

**When recorded, return to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

**SECOND AMENDMENT  
TO THE  
DEVELOPMENT AGREEMENT FOR FAIRWAY PEAKS**

THIS AMENDMENT TO DEVELOPMENT AGREEMENT FOR FAIRWAY PEAKS (“Amendment”) is entered into as of February \_\_, 2019, by and between: (i) the CITY OF FLAGSTAFF, an Arizona municipal corporation (“City”); and (ii) TLC PC LAND DEVELOPERS, LLC, an Arizona limited liability company (“Developer”).

**RECITALS**

A. A.R.S. § 9-500.05 authorizes the City to enter into and amend development agreements with landowners and persons having an interest in real property located in the City.

B. The City, together with: (i) Vanderbilt Farms, L.L.C., an Arizona limited liability company (“Vanderbilt”); and (ii) San Francisco Peaks Associates, L.P., an Arizona limited partnership (“Peaks”), entered into the Development Agreement for Fairway Peaks on September 5, 2000, which was recorded as Document No. 3063582, Official Records of Coconino County, Arizona (“County”), as amended by the Amendment to Development Agreement, dated January 30, 2007, and recorded on January 31, 2007 as Document No. 3423547, Official Records of the County (collectively, “Development Agreement”).

C. The zoning, development and use of the Property (as defined in the Development Agreement) is further governed by, among other documents and agreements, City Zoning Ordinance 2000-11, dated as of June 6, 2000, and recorded at Document No. 3056859, Official Records of Coconino County, Arizona (“Zoning Ordinance”).

D. Developer is the successor in interest to Vanderbilt and Peaks under the Development Agreement and the Zoning Ordinance.

E. The Development Agreement automatically terminated on October 5, 2010. General Condition No. 5 of the Zoning Ordinance, however, requires in pertinent part:

“That all of the terms, conditions, and restrictions set forth in the Development Agreement be fully satisfied.”

F. The City and Developer have entered into this Amendment for the sole and limited purpose of amending the Development Agreement in order to clarify and confirm Developer’s right to construct condominiums (for sale product) and/or multi-family housing (for

rent product) on the real property described on **Exhibit A** to this Amendment (“Tract 22”), which constitutes a portion of the Property.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **AGREEMENT**

1. Definitions. Capitalized terms not otherwise defined in this Amendment will have the meanings given them in the Development Agreement.

2. Authorization & Authority. Pursuant to Section 14.7 of the Development Agreement, the City and Developer possess the right and authority to execute, deliver and record this Amendment.

3. Amendment. The Development Agreement is amended by adding new Section 16, as follows:

**“16. Development of Tract 22.** Developer is permitted to construct multi-family housing that will either be condominiums (for sale product) or apartments (for rent product) on Tract 22. Developer is permitted to construct four (4) story buildings on Tract 22, as long as the additional height (the fourth story) is offset by two (2) story buildings adjacent to the Pinnacle Pines Subdivision as detailed on the Concept Plan for Tract 22 dated November 29, 2018, and approved by City staff on January 15, 2019, Project Number PZ-18-00059-01 (“Concept Plan”). The City agrees the Concept Plan meets the requirements of City Zoning Ordinance 2000-11 and this Development Agreement (as amended). If any other term or provision of this Agreement conflicts with this section, the terms of this section will control.”

4. Limited Purpose of Amendment. The sole purpose of this Amendment is to clarify and confirm the scope of application of the Development Agreement to Tract 22 and nothing contained in this Amendment may be construed as reconstituting or extending the life of the Development Agreement, which automatically terminated on October 5, 2010.

5. Miscellaneous. Except as specifically provided in this Amendment, the Development Agreement shall remain unchanged.

6. Conflict of Interest. This Amendment may be cancelled by the City pursuant to A.R.S. § 38-511.

*[Signatures begin on following page]*



**City:**

**CITY OF FLAGSTAFF,**  
an Arizona municipal corporation

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

STATE OF ARIZONA        )  
  ) ss.  
County of \_\_\_\_\_ )

On February \_\_\_\_, 2019, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of the CITY OF FLAGSTAFF, an Arizona municipal corporation, and acknowledged that he executed the foregoing instrument for and on behalf of the city, being authorized so to do, for the purposes therein contained.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
City Attorney

**Exhibit A**

(Legal Description of the Property)

TRACT 22, THE ESTATES AT PINE CANYON UNIT ONE, ACCORDING TO THE PLAT OF RECORD IN CASE 8, MAPS 92-92H, INCLUSIVE, AND CERTIFICATE OF CORRECTION RECORDED IN INSTRUMENT NO. 2004-3286375, RECORDS OF COCONINO COUNTY, ARIZONA.

SAVE AND EXCEPT THAT PORTION DEDICATED AS S. LINKS ROAD BY RIGHT OF WAY DEDICATION MAP, RECORDED AS 2015-3711130 OF OFFICIAL RECORDS.