

When recorded, mail to:

City Clerk
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

DEVELOPMENT AGREEMENT AND WAIVER
between
City of Flagstaff
and
McGrath Real Estate Partners

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is entered into this ____ day of _____, 2019, by and between the City of Flagstaff, an Arizona municipal corporation (“**City**”), and McGrath Real Estate Partners, LLC, a Texas Domestic Limited-Liability Company (LLC) (“**Developer**”).

RECITALS

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

B. Developer is the owner of real property located at 825 and 829 E. Butler Avenue, Flagstaff, Arizona, which is more specifically described in *Exhibit “A”* (the “**Property**”).

C. The Property is currently zoned Light Industrial (“**LI**”) and Heavy Industrial (“**HI**”), and the Developer is requesting rezoning to High Density Residential (“**HR**”) and Highway Commercial (“**HC**”).

D. Developer desires to develop the Property into a multi-family residential project consisting of (i) no more than 238 dwelling units and a clubhouse located in two five-story buildings; (ii) a commercial development at the southeast corner of Butler Avenue and Sawmill Road; and (iii) an extension of the Flagstaff Urban Trail System.

E. This Agreement is consistent with the Flagstaff Regional Plan 2030 in effect on the Effective Date of this Agreement, as set forth below.

F. The City has an interest in ensuring that the development of the Property complies with City standards for development and engineering improvements, and the City believes that development of the Property pursuant to this Agreement will result in planning, safety, and other benefits to the City and its residents.

G. The Developer acknowledges that development of the Property pursuant to this Agreement will be beneficial and advantageous to the Developer by providing assurances to the Developer that it will have the ability to develop the Property within the City pursuant to this

Agreement, under the zoning described in Recital C above, and in accordance with the Site Plans.

H. The City and Developer acknowledge that this Agreement is a development agreement pursuant to the provisions of A.R.S. § 9-500.05.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and agreements set forth herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and in order to fulfill the foregoing objectives, the parties agree as follows:

1. INCORPORATION OF RECITALS

Each of the recitals set forth above is incorporated into this Agreement as though fully set forth herein.

2. DEFINITIONS

The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

2.1 **“Certificate of Occupancy”** shall mean a document issued by an authorized City official setting forth that a building or structure legally complies with the City’s building codes, the Flagstaff Zoning Code, and other pertinent state and local requirements, and that the same may be used for the purpose(s) therein.

2.2 **“City”** shall mean and refer to the City of Flagstaff, an Arizona municipal corporation, and any successor public body or entity.

2.3 **“Developer”** shall mean and refer to McGrath Real Estate Partners, LLC, a Texas Domestic Limited-Liability Company (LLC), and any successor-in-interest or assignee of McGrath Real Estate Partners, LLC, as contemplated pursuant to Section 9.14.

2.4 **“Improvements”** shall mean and refer to all the improvements which may be constructed as part of the Project, including, without limitation, public roads, utilities, driveways, landscaping, and other improvements of any type or kind to be built by Developer.

2.5 **“Phasing”** shall mean and refer to each separate component or portion of the Project which is or may be developed by Developer pursuant to this Agreement.

2.5 **“Project”** shall mean and refer to the development of the Property for the uses, intensities, and densities currently shown in the approved Site Plans.

2.6 “**Property**” shall mean and refer to all of the real property which is legally described in *Exhibit “A”*.

3. ENTITLEMENTS

3.1 Zoning Map Amendment. McGrath Real Estate Partners hereby agrees to be subject to all of the terms, conditions, and stipulations of the rezoning ordinance for PZ-17-00089-03 (City Ordinance No. 2019-02) and Site Plan (PZ-17-00089-02) (collectively, the “Entitlements”).

3.2 Development Standards. The development of the Property, as well as the standards for off-site and on-site public improvements, will be governed by the Flagstaff Zoning Code, ordinances, regulations, rules, guidelines, and policies controlling permitted uses of the site, design review guidelines, the density and intensity of uses, and the maximum and minimum height and size of the buildings in existence as of the Effective Date of this Agreement will apply. For any development modifications made after five (5) years from the Effective Date of this Agreement, the current codes, ordinances, regulations, rules, guidelines, and standards in effect at the time of submittal shall apply.

4. DEVELOPMENT PLAN

4.1 Scope of Development. The City and Developer hereby acknowledge that the City of Flagstaff Development Review Staff approved, subject to conditions, the Site Plan and Building Elevations for the Project on September 21, 2018, attached hereto as *Exhibit “B”* and incorporated herein by this reference (collectively the “**Site Plan**”). The Site Plan sets forth the basic land uses, intensity and density of such uses, relative height, bulk and size of buildings and structures proposed by Developer and approved by the City for development within the Property. As depicted on the site plan, the overall maximum number of residential units on the subject property is 268 with 849 bedrooms and shall include a minimum of nineteen thousand (19,000) square feet of commercial space. The residential portion of the project shall be composed of twenty-two (22) studio units, twenty (20) one-bedroom units, thirty-six (36) two-bedroom units, twenty-five (25) three-bedroom units, and one hundred and sixty-five (165) four-bedroom units. Notwithstanding anything contained in the foregoing, however, the City acknowledges that, while the Developer intends to develop the Project in general conformance with the Site Plan, in order to make the Project economically viable and otherwise feasible, Developer may request amendments to the Site Plan. The City shall process all submittals made by Developer in conformance with Section 7.1, below, and nothing contained herein shall preclude the City from the exercise of its normal review process and requirements in connection with its approval of such submittals, however Developer shall not significantly deviate (more than five percent) from the unit breakdown set forth in this section.

4.2 Conceptual Commercial Site Plan Requirements. The commercial phase of this Project, as shown on *Exhibit “C”* attached hereto, is conceptual in nature but must meet the following requirements in order to comply with the Urban Activity Center as defined in the Regional Plan. The commercial parcel shall include a minimum of 19,000 square feet of commercial space. The minimum height of buildings on the commercial parcel shall be thirty-

two (32) feet, which may be accomplished through taller architectural feature(s). Commercial buildings may be designed to have office or commercial uses on a second floor. No more than two buildings may have drive-through lanes. If a banking use, no more than two (2) drive-through lanes are allowed for the building. For other uses, the building is limited to no more than one (1) drive-through lane. If there is no banking-related use, then drive-through lanes are limited to no more than one (1) per building. The drive aisle and pick-up window shall be on the south side of the building.

5. DEVELOPER OBLIGATIONS

5.1 Construction of Public and Other Related Improvements. Prior to issuance of public improvements permits for any phase or component of the Project, Developer shall provide security, in a form satisfactory to the City as set forth in the City's Zoning Code, that public and other related improvements will be constructed in accordance with approved plans. Developer shall, at its sole expense, construct or cause to be constructed all public and other related improvements as required by City codes, ordinances and this Agreement, and in accordance with approved specifications. Following the construction of the described public improvements and dedication of same to the City, unless otherwise provided, the City shall assume, at its expense, the maintenance and repairs of all public improvements in accordance with City policies. The Developer agrees that the construction of the public and other related improvements will coincide with the development of the Project.

Specifically, the scope and nature of the on-site and off-site right-of-way and other infrastructure improvements to be constructed in connection with the Project are as follows:

5.1.1. General Off-site Roadway Improvements: The developer provided a Traffic Impact Analysis ("TIA") to determine the necessary traffic mitigation for the Project. The parties agree that the developer's traffic mitigation will be accomplished in two ways: 1) Developer will be solely responsible for the design and construction of certain off-site roadway improvements: striping modification on Lone Tree at Sawmill Road to provide a westbound storage/acceleration lane, and, 2) Developer will make a cash contribution of two hundred thousand dollars (\$200,000.00) prior to the issuance of any building permit, with the exception of a demolition permit for the residential portion of the Project, to the City for future traffic improvements to the Lone Tree Road Corridor. If the development has not received construction permits within five (5) years of the Effective Date of this Agreement, or if the commercial phase of the development brings uses with a significantly higher impact than modeled in the TIA, a revised TIA may be required. Additional off-site improvements may be required as part of the review and approval of the new TIA. All right-of-way dedications required for this development will be completed prior to issuance of building permits, with the exception of a demolition permit for the residential portion of the Project.

5.1.2. General On-site Roadway Improvements: On-site roadway improvements shall consist of adjacent roadway improvements including but not limited to curb, gutter, sidewalks, pedestrian ways, FUTS trails, bicycle ways, medians, and turn lanes. On-site roadway improvements include all property frontage improvements along Butler Avenue and Sawmill Road. The on-site improvements shall include but not be limited to a right-turn deceleration lane

having a 60-foot taper and 139-foot storage lane at the Project's Butler Avenue driveway, a 40-foot wide site access driveway on Butler Avenue, and two 26-foot wide site access driveways on Sawmill Road.

5.1.3. Adjacent Right-of-Way Landscaping Maintenance: All landscaping and irrigation in adjacent right-of-way areas shall be maintained by the Developer or assignee(s).

5.1.4. On-site Water, Sewer, and Stormwater Improvement Requirements: The developer will provide on-site water and sewer improvements in compliance with the Water and Sewer Impact Analysis dated May 4, 2018 ("WSIA"), stormwater improvements in conformance with the Drainage Impact Analysis Letter dated July 26, 2018, and the City of Flagstaff Engineering Design Standards. In accordance with the approved WSIA, if the development has not received construction permits within two (2) years of the approval date of the WSIA, a revised WSIA may be required. Additional off-site improvements may be required as part of the review and approval of the new WSIA.

5.1.5. Flagstaff Urban Trail System. As part of the development of the Property, and to facilitate the expansion of the Flagstaff Urban Trail System, prior to the issuance of a Certificate of Occupancy for the second phase of the residential development, the Developer agrees to dedicate a twenty (20) foot wide non-motorized easement ("FUTS Easement"), to the City, on a form approved by the City, and to construct the ten (10) foot wide FUTS trail as generally depicted on the approved Site Plans. The FUTS trail must be constructed in compliance with City engineering standards. Most of the FUTS trail will be aggregate-surfaced; except that the portion of FUTS trail adjacent to Sawmill Road that also functions as the public sidewalk must be concrete. The aggregate material used for the FUTS trail surface must be approved by the City. Developer agrees that the construction of the FUTS trail will coincide with the development of other public improvements for the Project. Snow removal from the concrete portion of the FUTS trail shall be the responsibility of the Developer.

5.1.6. Sinclair Wash. Developer has acknowledged a benefit to the community and to the Project from the restoration of the Sinclair Wash Riparian Area. Although improvements to the area are in the early stages of planning, Developer is interested in partnering with the community through the provision of picnic tables, bird blinds, and/or "adopting" a section of the area immediately adjacent to the Project for cleanup by Project residents. Developer will continue discussions with interested community members as the restoration progresses.

5.2. Dedication of Public Easements. Public utility and drainage easements with respect to the Project must be identified on the construction plans and dedicated prior to issuance of building permits. Dimensions for these easements must be in accordance with City requirements. Prior to dedication of public easements, all Phase 1 Environmental Site Assessments ("ESA") and any Phase 2 ESA recommendations must be complied with.

5.3. Affordable Housing. Developer agrees to comply with the Affordability Plan set forth in *Exhibit "E"*, attached hereto and incorporated by this reference. The Affordability Plan can be modified only upon the express written agreement of the City's Housing Director. The

purpose of these requirements is to ensure that the affordable housing set-aside contribution of ten percent (10%) of the overall unit count (27 out of 268 units) for income-restricted rental units for households earning, on average, up to eighty per cent (80%) of the Area Media Income (“AMI”), but in no event exceed one hundred percent (100%) AMI, as defined by the United States Department of Housing and Urban Development (“HUD”), or its successors, is met and maintained for the life of this Agreement. Rental rates for the affordable units will be set at no more than thirty-three percent (33%) of the applicant’s household income. These affordability criteria will be developed in more detail in an Affordability Plan and can be modified only with the express written consent of the Housing Director. Developer will also contribute one hundred and twenty thousand dollars (\$120,000.00) to the City of Flagstaff’s Housing Section, to be made prior to the issuance of any building permit, with the exception of a demolition permit on the residential portion of the Project.

5.4. Safety Plan and Contribution. Developer agrees to participate in the City of Flagstaff Crime-Free Multi-Housing Program and agrees that a final safety plan that addresses events, parties, general safety requirements, staff, and operations shall be approved by the Planning Director prior to Certificate of Occupancy for any part of the residential portion of the development. Developer also agrees to contribute twenty-five thousand dollars (\$25,000) to the Flagstaff Police Department and ten thousand dollars (\$10,000) to the Flagstaff Fire Department to offset some of the additional costs of providing service to the Project.

5.5. Undisturbed Open Space Areas. The two areas on the Landscape Plan (Sheet L-1.01) labeled as Undisturbed Natural Landscape and Existing Ponderosa Pine shall remain undeveloped and undisturbed except for any necessary cleanup, additional new landscaping in the area north of the parking structure, and reseeded of disturbed areas with native seed mix.

5.6. Materials Management. Developer agrees to incorporate infrastructure to support recycling activities on-site, including easy access to recycling chutes and disposal locations near those dedicated for trash, as well as proper signage at each location. Developer agrees to work with the City’s Sustainability Section to utilize best-practices in diverting debris produced in the construction of the development. Following construction, Developer will work with the Sustainability Section to ensure that the property management of the site utilizes best-practices in communicating proper recycling protocol to tenants and has all available resources to assist in this communication.

5.7. Permits and Building Fees. Developer agrees and understands that upon the submittal date of any application or permit, the current fees in effect at the time of submittal shall apply to the Project.

5.8. NAIPTA. Developer has agreed to provide Ecopasses for all residents for a period of five years and to make a contribution to NAIPTA in the amount of double the total Developer’s first year Ecopass expenditure to serve disadvantaged members of the community. This agreement has been outlined in a Letter of Intent between Developer and NAIPTA to be formalized through a final agreement executed between the parties. NAIPTA is the beneficiary of this agreement and this provision of the Development Agreement will be deemed satisfied at the time Developer and NAIPTA execute the formal agreement.

6. PHASING

6.1. Occupancy. Prior to any final or conditional Certificate of Occupancy being issued, the following are to be complete, approved, and accepted by the City: all underground utilities and all required public improvements, including sidewalk, turning lanes, and associated landscaping, as depicted on the Phasing Plan, attached hereto as “*Exhibit D*”, and Site Plan.

6.2. Residential Towers. Developer’s portion of the Project will consist of two five-story residential towers. Developer will commence construction of each tower simultaneously but anticipates that the north tower (which will include the clubhouse amenities that will serve both towers) will be completed prior to the second tower. Developer anticipates leasing the north tower and allowing tenants to move in while the south tower is being completed. Developer anticipates that the north tower will be completed during Fall 2020. Developer shall prepare and submit a logistics plan, to be approved by the City during civil improvements plan review, which details, but is not limited to, construction sequencing/schedule, access, staging, and deliveries.

In addition to the requirements of Section 6.1 of this Agreement, the following must be completed prior to issuance of any Certificate of Occupancy for a residential tower: parking required for the residential tower for which the Certificate of Occupancy is sought with associated landscaping, and site lighting; all drainage infrastructure required for proper operation of the entire residential portion of the Project; emergency ingress/egress per applicable International Building Code (IBC) requirements, including any City of Flagstaff revisions; installation and maintenance of all required fire access lanes; and any items identified by the City related to the health and safety of the tenants and general public. The FUTS Trail must be completed prior to issuance Certificate of Occupancy for the south residential tower.

6.3 Commercial/Retail Component. As of the date of this Agreement, Developer has contracted to sell the commercial parcel to Accelerated Mesa Country Club, LLC, who will subsequently develop the improvements to be located on the commercial parcel as identified in the Phasing Plan and Site Plan. Notwithstanding any sale of the commercial parcel, Developer remains responsible for the improvements set forth in Sections 6.1 of this Agreement.

In addition to the requirements of Section 6.1 of this Agreement, the following must be completed prior to issuance of any Certificate of Occupancy for the commercial parcel: parking required for the commercial development with associated landscaping, and site lighting; all drainage infrastructure required for proper operation of the commercial portions of the site; emergency ingress/egress per applicable IBC requirements, including any City of Flagstaff revisions; installation and maintenance of all required fire access lanes; and any items identified by the City related to the health and safety of the tenants and general public.

7. DEVELOPMENT PROCESS.

7.1 Diligence in Responding to Approval Requests. The City hereby acknowledges and agrees that development of the Property will require the City’s ongoing participation in the review and approval of modifications and amendments to any phasing plans, site plans,

infrastructure plans, drainage plans, design plans, building plans, grading permits, building permits, and other plans, permit applications, and inspections which are a part of the City's current building and development requirements (hereinafter collectively called "**Approval Requests**"). The City hereby agrees that, in connection with all such Approval Requests relating to the planning or development of the Property or any portion thereof, and the construction of Improvements thereon, it shall cooperate with Developer in good faith to process all such Approval Requests. Any modifications to the approved plans shall come into compliance with City codes and standards in accordance with Section 3.2.

8. **DEFAULT; REMEDIES**

8.1 Events Constituting Default. A party hereunder shall be deemed to be in default under this Agreement if such party breaches any obligation required to be performed by the respective party hereunder within any time period required for such performance and such breach or default continues for a period of thirty (30) days after written notice thereof from the party not in default hereunder.

8.2. Dispute Resolution. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before the commencement of litigation. The mediations shall be held under the commercial mediation rules of the American Arbitration Association. The mediator selected shall have at least five (5) years experience in mediating or arbitrating disputes relating to commercial property development. The costs of any such mediation shall be divided equally between the City and the Developer or in such other fashion as the mediator may order. The results of the mediation shall be nonbinding on the parties and any party shall be free to initiate litigation upon the conclusion of mediation.

8.3. Developer's Remedies. In the event that the City is in default under this Agreement and fails to cure any such default within the time period required therefore as set forth in Section 8.1 above, then, in that event, in addition to all other legal and equitable remedies which the Developer may have, the Developer may terminate this Agreement by written notice delivered to the City.

8.4 City's Remedies. In the event that the Developer is in default under this Agreement, and the Developer thereafter fails to cure any such default within the time period described in Section 8.1 above, then, in that event, in addition to all other legal and equitable remedies which the City may have, the City may terminate this Agreement by written notice delivered to the Developer.

8.5 Development Rights in the Event of Termination. Upon the termination of this Agreement as provided herein, the Developer shall have no further rights to develop the Property pursuant to this Agreement.

8.6 No Personal Liability. No current or former member, official, or employee of the City or Developer when acting within the scope of their official capacity shall be personally

liable (a) in the event of any default or breach by the City or Developer, as applicable; (b) for any amount which may become due to the nonbreaching party or its successor or assign; or (c) pursuant to any obligation of the City or Developer, as applicable, under the terms of this Agreement.

8.7 Liability and Indemnification. Developer shall indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, and agents for, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the performance of this Agreement by City or Developer, or nonperformance of this Agreement by the Developer.

9. GENERAL PROVISIONS

9.1 Effective Date and Term. This Agreement shall be effective (the "**Effective Date**") upon execution by the parties hereto and recordation in accordance with A.R.S. § 9-500.05 (as amended). The term of this Agreement shall extend from the Effective Date of this Agreement and shall automatically terminate thirty years from such date.

9.2 Notices. All notices and communications provided for herein, or given in connection herewith, shall be validly made if in writing and delivered personally or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid to:

To City:

City Manager
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

To Developer:

McGrath Real Estate Partners, LLC
950 Corbindale Road, Suite 300
Houston, TX 77024-2849
Attention: Barrett O. Kirk

or to such other addresses as either party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective. Notices given by mail shall be deemed delivered 72 hours following deposit in the United States Postal Service in the manner set forth above.

9.3 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement.

9.4 Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only, and shall not control or affect the meaning or construction of any of the provisions of the Agreement.

9.5 Authority. The undersigned represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. The Developer represents and warrants that it is duly formed and validly existing under the laws of the State of Texas and that it is duly qualified to do business in the State of Arizona and is in good standing under applicable state laws. The Developer and the City warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing. The Developer represents to the City that by entering into this Agreement, the Developer has bound the Property and all persons and entities having any legal or equitable interest therein to the terms of the Agreement.

9.6 Entire Agreement. This Agreement, including the following exhibits which are incorporated in this Agreement by reference, constitutes the entire agreement between the parties and supersedes any prior written or oral understandings or agreements between the parties. This provision applies only to the entirety of this Agreement; additional and separate zoning stipulations and agreements with the City may apply to the Property, and this provision has no effect on them.

- Exhibit "A" Legal Description of Property***
- Exhibit "B" Site Plans***
- Exhibit "C" Conceptual Plan: Commercial Property***
- Exhibit "D" Phasing Plan***
- Exhibit "E" Affordability Plan***
- Exhibit "F" Zoning Ordinance***

9.7 Amendment of the Agreement. This Agreement may be amended, in whole or in part and with respect to all or any portion of the Property, only with the mutual written consent of the parties to this Agreement or by their successors in interest or assigns. The City shall record the amendment or cancellation in the official records of the Coconino County Recorder.

9.8 Severability. If any other provision of the Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.

9.9 Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. This Agreement has been made and entered into in Coconino County, Arizona.

9.10 Recordation of Agreement and Subsequent Amendment; Cancellation. The City will record this Agreement, and any amendment or cancellation of it, in the official records of the Coconino County Recorder no later than ten (10) days after the City and the Developer execute the Agreement, amendment, or cancellation, as required by A.R.S. § 9-500.05.

9.11 No Partnership; Third-Party. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between Developer and the City. No term or provision of this Agreement is intended to, or shall,

be for the benefit of any person, firm, organization, or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.

9.12 Conflict of Interest. Pursuant to Arizona law, rules, and regulations, no member, official, or employee of the City shall have a personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. This Agreement is subject to the cancellation provisions of A.R.S. § 38-511.

9.13 Compliance with All Laws. Developer will comply with all applicable Federal, State, and County laws, as well as with all applicable City ordinances, regulations, and policies.

9.14 Successors and Assigns; Restriction on Assignment by Developer. The provisions of this Agreement shall inure to the benefit and be binding upon the permitted successors and assigns of the parties hereto. Notwithstanding anything contained in the foregoing to the contrary, until completion of construction of the Project, the right of Developer to assign its rights, duties, and obligations under this Agreement shall be limited to the following (which assignments shall not require City approval provided that the City is timely notified of such assignment):

(a) Assignments made by the Developer in connection with obtaining financing, and the exercise of lender remedies with respect thereto;

(b) An assignment of all rights and obligations of Developer under this Agreement to a real estate developer reasonably acceptable to and approved by the City; however, that if Developer or a current principal of Developer retains an ownership interest and management control in such real estate developer, then, in that event, the City's prior approval shall not be required; or

(c) An assignment by Developer of its rights under this Agreement to a corporation, partnership, joint venture, limited liability company, trust, or other legal entity which is controlled by, under common control with, or which controls Developer, or which is owned or controlled by a principal of Developer; or

(d) Any partial assignment of this Agreement to the owner of the commercial parcel with respect to the development of the improvement on such commercial parcel provided that Developer retains responsibility for the public improvements and dedications identified above.

With the exception of those instances set forth in Section 9.14(a)-(d), above, the Developer shall not transfer or assign any part of its rights and/or obligations arising under this Agreement without the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned, or delayed. After the completion of construction of the Project, Developer may assign this Agreement to any purchaser of the portion of the Project owned by Developer without the City's consent (provided that the City is timely notified of such

assignment). Notwithstanding anything contained in the foregoing to the contrary, no assignment of this Agreement or any specific rights, obligation, or duties of Developer under this Agreement shall release Developer, its successors, or assigns, from its obligations hereunder, unless specifically agreed to by the City.

9.15 Restriction on Assignment by City. The City shall not transfer or assign all or any part of its rights and obligations under this Agreement without the prior written consent of the Developer, which consent may not be unreasonably withheld, conditioned, or delayed.

10. WAIVER OF CLAIM FOR DIMINUTION IN VALUE.

Developer hereby waives and fully releases any and all financial loss, injury, claims, and causes of action that the Developer may have, now or in the future, for any “diminution in value” and for any “just compensation” under the Private Property Rights Protection Act, codified in A.R.S §§ 12-1131 through 12-1138 (the “Act”), in connection with the application of the City’s existing land use laws and including Ordinance Number 2019-02 regarding the Property. This waiver constitutes a complete release of any and all claims and causes of action that may arise or may be asserted under the Act with regard to the subject Property. Developer agrees to indemnify, hold harmless, and defend City, its officers, employees, and agents, from any and all claims, causes of actions, demands, losses and expenses, including attorney’s fees and litigation costs, that may be asserted by or may result from any of the present or future owners of any interest in the Property seeking potential compensation, damages, attorney’s fees, or costs under the Act that they may have, as a result of the application of the City’s existing land use laws, including Ordinance Number 2019-02, upon the Property.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

City of Flagstaff

**McGrath Real Estate Partners, LLC, a
Texas Domestic Limited-Liability
Company**

Coral Evans, Mayor

By: _____

Attest:

Name: _____

Title: _____

City Clerk

Approved as to form and authority:

City Attorney

STATE OF ARIZONA)
COUNTY OF _____)

ACKNOWLEDGMENT

On this _____ day of _____, 2019, before me, a Notary Public, personally appeared _____, known to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same on behalf of McGrath Real Estate Partners, LLC, a Texas Domestic Limited-Liability Company, for the purposes therein contained.

Notary Public
My Commission Expires: _____