Date.

c. Construction Documents. No later than 120 days after the Effective Date, Tenant shall provide to Landlord for Landlord’s approval a draft set of complete construction plans, specifications and documents (the “**Draft Tenant Construction Documents**”) ready for permitting for the construction of Tenant’s Work. The Draft Tenant Construction Documents shall clearly indicate the location of all access points for the Leased Property, all utilities to be brought onto the Leased Property (including, without limitation, the location and dimensions of any easements proposed therefor), the size and location of all buildings to be constructed or located upon the Leased Property and all interior plans for such buildings and improvements, including partitions, fixtures, electrical components, mechanical components, and restroom(s) required for the finish of the Premises. Landlord shall have 30 days to respond to the Draft Tenant Construction Documents and either approve such documents or provide requested revisions thereto. If applicable, Tenant shall thereafter have 10 days to revise such Draft Tenant Construction Documents based on Landlord’s requested revisions. Upon Landlord and Tenant’s agreement on the Draft Tenant Construction Documents, Tenant shall submit to Landlord four (4) sets of complete construction plans, specification and documents (the “**Tenant Construction Documents**”) ready for permitting for the finish of the Premises. Prior to Tenant seeking construction permits for Tenant’s Work and/or construction, Tenant shall provide written notice thereof to Landlord and Landlord

will provide Tenant with a letter releasing Tenant to permitting or initiation of construction, as the case may be. All permits for Tenant's Work will be obtained by Tenant and its sole cost and expense. Notwithstanding the foregoing or anything to the contrary set forth in this Work Letter or the Lease, any easement which may be necessary or desirable for the performance of Tenant's Work or the operation of the Premises may only be granted by Landlord, which easements shall be upon such terms and conditions, benefit such third parties and be in such locations as Landlord may determine in its sole but reasonable discretion.

d. Construction Schedule. Prior to commencement of construction of any Tenant's Work, Tenant shall furnish to Landlord in writing a schedule setting forth projected completion dates and copies of all permits for the Improvements.

e. Changes in Tenant's Work. Should Tenant desire to make any changes to the Tenant Construction or should changes be required by any governmental agency (other than Landlord), such changes and the costs thereof shall be forwarded to Landlord for prompt approval (which approval shall not be unreasonably withheld, conditioned or delayed) prior to incorporation into Tenant's Work. After Landlord's approval of the changes and the costs thereof, the changes shall be incorporated into the Tenant Construction Documents by means of a change order. If any change in the Tenant Construction Documents allowed by the terms of this Section 1(e) is made, references to the Tenant Construction Documents and Tenant's Work in this Work Letter and the Lease shall be deemed to mean the Tenant Construction Documents and Tenant's Work as amended to include such change. If Tenant provided Landlord with notice of a change and cost as provided for herein and Landlord does not object to such changes within 10 days of Tenant providing such notice, Landlord will be deemed to have accepted such change.

f. Prosecution of Tenant's Work. Following Landlord's approval of the Tenant Construction Documents and Tenant's receipt of all permits required for Tenant's Work, Tenant shall direct Contractor and its subcontractors to immediately commence and diligently pursue construction of Tenant's Work. All Tenant's Work shall be performed diligently, in a first-class, workmanlike manner and in accordance with all applicable laws and recorded private covenants, conditions and restrictions affecting the Leased Property. Prior to commencing Tenant's Work, Tenant shall furnish Landlord with: (i) sufficient evidence that Tenant, Contractor and, as applicable, all subcontractors are carrying such insurance coverage as is required under the Lease and all other insurance reasonably required by Landlord or its lender; and (ii) a Contractor's agreement executed by each contractor, subcontractor, sub-subcontractor or other party performing any portion of Tenant's Work, including, without limitation, Contractor. Landlord shall have the right to enter the Leased Property at all times to inspect the work. Tenant shall ensure lien-free completion of the Tenant's Work, and Tenant shall comply with all provisions of the Lease regarding liens.

2. **General Building Requirements.**

a. Permits. Tenant will obtain all permits for Tenant's Work and a certificate of occupancy (or equivalent certificate) from the applicable governmental agencies or authorities for the Premises prior to occupancy.

b. Utilities. Tenant shall cause all water, sewage, natural gas, electricity, and other utility services for the Premises (collectively, "**Utilities**") to be separately metered. All costs of construction and providing Utilities to the Leased Property and the Premises shall be borne by Tenant.

c. Workmanship. All Tenant's Work and other work performed in connection with the Premises shall comply and be in accordance with local, state and national codes in effect at the time of such work. All work done by Tenant shall be executed in a good and workmanship like manner, using all

new, first quality materials.

d. County Inspection. Landlord and its representatives will, at all times and upon reasonable advance notice, be entitled to enter upon the Leased Property and the Premises and inspect Tenant's Work. This provision will not create any obligation on Landlord to conduct any such inspection, however.

EXHIBIT A
TO WORK LETTER

FORM OF CONTRACTOR'S AGREEMENT

CONTRACTOR'S AGREEMENT

The undersigned _____, a _____ (“**Contractor**”), hereby agrees to protect, defend, indemnify and hold harmless **PIMA COUNTY**, a political subdivision of the State of Arizona (“**Owner**”), and its successors-in-interest and assigns (collectively, the “**Indemnitees**”), the Indemnitees’ supervisors, board members, directors, representatives, employees, agents and affiliates, and each of their respective directors, officers, members, managers, partners, servants, employees, agents and independent contractors from and against any and all loss, cost, expense, liability, damage, claim and demand incurred in connection with, or arising from, any cause relating to the performance of any work done in, upon, about, over, under or through the Property (as defined below) by Contractor, or its agents, servants, or employees (collectively, “**Contractor’s Agents**”), including, without limiting the generality of the foregoing, any default in the observance or performance of any of the terms, covenants or conditions of the Contract (as defined below), any injury to persons, including death, or damage to property in connection with the performance of the Contract, or any acts, omissions or negligence of Contractor or Contractor’s Agents or any person claiming by, through or under Contractor or Contractor’s Agents. Contractor hereby agrees that Contractor shall, at Contractor’s sole cost and expense, defend any and all actions brought against any Indemnitee based upon any of the foregoing with attorneys reasonably acceptable to Owner and shall pay any and all costs and expenses incurred in such actions, including, without limitation, court costs and professional fees such as appraisers’, accountants’ and attorneys’ fees, and promptly discharge any judgments arising therefrom. This covenant by Contractor shall survive the expiration or sooner termination of the Contract and the Lease in connection with which Contractor performed the Contract. Indemnitees, their directors, officers, members, managers, partners, servants, employees, agents, affiliates and independent contractors, and each of their respective directors, officers, members, managers, partners, servants, employees, agents and independent contractors shall not be liable for any damage either to person, including death, or property, which is sustained by Contractor or Contractor’s Agents or by any other person or entity claiming through Contractor or Contractor’s Agents or by any other person or entity claiming through Contractor or Contractor’s Agents in connection with Contractor’s or Contractor’s Agents’ performance of the Contract or any subcontracted operations. Contractor hereby agrees to insert the provisions of the preceding sentence in any subcontract relating to the Owner’s property.

Contractor hereby further agrees that Contractor will perform the work and services in connection with the Contract as an independent contractor and not as an employee or agent of Indemnitees.

As used herein, the term “**Contract**” shall include any agreement, whether oral or written, relating to any work performed and/or required to be performed by Contractor or Contractor’s Agents with respect to the Property. As used herein, the term “**Property**” means and refers to that certain real property located within the Aerospace Research Campus in Tucson, Arizona, which is more particularly described in Exhibit A-I and generally depicted on Exhibit A-II attached hereto and incorporated herein by reference.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the undersigned has executed this Contractor's Agreement on the ____ day of _____, 20 ____.

CONTRACTOR:

[INSERT CONTRACTOR'S NAME AND STATE OF ORGANIZATION]

By: _____
Name: _____
Its: _____

[EXHIBITS A-I AND A-II TO BE ATTACHED]

EXHIBIT D

RAYTHEON RESTRICTIONS

EXHIBIT D

RAYTHEON RESTRICTIONS

- Buildings should not exceed 40 feet above ground level within in the first ½ mile of the Raytheon south property line. Any exceptions to this requirement require the review and approval by Raytheon.
- Facing walls of any structure shall not be within 15 degrees of perpendicularity to the west corner of Building 849.
- Inside corners of structures shall face to the south (away from Raytheon Facility).
- Site radio frequency emissions must be reviewed by Raytheon review team.
- No structures to be located within 200 to 400 feet of the current Hughes Access Road.
- Buildings should not exceed 40 feet above ground level or have any elevated activities with extended line of site into the Raytheon Facility.
- No Foreign Owned / Non-NATO country-based Businesses/Corporations.
- A&D Park facilities, parking lots, access points should not be fed off of South Access Road.
- No structures or activities within 1500 feet of ITF structures.

EXHIBIT E

FORM OF DEED

EXHIBIT E
FORM OF DEED

WHEN RECORDED, RETURN TO:

SPECIAL WARRANTY DEED

For the consideration of the sum of Ten Dollars (\$10.00) and other valuable considerations received, _____ (“**Grantor**”), does hereby convey to _____ (“**Grantee**”), that certain real property described in Exhibit “A” attached hereto and incorporated herein by reference, situated in Pima County, Arizona (the “**Real Property**”), together with (a) all appurtenances, hereditaments, easements, rights-of-way, reversions, remainders, development rights, water rights, well rights and air rights appurtenant to the Real Property, (b) any rights of Grantor in and to any adjoining strips or gores of property and any land lying within the bed of any adjoining street, (c) any other rights or privileges appurtenant to such Real Property or used in connection therewith, and (d) any improvements, fixtures, buildings or structures thereon (such property, together with the Real Property, to be collectively referred to herein as the “**Property**”);

SUBJECT TO: current taxes; patent reservations; all covenants, conditions, restrictions, reservations, easements and declarations or other matters of record; and conditions which a physical inspection or accurate survey of the Property would reveal.

Grantor hereby binds itself and its successors to warrant and defend the title to the Property, as against all acts of Grantor herein and no other, subject to the matters above set forth.

SIGNATURE PAGE FOLLOWS

[SIGNATURE BLOCK, NOTARY BLOCK AND LEGAL DESCRIPTION TO BE INCLUDED]

EXHIBIT F

FORM OF LANDLORD OPTION AGREEMENT

PURCHASE OPTION AGREEMENT

THIS PURCHASE OPTION AGREEMENT (this “**Agreement**”) is entered into effective as of _____, 20__ (the “**Effective Date**”), by and between **AMERICAN BATTERY FACTORY, INC.**, a Utah corporation (“**ABF**”), and **PIMA COUNTY**, a political subdivision of the State of Arizona (“**County**”). ABF and County each may be referred to as a “**Party**” or collectively as the “**Parties**”.

RECITALS

A. ABF is the owner of approximately 197 acres of real property, which is comprised of the “**Phase II Property**” more particularly described in Exhibit A-I attached hereto and incorporated herein by reference, and the “**Phase III Property**” more particularly described in Exhibit A-II attached hereto and incorporated herein by reference. For purposes of this Agreement, where no differentiation is required the Phase II Property and the Phase III Property may be referred to individually or collectively as the “**Property**”.

B. The Property is located Aerospace, Defense, and Technology Business and Research Park located in Tucson, Pima County, Arizona and is generally depicted on Exhibit A-II attached hereto.

C. ABF acquired the Property from County on _____, 20__, pursuant to the terms of that certain Ground Lease Agreement dated _____, 2022, by and between County, as landlord thereunder, and ABF, as tenant thereunder (the “**Lease**”).

D. ABF is currently in the process of developing the Property as a battery cell manufacturing facility containing at least 800,000 square feet of office space, warehouse space and manufacturing space for ABF’s battery cell development and manufacturing business operations (the “**Project**”). The Project is intended to result in significant direct and indirect benefits accruing to County and the general public, including, without limitation, the expansion of the employment base within Pima County, Arizona, including an estimated 1,000 employees of the Project and an additional approximately 1,000 indirect employees, and increased property values and increased tax revenues within Pima County, Arizona.

E. The Project’s anticipated economic activity and benefit to Pinal County, Arizona constituted material consideration for the County’s agreement to enter into the Lease, to sell the Property to ABF and to enter into this Agreement.

F. Based on the foregoing, ABF desires, among other things, to grant to County an exclusive option to purchase the Property, upon and subject to the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, ABF and County covenant and agree as follows:

1. **Recitals; Capitalized Terms.** The foregoing Recitals are true and correct and incorporated into this Agreement. Capitalized terms used herein and not specifically defined will have the meanings set forth in the Lease.
2. **Definitions.**

2.1. **Exercise Property:** all or portion of the undeveloped Property which the County elects to purchase from ABF pursuant to the Option.

2.2. **Fair Market Value:** the per acre fair market value of the undeveloped portion of Property as determined by an appraisal of such undeveloped portion of Property prepared for County, which shall be dated within six (6) months of the exercise of the Option.

2.3. **FTE Employees:** full-time equivalent employees determined in accordance with 26 C.F.R. 54.4980H-3.

2.4. **Net Acre or Net Acreage:** the gross acreage of the Phase II Property or Phase III Property, as the case may be, less any portion of such real property which is subject to existing easements or rights-of-way in favor of third parties or ABF.

2.5. **Measurement Date:** _____, 2022 (the effective date of the Lease).

2.6. **Option Exercise Deadline:** the eighth anniversary of the Measurement Date.

2.7. **Permitted Exceptions:** (a) the Property Restrictions, (b) any easements or encumbrances specifically agreed to in writing by ABF after the Measurement Date, and (c) those certain title exceptions reflected in Schedule B-II of ABF's owner's policy of title insurance issued on the date of ABF's acquisition of the Property, except any such exceptions entered into or created by or on behalf of ABF in violation of the terms of the Lease.

2.8. **Phase I Property:** the real property and all improvements thereon developed and operated by ABF as the first phase of the Project, which property is described on Exhibit B attached hereto.

2.9. **Phase II Improvements:** one (1) or more Sprung Structures Power & Energy structure, which, when combined with the usable floor area of the building improvements constructed on the Phase I Property for ABF's first phase production line, total at least 400,000 square feet of floor area, including, without limitation, office space for ABF's executives and plant management staff, a manufacturing area for ABF's second phase production line for the manufacture of battery cells and warehousing and distribution areas for such battery cells, together with all infrastructure and improvements related to the second phase of the Project.

2.10. **Phase II Property:** has the meaning set forth in Recital A above.

2.11. **Phase III Improvements:** one (1) or more Sprung Structures Power & Energy structure, which, when combined with the usable floor area of the building improvements and Phase II Improvements constructed for ABF's first and second phase production lines, total at least 800,000 square feet of floor area, including, without limitation, office space for ABF's executives and plant management staff, a manufacturing area for ABF's second phase production line for the manufacture of battery cells and warehousing and distribution areas for such battery cells, together with all infrastructure and improvements related to the second phase of the Project.

2.12. **Phase III Property:** has the meaning set forth in Recital A above.

2.13. **Property Restrictions:** the property use and development restrictions set forth in that certain [Property Restrictions Agreement] dated _____, 202__, executed by

County and recorded in the real property records of Pima County, Arizona on _____, 202__, as Document No. _____.

2.14. **Purchase Price:** an amount equal the lesser of (a) the Fair Market Value of the Exercise Property, or (b) \$78,318.00 per Net Acre of Exercise Property.

2.15. **Trigger Event:** the occurrence of any of the following: (i) the failure of ABF to complete construction of the Phase II Improvements prior to the fourth anniversary of the Measurement Date; (ii) the failure of ABF to timely satisfy the Phase II Employment Requirements; (iii) the failure of ABF to complete construction of the Phase III Improvements prior to the sixth anniversary of the Measurement Date; (iv) the failure of ABF to timely satisfy the Phase III Employment Requirements; (iv) any violation by ABF of the Property Restrictions or other conditions, covenants, or restrictions recorded against the Property which remains uncured beyond any applicable notice or cure period; or (v) any breach or violation of the terms of this Agreement by ABF.

3. **Economic Performance of the Project.**

3.1. Employees & Salaries. In connection with ABF's development and operation of the Project, ABF shall satisfy the following requirements:

3.1.1. On or before the fourth anniversary of the Measurement Date, ABF shall satisfy the following requirements (collectively, the "**Phase II Employment Requirements**"): (a) at all times employ at least 600 FTE Employees working full-time at the Phase I Property and the Phase II Property; (b) the average base salary of FTE Employees working full-time at the Phase I Property and the Phase II Property must be at least \$65,000.00 (U.S.) per year; and (c) all such FTE Employees must be full-time residents of Pima County, Arizona.

3.1.2. On or before the sixth anniversary of the Measurement Date, ABF shall satisfy the following requirements (collectively, the "**Phase III Employment Requirements**"): (a) at all times employ at least 1,000 FTE Employees working full-time at the Phase I Property, the Phase II Property and the Phase III Property; (b) the average base salary of FTE Employees working full-time at the Phase I Property, the Phase II Property and the Phase III Property must be at least \$65,000.00 (U.S.) per year; and (c) all such FTE Employees must be full-time residents of Pima County, Arizona.

3.1.3. Reporting. Commencing on the Effective Date and continuing until the earlier of (a) the expiration of this Agreement or (b) County's purchase of the Exercise Property pursuant to the Option, ABF shall provide to County quarterly reports stating the number of ABF's FTE Employees employed and working full-time at the Property as part of the Project and the average salary of such FTE Employees for each month during the quarter ("**Employment Certificates**"). Employment Certificates shall be delivered by ABF to County no later than 30 days following the end of each calendar quarter during a calendar year (i.e. by each April 30th, July 30th, October 30th and January 30th). Employment Certificates shall be signed by ABF's Chief Financial Officer and certify that all information contained in such Employment Certificate is true and correct. Employment Certificates shall be in such form as County may require from time to time.

4. **Option to Purchase Property.**

4.1. **Grant of Option.** ABF hereby grants to County the exclusive right and option (the "**Option**") to purchase the Property or a portion thereof, as the case may be, upon the terms and conditions set forth in this Agreement.

4.2. **Term of Option.** The term of the Option and County's right to purchase the Property pursuant thereto shall commence on the Effective Date and shall expire if not exercised on or before the Option Exercise Deadline.

4.3. **Exercise of Option; Survey.** Upon the occurrence of a Trigger Event, County may elect to purchase the Exercise Property by delivering written notice of such election (the "**Exercise Notice**") to ABF. Upon delivery of the Exercise Notice, County shall cause to be opened an escrow (the "**Escrow**") for the purchase and sale of the Exercise Property with a title company or escrow agent located in the State of Arizona ("**Escrow Agent**"). As soon as practicable following County's delivery of the Exercise Notice, County shall cause to be performed, at ABF's sole cost and expense, an ALTA/NSPS land title survey of the Exercise Property (the "**Survey**"), which Survey shall be prepared by a registered land surveyor licensed and in good standing with the State of Arizona. The Survey be certified to County and ABF and shall include the Net Acreage of the Exercise Property, which shall be used for purposes of calculating the Purchase Price. County shall promptly provide a copy of the Survey to ABF and Escrow Agent. To the extent the Exercise Property does not constitute a separate legal parcel, the parties shall cause the Exercise Property to be lawfully subdivided from the Property. All costs related to such subdivision, including the reasonable costs related thereto actually incurred by County, shall be borne by ABF. Any costs payable pursuant to the terms of this Section 4.3 may be paid at Closing out of ABF's sale proceeds by submitting invoices therefor into the Escrow or, if previously paid by County, shall be credited against the Purchase Price.

4.4. **Payment of Purchase Price.** Subject to any adjustments provided for in this Agreement, on or before the Closing Date, County shall deposit into Escrow by wire transfer or other immediately available federal funds the Purchase Price plus County's share of prorations and other Closing costs required under this Section 4 (collectively, the "**Closing Funds**").

4.5. **Closing; Conveyance.** The closing of the purchase and sale of the Exercise Property pursuant to the Option (the "**Closing**") shall occur on the date that is 90 days after the date of the Exercise Notice (the "**Closing Date**"), or such other date as ABF and County may agree in writing. At the Closing, ABF will convey to County title to the Exercise Property by a duly executed and acknowledged Special Warranty Deed in the form attached hereto as Exhibit C (the "**Deed**") and incorporated herein by reference, subject only to the Permitted Exceptions.

4.6. **Condition of Title; Title Policy.** At or before the Closing, and without the need for County to object to same, ABF shall remove or cause to be removed at its sole cost and expense (or the title insurer, having received pay-off letters from the applicable beneficiaries, will be committed to insure over) all financial liens or encumbrances created or assumed by ABF; all property owners' association or other similar liens; mechanics', materialmen's and suppliers' liens resulting from ABF's acts; judgment liens against ABF; federal, state or local income, sales, transaction privilege or other tax liens against ABF; matters created by or arising from the act or affirmative approval of ABF, its affiliates, employees, agents, contractors, subcontractors, or representatives first arising or first recorded against the Exercise Property after the Measurement Date (unless specifically agreed to in writing by County); and any other lien, encumbrance or matter affecting title to the Exercise Property other than a Permitted Exception. At Closing, and as a condition to County's obligations to close Escrow, Escrow Agent or the title insurer must be prepared and irrevocably committed to issue to County (with an effective date not earlier than Closing) a 2006 ALTA form (or 2021 ALTA form, if available) extended coverage owner's policy of title insurance in favor of County for the Exercise Property in the following form (the "**Title Policy**"): (a) showing fee simple title to the Exercise Property vested in County; (b) with liability coverage in an amount equal to the Purchase Price; (c) with those endorsements reasonably requested by Buyer; and (d) containing no exceptions other than the Permitted Exceptions.

4.7. **Seller Closing Deliveries.** On or before the Closing Date, ABF shall deliver or cause to be delivered into Escrow the following:

4.7.1. An original executed and acknowledged Deed transferring the Exercise Property;

4.7.2. An affidavit stating Seller's United States taxpayer identification number and that Seller is not a foreign corporation in accordance with Internal Revenue Code Section 1445, which shall be in such form as may be required by Escrow Agent;

4.7.3. Such proof of ABF's authority or authorization to convey the Exercise Property as may be required by Escrow Agent, including, without limitation, proof of the power and authority of the individual(s) executing or delivering any instruments, documents, or certificates on behalf of ABF to act for and bind ABF;

4.7.4. An owner's affidavit in a form sufficient and acceptable to the Escrow Agent and the title insurer that allows Escrow Agent and the title insurer to eliminate the typical owner's exceptions, including, without limitation, parties in possession, mechanic's lien and gap exceptions from the Title Policy;

4.7.5. To the extent not previously executed, delivered to County and recorded, any such documents or instruments, signed and properly acknowledged (if appropriate) by ABF, as may be required for the subdivision of the Exercise Property from the Property; and

4.7.6. Such other documents and instruments, signed and properly acknowledged (if appropriate) by ABF, as may be reasonably required by Escrow Agent or otherwise in order to effectuate the provisions of this Section 4 and the Closing of the transaction contemplated herein.

4.8. **Deliveries by Buyer.** On or before the Closing Date, ABF shall deliver the or cause to be delivered into Escrow the following:

4.8.1. Immediately available U.S. funds in the amount of the Closing Funds;

4.8.2. Such proof of County's authority or authorization to acquire the Exercise Property as may be required by Escrow Agent, including, without limitation, proof of the power and authority of the individual(s) executing or delivering any instruments, documents, or certificates on behalf of County to act for and bind County; and

4.8.3. Such other documents and instruments, signed and properly acknowledged (if appropriate) by County, as may be reasonably required by Escrow Agent or otherwise in order to effectuate the provisions of this Section 4 and the Closing of the transaction contemplated herein.

4.8.4. Closing Costs. Current real property taxes and assessments affecting the Exercise Property will be prorated between County and ABF as of the Closing based on a 365-day year. Similarly, all other costs and expenses relating to the ownership and operation of the Exercise Property, including, but not limited to, property owners' or similar association fees, costs, charges and assessments, and similar items shall be prorated as of the Closing based on a 365-day year. Notwithstanding the foregoing, any special or extraordinary assessments affecting the Exercise Property and any special or extraordinary property owners' or other association fees assessed prior to Closing shall not be prorated and shall be paid in full by ABF. At the Closing, ABF shall pay all escrow fees and costs, the cost of the Title Policy and all recording costs. ABF and County shall each bear the costs of its own legal counsel. Any other costs associated with the

Closing will be borne by the parties in accordance with custom in Pima County, Arizona, as determined by Escrow Agent, unless otherwise specified in this Section 4.

5. **ABF Representations, Warranties and Covenants.** ABF covenants, represents and warrants the following to County, which covenants, representations and warranties shall be continuing covenants, representations and warranties, and are true and accurate in all respects as of the date hereof: (i) ABF is the sole owner of the Property and it has full power and authority to enter into and perform its obligations in accordance with the terms and conditions of this Agreement; (ii) ABF's execution, delivery, and performance of this Agreement, and any other documents and instruments required to be signed and delivered to County, does not and will not conflict with or result in a violation of any judgment, order, or decree of any court or arbiter to which ABF is a party, or any agreement to which ABF or any of the Property is bound; (iii) the individual(s) signing this Agreement on behalf of ABF is/are duly authorized to execute this Agreement, and this Agreement is a valid, binding and enforceable obligation of ABF; (iv) if ABF is a business entity, it has been duly formed and is in good standing under the laws of the State of Utah, and it has the requisite power and authority to enter into and perform this Agreement and any documents and instruments required to be executed and delivered by ABF pursuant hereto; and (v) there are no actions, suits or other legal proceedings presently pending or threatened against the Property or ABF in connection with the Property.

6. **County's Representations, Warranties and Covenants.** County covenants, represents and warrants the following to ABF, which covenants, representations and warranties shall be continuing covenants, representations and warranties, and are true and accurate in all respects as of the date hereof: (i) County is a political subdivision of the State of Arizona; and (ii) County has full power and authority to enter into and perform in accordance with the terms and conditions of this Agreement.

7. **Default and Remedies; Attorneys' Fees.** In the event of a default by either Party, which default is not cured within five (5) days after written notice thereof from the non-defaulting Party, the non-defaulting Party may seek any and all remedies permitted by law. For purposes of clarity and not in limitation of the foregoing, in the event of a default by ABF hereunder, County shall be entitled to specific performance of this Agreement against ABF, it being expressly acknowledged and agreed by ABF that specific performance shall for all purposes be available to County as a remedy hereunder. In the event of any dispute between the parties regarding the enforcement or effect of this Agreement, the non-prevailing Party in any such dispute shall pay the prevailing Party's reasonable costs, charges, and expenses, including reasonable attorneys' fees, expert witness fees, litigation and court costs expended or incurred in connection therewith, in addition to any and all other relief provided for by law or equity.

8. **Limitation of Damages.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN THE EVENT OF A DEFAULT BY EITHER PARTY, OR FOR ANY OTHER REASON, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECULATIVE, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF REVENUES, LOSS OF PROFIT).

9. **Waiver.** EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. EACH OF THE PARTIES TO THIS AGREEMENT WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN

WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT.

10. **Notices.** All notices, requests, and other communications hereunder must be given in writing and either: (i) personally served on the party to whom it is given; (ii) mailed by registered or certified mail, postage prepaid, return receipt requested; (iii) sent by a nationally recognized overnight courier service such as Federal Express; or (iv) sent by email transmission. All notices will be deemed delivered and received upon the earliest of: (a) actual receipt; (b) the third day after the day of mailing; (c) the next business day after the date of deposit with a nationally recognized overnight courier service; or (d) the business day that such notice is sent by email, or if not sent on a business day, the next business day; provided, however, the sender of such email does not receive a response indicating the message was rejected or otherwise undeliverable. Any notices received on a Saturday, Sunday, or on a holiday in the State of Arizona or the United States will be deemed received on the next succeeding business day. The designated address of each party will be:

If to County: Pima County Administrator
130 West Congress, 10th Floor
Tucson, Arizona 85701
Attn: _____
Email: _____

With a copy to: Osborn Maledon, P.A.
2929 North Central Avenue, 20th Floor
Phoenix, Arizona 85012
Attn: Jack Dearing
Email: jdearing@omlaw.com

If to ABF: American Battery Factory Inc.

With a copy to: _____

or such other address as that party, from time to time, may specify by notice to the other party given in the manner provided herein. The inability to deliver notice because of a changed address of which no notice was given, or the rejection or other refusal to accept any notice, will be deemed to be the effective receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept.

11. **Entire Agreement; No Third-Party Beneficiaries.** This Agreement, including the exhibits attached hereto, constitute the entire agreement between ABF and County pertaining to the subject matter hereof and thereof and supersede all prior agreements, understandings, letters of intent, negotiations, and discussions, whether oral or written, of the Parties, and there are no warranties, representations, or other agreements, express or implied, made to either Party by the other Party in connection with the subject matter hereof or thereof except as specifically set forth herein or in the documents delivered pursuant to or in connection with this Agreement. Nothing in this Agreement is intended to or will confer upon any

other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever. In no event will any third party be deemed a third-party beneficiary of this Agreement.

12. **Modification; Waiver.** Except as otherwise provided in this Agreement, no amendment, supplement or modification of this Agreement will be binding unless executed in writing by both Parties. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provisions, whether or not similar, nor will any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver will be binding unless executed in writing by the Party making the waiver. Either Party may waive any provisions of this Agreement intended for its benefit; provided, however, such waiver will in no way excuse the other Party from the performance of any of its other obligations under this Agreement.

13. **Further Assurances.** In addition to the actions recited herein and contemplated to be performed, executed, and delivered by ABF and County, ABF and County agree to perform, execute, and deliver or cause to be performed, executed, and delivered concurrently herewith or hereafter all such further acts, instruments and assurances as may be reasonably required to consummate the transaction contemplated hereby.

14. **Time of the Essence.** Time is of the essence for performance or satisfaction of all requirements, conditions, or other provisions hereof, including, without limitation, ABF's timely execution and delivery of all documents and instruments hereunder.

15. **Headings.** Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

16. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which may contain fewer than all signatures but all of which, combined, shall constitute a single instrument. The Parties hereto are authorized to attach the separate signature pages to a single Agreement. Each Party represents to the other that execution and delivery of this Agreement has been properly authorized and that all signatures hereon are genuine.

17. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Arizona, without regard to its principles of conflicts of laws. The Parties hereby agree that the proper venue for any legal proceedings arising out of this Agreement shall be Pima County, Arizona, and each Party hereto consents to the jurisdiction of the state or federal courts located in Pima County, Arizona.

18. **Construction.** This Agreement will not be construed more strictly against one Party hereto than against any other Party hereto merely by virtue of the fact that it may have been prepared by counsel for one of the Parties. Each Party represents that it has had the opportunity to have its own legal counsel review and participate in the completion of this Agreement.

19. **Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law, but if any provision shall be invalid or prohibited hereunder, such provision shall be ineffective to the extent of such prohibition or invalidation but shall not invalidate the remainder of such provision or the remaining provisions.

20. **Binding Effect.** Except as set forth in this paragraph, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

21. **Recording.** Upon the execution of this Agreement, ABF and County will execute and have acknowledged a Memorandum of Option in the form attached hereto as Exhibit D (the “**Memorandum**”) and cause the Memorandum to be recorded in the official records of the Pima County, Arizona Recorder’s Office.

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, ABF and County have executed this Purchase Option Agreement as of the Effective Date.

ABF:

AMERICAN BATTERY FACTORY, INC.,
a Utah corporation

By: _____
Name: _____
Its: _____

STATE OF _____)
County of _____) ss.

The foregoing instrument was acknowledged before me this ____ day of _____ 202__,
by _____, in his/her capacity as _____ of
American Battery Factory, Inc., a Utah corporation, on behalf of said corporation for the purposes
contained therein.

Notary Public

My commission expires:

COUNTY:

PIMA COUNTY,
a political subdivision of the State of Arizona

By: _____
Name: _____
Its: Chair of the Board of Supervisors

STATE OF ARIZONA)
) ss.
County of Pima)

The foregoing instrument was acknowledged before me this ____ day of _____ 202__,
by _____, in his/her capacity as _____ of
Pima County, a political subdivision of the State of Arizona corporation, on behalf of said political
subdivision for the purposes contained therein.

Notary Public

My commission expires:

ATTEST:

Clerk of the Board of Supervisors

APPROVED AS TO CONTENT:

Director of Economic Development

APPROVED AS TO FORM:

Deputy County Attorney

EXHIBIT A-I
TO PURCHASE OPTION AGREEMENT

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT A-II
TO PURCHASE OPTION AGREEMENT

DEPICTION OF THE PROPERTY

EXHIBIT B
TO PURCHASE OPTION AGREEMENT

LEGAL DESCRIPTION OF THE PHASE I PROPERTY

EXHIBIT C
TO PURCHASE OPTION AGREEMENT

FORM OF DEED

WHEN RECORDED, RETURN TO:

SPECIAL WARRANTY DEED

For the consideration of the sum of Ten Dollars (\$10.00) and other valuable considerations received, _____ (“**Grantor**”), does hereby convey to _____ (“**Grantee**”), that certain real property described in Exhibit “A” attached hereto and incorporated herein by reference, situated in Pima County, Arizona (the “**Real Property**”), together with (a) all appurtenances, hereditaments, easements, rights-of-way, reversions, remainders, development rights, water rights, well rights and air rights appurtenant to the Real Property, (b) any rights of Grantor in and to any adjoining strips or gores of property and any land lying within the bed of any adjoining street, (c) any other rights or privileges appurtenant to such Real Property or used in connection therewith, and (d) any improvements, fixtures, buildings or structures thereon (such property, together with the Real Property, to be collectively referred to herein as the “**Property**”);

SUBJECT TO: current taxes; patent reservations; all covenants, conditions, restrictions, reservations, easements and declarations or other matters of record; and conditions which a physical inspection or accurate survey of the Property would reveal.

Grantor hereby binds itself and its successors to warrant and defend the title to the Property, as against all acts of Grantor herein and no other, subject to the matters above set forth.

SIGNATURE PAGE FOLLOWS

[SIGNATURE BLOCK, NOTARY BLOCK AND LEGAL DESCRIPTION TO BE INCLUDED]

EXHIBIT D
TO PURCHASE OPTION AGREEMENT

FORM OF MEMORANDUM

WHEN RECORDED, RETURN TO:

MEMORANDUM OF OPTION

THIS MEMORANDUM OF OPTION is made and entered into _____, 202__ by and between **AMERICAN BATTERY FACTORY, INC.**, a Utah corporation (“**ABF**”), and **PIMA COUNTY**, a political subdivision of the State of Arizona (“**County**”).

RECITALS:

A. ABF and County entered into that certain Purchase Option Agreement dated _____, 202__ (the “**Agreement**”), pertaining to that certain real property described on Exhibit A attached hereto (the “**Property**”).

B. The parties desire to impart actual and constructive notice to all persons dealing with the Property of County’s contractual interest in the Property and lien on the Property for the return of the Deposit pursuant to the terms of the Agreement.

AGREEMENT:

NOW, THEREFORE, ABF and County hereby impart actual and constructive notice:

1. To all persons dealing with or interested in the Property, of County’s contractual interest in the Property and lien on the Property pursuant to the terms of the Agreement;
2. All persons dealing with or interested in the Property are advised to consult with County and ABF;
3. In addition to other matters, the Agreement provides, in part, that ABF shall not place or permit to be placed any liens, encumbrances or easements against the Property unless consented to by County in writing, which consent may be given or withheld at County’s discretion; and

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the parties have executed this Memorandum of Option to be effective on the date first written above.

[SIGNATURE PAGES, NOTARY BLOCKS AND LEGAL DESCRIPTION TO BE INCLUDED]

EXHIBIT G

FORM OF ENVIRONMENTAL INDEMNITY AGREEMENT

ENVIRONMENTAL INDEMNITY AGREEMENT

This ENVIRONMENTAL INDEMNITY AGREEMENT (this “**Indemnity**”) is made and entered into as of the ____ day of December 2022 by **AMERICAN BATTERY FACTORY, INC.**, a Utah corporation (“**Tenant**”), having its principal place of business at 735 Auto Mall Road, American Fork, UT 84003; for the benefit of PIMA COUNTY, a political subdivision of the State of Arizona (“**County**”). Tenant is sometimes hereinafter referred to individually as an “**Indemnitor.**”

RECITALS

A. Of even date herewith, County and Tenant have entered into a Ground Lease Agreement (the “**Lease**”) pursuant to which Tenant will lease from County that certain real property more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “**Property**”) and develop the Property

B. County has required, as a condition to entering into the lease with Tenant, that the Indemnitor execute this Indemnity and thereby indemnify County with respect to Hazardous Materials (as hereinafter defined) on, in, under or affecting the Property.

C. The Indemnitor will, directly or indirectly, benefit from County entering into the Lease with Tenant.

AGREEMENT

NOW, THEREFORE, in consideration of County’s entering into the Lease with Tenant, the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Indemnitor agrees as follows:

1. **Defined Terms.** As used in this Indemnity, the following terms shall have the meanings hereafter ascribed to them:

(a) “**Claims**” shall mean any and all costs (including, without limitation, reasonable attorneys’ fees and expenses, which fees and expenses shall include, without limitation, fees and expenses of both outside and staff counsel), damages, penalties, fines, expenses or losses arising from any and all claims, demands, losses, damages, liabilities, fines, penalties, charges, causes of action, injury to person, property, or natural resources, administrative and judicial proceedings and orders, injunctive relief, judgments, remedial action requirements and enforcement actions of any kind, arising directly or indirectly, in whole or in part, out of or attributable to (i) any inaccuracy or incompleteness in any representation set forth in Section 3(a) hereof or any breach or default by Indemnitor in the performance of any of their obligations under Sections 3(b) through (g) hereof, or (ii) any Release or threatened Release. Without limiting the generality of the foregoing and for purposes of clarification only, “**Claims**” also include:

- (i) reasonable costs incurred by an Indemnified Party in connection with (A) determining whether the Property is in compliance with all applicable Hazardous Materials Laws, (B) taking any precautions to protect against any Release or threatened Release, or (C) any Remedial Work; and
- (ii) any repair of any damage to the Property or any other property caused by any such compliance activities, precautions and/or Remedial Work.

The rights of the Indemnified Parties hereunder shall not be limited by any investigation or the scope of any investigation undertaken by or on behalf of County or any of the other Indemnified Parties in connection with the Property, or by any disclosures provided to County, prior to the date hereof.

(b) “**Hazardous Materials**” shall mean the following:

- (i) any oil, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other materials or pollutants, exposure to which is prohibited, limited or regulated by any governmental authority pursuant to any Hazardous Materials Laws;
- (ii) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contains dielectric fluid containing levels of polychlorinated biphenyl in excess of 50 parts per million, exposure to which is prohibited, limited or regulated by any governmental authority pursuant to any Hazardous Materials Laws;
- (iii) any pesticide, herbicide, fertilizer, mold, radon or other chemical, gas, material or substance defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous waste,” “restricted hazardous waste,” “toxic substances,” “wastes,” “regulated substances,” “industrial solid wastes,” or “pollutants” or words of similar import under any Hazardous Materials Laws; and
- (iv) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority pursuant to any Hazardous Materials Laws; provided, however, that “**Hazardous Materials**” shall not include commercially reasonable amounts of cleaning products used in the ordinary course of operation of the Property which are used and stored in accordance with all applicable Hazardous Materials Laws.

(c) “**Hazardous Materials Laws**” shall mean and include all federal, state and local laws and ordinances and the regulations, restrictions, requirements, policies or publications promulgated pursuant thereto by any federal agency, state department of natural resources or state environmental protection agency, now or at any time hereafter in effect, and common law relating to the presence, use, handling, transportation, production, storage, disposal, discharge or remediation of air pollutants, water pollutants and other Hazardous Materials or otherwise relating to the protection of the environment, human health and safety, industrial hygiene or environmental conditions on, in, under or affecting the Property, including, but not limited to:

- (i) the Clean Air Act (42 U.S.C. § 7401, *et seq.*), the Clean Water Act (33 U.S.C. § 1251, *et seq.*), the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601, *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. § 5101, *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. § 6901, *et seq.*), the Safe Drinking Water Act (42 U.S.C. § 300f, *et seq.*), the Toxic

Substances Control Act (15 U.S.C. § 2601, *et seq.*), the Occupational Safety and Health Act (29 U.S.C. § 651, *et seq.*), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136, *et seq.*), the Endangered Species Act (16 U.S.C. § 1531, *et seq.*), the National Environmental Policy Act (42 U.S.C. § 4321, *et seq.*), the Noise Control Act (42 U.S.C. § 4901, *et seq.*), the Emergency Planning and Community Right to Know Act (42 U.S.C. § 11001, *et seq.*) and the Federal Mine Safety and Health Act of 1977 (30 U.S.C. § 801, *et seq.*); and

(ii) any similar Hazardous Materials Laws adopted in the State of Arizona or promulgated by any political subdivision thereof.

(d) “**Indemnified Parties**” shall mean (i) County and its supervisors, directors, officers, , agents, and employees, (ii) any successor entity of the County, and (iii) any assignee of the County’s interest in the Lease.

(e) “**Pending Claims**” shall mean claims, litigation, administrative enforcement actions or proceedings with respect to the presence of any Hazardous Materials on the Property or the migration of Hazardous Materials from or onto the Property.

(f) “**Proceedings**” shall mean any proceedings or inquiries before or by any governmental authority with respect to the presence of any Hazardous Materials on the Property or the migration of Hazardous Materials from or onto the Property.

(g) “**Release**” shall mean any presence, use, generating, storing, spilling, leaking, pumping, pouring, emitting, treating, emptying, discharging, injecting, escaping, leaching, dumping or disposing of Hazardous Materials into the environment on, about, from, under, within or affecting the Property, or transported to or from the Property, including continuing migration of Hazardous Materials into or through soil, surface water or groundwater, but “**Release**” shall not mean the presence of or use on the Property of Hazardous Materials which is not in violation of applicable Hazardous Materials Laws.

(h) “**Remedial Work**” shall mean any investigation, site monitoring, containment, cleanup, removal, restoration, precautionary actions or other remedial work of any kind or nature with respect to the presence of any Hazardous Materials on the Property, or the migration from or to the Property to or from other property, required under Hazardous Materials Laws.

All other capitalized terms used herein and not otherwise defined, shall have the respective meanings assigned to them in the Lease.

2. **Environmental Indemnification by Indemnitor.**

(a) Indemnitor hereby covenants and agrees to defend (at trial and appellate levels, and with counsel reasonably approved by County), protect, indemnify and hold the Indemnified Parties harmless for, from and against, and shall reimburse the Indemnified Parties for, any and all Claims, except to the extent such Claims are found, in a final non-appealable judgment by a court of competent jurisdiction, to have resulted from the gross negligence or willful misconduct of any Indemnified Party or to have occurred on a date after Tenant was dispossessed of the Property by or at the direction of an Indemnified Party. Indemnitor hereby expressly waives, with respect to any Claims, any immunity to which Indemnitor may otherwise be entitled under any industrial or workers compensation laws.

(b) County shall have the right to employ independent counsel to represent it and the other Indemnified Parties in any action or proceeding to which this Indemnity is, and in such event the reasonable fees and expenses of such independent counsel employed by County shall be paid by Indemnitor.

(c) Indemnitor's obligations hereunder shall not be diminished or affected in any respect as a result of any notice or disclosure to, or any other knowledge by, any Indemnified Party of any Release or threatened Release, or as a result of any other matter related to such Indemnitor's obligations hereunder, solely because any Indemnified Party had notice, disclosure or knowledge thereof, whether at the time this Indemnity is delivered or at any time thereafter.

(d) This Indemnity shall not be limited by any representation, warranty or indemnity of any Indemnitor made herein.

(e) In addition to and without limitation of Section 4(f) below, Indemnitor waives all rights to require County to pursue any remedy in County's power whatsoever; provided, however, that the foregoing waiver shall not apply in the event an Indemnified Party, through its gross negligence or willful misconduct.

3. **Environmental Representations and Covenants.**

(a) Indemnitor represents and warrants that:

- (i) Indemnitor has not, and, to Indemnitor's knowledge, no affiliate of Indemnitor nor any predecessor in title nor any third person at any time occupying or present on the Property has, caused or knowingly, willfully or negligently permitted any Release, nor are Indemnitor aware of the Release of any Hazardous Materials on, in, from, under or affecting the Property;
- (ii) Tenant or its affiliates, as applicable, has obtained or will timely obtain (while it owns or controls the Property or any portion thereof) all certificates, permits, licenses, approvals and authorizations required by any federal, state, county, regional or local authority whose jurisdiction includes, in whole or in part, environmental protection or regulation of Hazardous Materials, for the lawful use or operation of the Property;
- (iii) Indemnitor has not, and, to each Indemnitor's knowledge, no affiliate of Indemnitor has received any notice of any Proceedings;
- (iv) To Indemnitor's knowledge, no Pending Claims have been made or threatened by any third party against Indemnitor, any affiliate of any Indemnitor or any other person, nor have any settlements been reached by or with any party or parties, public or private, alleging any Release or threatened Release; and
- (v) Indemnitor have undertaken such due diligence investigation or inquiry into the current and previous uses of the Property, in a manner consistent with good commercial or customary practice for purposes of meeting the standard for minimizing liability under Hazardous Materials Laws, as Indemnitor believe is reasonable and prudent as a basis for making the

representations and warranties stated above, and Indemnitor have disclosed to County and provided County with true, correct and complete copies of the results of any and all reports, tests, studies and investigations commissioned by or on behalf of Indemnitor, or otherwise within the possession or control of Indemnitor, relating to Hazardous Materials and the Property.

(b) During such period of time that any Indemnitor or any of its affiliates owns and/or controls the Property or any portion thereof, Indemnitor and their respective affiliates shall keep and maintain the Property in material compliance with any Hazardous Materials Laws, and shall not cause or knowingly, willfully or negligently permit a Release in violation of any Hazardous Materials Laws.

(c) During such period of time that any Indemnitor or any of its affiliates owns and/or controls the Property or any portion thereof, Indemnitor and their respective affiliates shall not, nor shall they knowingly, willfully or negligently permit any tenants, licensees or other occupants of the Property to, cause or permit a Release.

(d) Indemnitor shall give prompt written notice to County of any Pending Claims or of any Proceedings in respect of or relating to any Release.

(e) Indemnitor shall give prompt written notice to County, and to any governmental agency, if required by law, of the discovery by Indemnitor or any of their affiliates of any Release or of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Laws or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Laws.

(f) County shall have the right to join and participate in, as a party if it so elects, any Proceedings or actions initiated in connection with any Hazardous Materials Laws. In the event of such an election by County, and if counsel for Indemnitor is unable to adequately represent both the interests of Indemnitor and County due to a conflict of interest between Indemnitor and County, Indemnitor shall pay County's reasonable attorneys' fees and expenses in connection therewith, including, without limitation, fees and expenses of both outside and staff counsel.

(g) If any Remedial Work is required under any applicable Hazardous Materials Law as a result of, or in connection with, any Release, suspected Release, or threatened Release, Indemnitor or their affiliates shall, within thirty (30) days after receipt from the applicable governmental agency of information that such Remedial Work is required (or such shorter period of time as may be required under any applicable law, regulation, order or agreement), commence the performance of, or cause to be commenced, and thereafter diligently prosecute to completion, the performance of all such Remedial Work. All Remedial Work shall be performed by one or more contractors, approved in advance in writing by County, and under the supervision of a consulting engineer reasonably approved in advance in writing by County, which consent shall not be unreasonably withheld. All costs and expenses of such Remedial Work shall be paid by Indemnitor, including, without limitation, the charges of such contractor(s) and/or the consulting engineer, and County's reasonable attorneys' fees and costs, including, without limitation, fees and costs of both outside and staff counsel incurred in connection with monitoring or review of such Remedial Work. In the event Indemnitor or their affiliates shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, the performance of such

Remedial Work, County may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, shall be deemed Claims hereunder.

4. **Liability.**

(a) Tenant shall be fully, unconditionally, irrevocably, and personally liable, on a joint and several basis, for all of their respective obligations hereunder.

(b) Notwithstanding any other provisions of this Indemnity, any liability of an Indemnitor hereunder shall be its personal liability, and may be asserted against its interest in the Property as well as against any and all of its other assets.

(c) Without limiting the foregoing, the obligations of Indemnitor hereunder shall survive, to the maximum extent permitted by law, any termination, cancellation or modification of the Lease or any other agreement relating to the Lease. Upon and following the occurrence of the foregoing, the obligations of Indemnitor hereunder shall be enforceable against Indemnitor to the fullest extent permitted by applicable laws.

(d) The obligations of Indemnitor hereunder are primary and not secondary and are not intended to be the obligations of a surety or guarantor. The liability of Indemnitor hereunder shall in no way be limited or impaired by (i) any extensions of time for performance required by the Lease, (ii) the accuracy or inaccuracy of any representations and warranties made by either of the Indemnitor in the Lease or (iii) the release of any person or entity from performance or observance of any of the agreements, covenants, terms or conditions contained the Lease by operation of law or otherwise.

(e) The rights and remedies of the Indemnified Parties under this Indemnity (i) shall be in addition to any other rights and remedies of such Indemnified Parties under the Lease or at law or in equity and (ii) may be enforced by any of the Indemnified Parties, to the maximum extent permitted by law, without regard to or affecting any rights and remedies that such Indemnified Party may have under the Lease or at law or in equity, and without regard to any limitations on such Indemnified Party's recourse for recovery as may be provided the Lease.

(f) Each Indemnitor agrees that any payments required to be made hereunder shall become due on demand, whether or not demand is also made on any other Indemnitor. Indemnitor expressly waive and relinquish all rights and remedies accorded by applicable law to Indemnitor to which Indemnitor would otherwise be entitled, including, without limitation, any defense based upon any of the following:

- (i) any invalidity or unenforceability of the Lease or of any other indemnity agreement;
- (ii) any legal disability or discharge or limitation of liability of any other indemnitor or any other person or entity who may be liable or responsible for any matters covered by Section 2 hereof; or
- (iii) any other matters described in this Section 4;

except that such waiver shall not extend to any rights of subrogation, reimbursement or contribution that Indemnitor may have; provided, however, that the indemnity provided for

hereunder shall be neither contingent upon the existence of any such rights of subrogation, reimbursement or contribution nor subject to any claims of defenses whatsoever that may be asserted in connection with the enforcement or attempted enforcement of such subrogation, reimbursement or contribution rights, including, without limitation, any claim that such subrogation, reimbursement or contribution rights were abrogated or otherwise affected by any acts or omissions of any Indemnified Party.

5. **Site Visits, Observation and Testing.** The Indemnified Parties and their respective agents and representatives (at their own cost, unless a material violation of the Hazardous Material Laws is discovered) shall have the right, at any reasonable time, to enter and visit the Property to make such inspections, tests (including, without limitation, taking and removing soil or groundwater samples) and inquiries as they shall deem appropriate, including inspections for violations of any of the terms of this Indemnity and for determining the existence, nature and magnitude of any past or present Release or threatened Release. The Indemnified Parties have no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation or testing by any Indemnified Party shall impose any liability on any Indemnified Party. In no event shall any site visit, observation or testing by any Indemnified Party be a representation that Hazardous Materials are or are not present in, on or under the Property, or that there has been or shall be compliance with any Hazardous Materials Laws or any other applicable governmental law. Neither Indemnitor nor any other party shall be entitled to rely on any site visit, observation or testing by any Indemnified Party. The Indemnified Parties owe no duty to protect Indemnitor or any other party against, or to inform Indemnitor or any other party of, any Hazardous Materials or any other adverse condition affecting the Property. Any Indemnified Party shall give Indemnitor reasonable notice before entering the Property. The Indemnified Parties shall make reasonable efforts to avoid interfering with Tenant's use of the Property in exercising any rights provided in this Section 5.

6. **Interest Accrued.** Any amount claimed hereunder by an Indemnified Party not paid within thirty (30) days after written demand from such Indemnified Party with an explanation of the amounts claimed shall bear interest at a rate per annum equal to the Default Rate.

7. **Subrogation of Indemnity Rights.** If Indemnitor fail to fully perform their obligations hereunder, any Indemnified Party shall be entitled to pursue any rights or claims that Indemnitor may have against any present, future or former owners, tenants or other occupants or users of the Property, any portion thereof or any adjacent or proximate properties, relating to any Claim or the performance of Remedial Work, and Indemnitor hereby assign all of such rights and claims to the Indemnified Parties under such circumstances and shall take all actions required by the Indemnified Parties to cooperate with such Indemnified Parties in enforcing such rights and claims under such circumstances.

8. **Reliance.** Indemnitor acknowledge that they are making and giving the indemnities and representations and covenants contained herein with the knowledge that County is relying on such indemnities and representations and covenants in entering into the Lease with Tenant.

9. **Successors and Assigns.** The obligations, duties, agreements, covenants, and liabilities of Tenant hereunder shall be binding upon and be enforceable against Tenant and their respective heirs, legatees, legal representatives, successors, and assigns. This Indemnity shall inure to the benefit of each Indemnified Party's successors and assigns to the extent provided herein, and shall be binding upon the heirs, successors, and assigns of Indemnitor. Indemnitor may not assign any rights or delegate any obligations hereunder.

10. **Attorneys' Fees.** In the event that any Indemnified Party, or any person or entity entitled to enforce this Indemnity, brings any suit or other proceeding with respect to the subject matter or

enforcement of this Indemnity, such Indemnified Party or other party (as determined by the court, agency or other authority before which such suit or proceeding is commenced) shall, in addition to such other relief as may be awarded, be entitled to recover reasonable attorneys' fees, expenses and costs of investigation as actually incurred (including, without limitation, attorneys' fees and expenses of outside counsel and other expenses and costs of investigation incurred in appellate proceedings or in enforcing any judgment, costs incurred in establishing the right to indemnification, or incurred in any action or participation in, or in connection with, any case or proceeding under the United States Bankruptcy Code, 11 U.S.C. § 101, *et. seq.*, or any successor statutes). Any such attorneys' fees and disbursements, and other expenses and costs incurred by any Indemnified Party in enforcing a judgment in its favor under this Indemnity shall be recoverable separately from and in addition to any other amount included in such judgment, and such obligation to pay attorneys' fees and disbursements, costs and expenses is intended to be severable from the other provisions of this Indemnity and the Lease and to survive and not be merged into any such judgment.

11. **Notices.** All notices, requests, demands and other communications (collectively, "Notices") hereunder must be given in writing by (a) personal delivery, or (b) reputable overnight delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, or (d) e-mail transmission sent to the intended addressee at the e-mail address set forth below, or to such other e-mail address, mailing address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith. Notices shall be deemed to have been given either at the time of personal delivery; or, in the case of overnight delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein; or, in the case of e-mail delivery, the business day that such Notice is sent by e-mail, or if not sent on a business day, the next business day (provided the emailing party does not receive an automated "rejection message"). Any Notice received on a Saturday, Sunday, or on a State of Arizona or federal holiday will be deemed received on the next succeeding business day. Unless changed in accordance with the preceding sentence, the addresses for Notices given pursuant to this Agreement shall be as follows:

County: Pima County Administrator
130 West Congress, 10th Floor
Tucson, Arizona 85701
Attn: Carmine DeBonis
Email: Carmine.BeBonis@pima.gov

With a copy to: Pima County Attorney's Office
32 North Stone Avenue, Suite 2100
Tucson, Arizona 85701
Attn: Chief Civil Deputy Attorney
Email: Sam.Brown@pcao.pima.gov

Tenant: American Battery Factory Inc.
735 Auto Mall Drive
American Fork, UT 84003
Attn: CEO

With a copy to: American Battery Factory
735 Auto Mall Drive
American Fork, UT 84003
Attn: General Counsel

12. **Miscellaneous.**

(a) **Governing Law.** This Indemnity shall be governed and construed in accordance with the laws of the State of Arizona, without regard to its principles of conflicts of laws.

(b) **Counterparts; Electronic Signatures.** This Indemnity may be executed in counterparts and each counterpart may be deemed an original, and signatures delivered via facsimile, portable document format (.pdf) via electronic mail, or other electronic form shall be deemed to be original signatures.

(c) **Amendment.** No provision of this Indemnity may be modified, amended, or waived, except by an instrument in writing executed by the parties hereto.

(d) **Severability.** If any term of this Indemnity or any application thereof is determined by a court to be invalid, illegal or unenforceable, the remainder of this Indemnity and any other application of that term will not be affected thereby.

(e) **Statute of Limitations.** To the fullest extent permitted by law, Indemnitor hereby unconditionally waive and agree not to assert or take advantage of the defense of any statute of limitations in any action under this Indemnity.

(f) **No Waiver.** No provision of this Indemnity shall constitute a waiver of or be in lieu of any right or claim, including, without limitation, any right of contribution or other right of recovery, that any party to this Indemnity might otherwise have against any other party to this Indemnity under any Hazardous Materials Laws.

(g) **Default.** In addition to constituting a breach of this Indemnity, the failure of the Tenant to comply with any provision, representation, warranty, or covenant hereunder shall give County the right to declare an Event of Default under the Lease and shall give the County the right to avail itself of any and all remedies set out under the Lease. Separate and successive actions may be brought under this Indemnity to enforce any of the provisions hereof at any time and from time to time. No action under this Indemnity shall preclude any subsequent action, and each Indemnitor hereby waives and covenants not to assert any defense in the nature of splitting of causes of action or merger of judgments. Any delay or omission in exercising any right hereunder shall not operate as a waiver of such right or any other right. Furthermore, failure by County to object to any action of Tenant shall in no way be construed as an express or implied approval by County of such action. The rights granted County hereunder shall be addition to all rights granted County under the Lease.

(h) **Costs and Expenses.** Tenant agrees to pay, upon demand, all of County's actual and reasonable costs and expenses incurred in connection with the enforcement of this Indemnity. County may engage a third party to enforce this Indemnity, and Tenant shall pay the costs and expenses of such enforcement. Costs and expenses include, but are not limited to, consultant's fees, County's attorneys' fees and legal expenses whether or not a lawsuit is filed, including without limitation attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgment collection services, and all court costs and such additional fees as may be directed by the court.

(i) CHOICE OF VENUE, SERVICE OF PROCESS. INDEMNITOR HEREBY AGREE THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY INDEMNITOR AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS INDEMNITY OR THE LEASE SHALL BE LITIGATED IN SUPERIOR COURT OF PIMA COUNTY, ARIZONA, OR AT COUNTY'S DISCRETION IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA. INDEMNITOR HEREBY EXPRESSLY SUBMIT AND CONSENT IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY COUNTY IN SUCH COURT. INDEMNITOR WAIVE ANY CLAIM THAT SUCH STATE COURT OR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. THE EXCLUSIVE CHOICE OF FORUM FOR INDEMNITOR SET FORTH IN THIS SECTION 12(i) SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT, BY COUNTY, OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING, BY COUNTY, OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND INDEMNITOR HEREBY WAIVE THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION. INDEMNITOR FURTHER CONSENT AND AGREE TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, RETURN RECEIPT REQUESTED, TO INDEMNITOR AT THE ADDRESS FOR NOTICE DESCRIBED HEREIN, AND CONSENT AND AGREE THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW.

(j) WAIVER OF RIGHT TO JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH INDEMNITOR AND COUNTY (BY ACCEPTING THIS INDEMNITY), HEREBY WAIVES THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT EITHER (1) BY COUNTY AGAINST INDEMNITOR OR (2) BY INDEMNITOR AGAINST COUNTY.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, Tenant have executed this Indemnity as of the date acknowledged by the respective notary below.

TENANT:

AMERICAN BATTERY FACTORY, INC.,
a Utah corporation

By: _____
Name: Michael Davidson
Its: COO

EXHIBIT A

Legal Description

(To Be Attached)