

When recorded, mail to:

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

DEVELOPMENT AGREEMENT

**between
City of Flagstaff
and**

Woodshire on Butler, LLC

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is made as of this ___ day of _____ 2019, by and between the City of Flagstaff (the “**City**”), a municipal corporation organized and existing under the laws of the State of Arizona, and Woodshire on Butler, LLC (the “**Developer**”), an Arizona limited liability company (LLC).

RECITALS

A. Developer owns 3.31 acres of real property located at 3001 E. Butler Avenue, parcel number 106-04-006C, and intends to purchase a 0.74-acre portion of City Parcel 106-04-007B (the “City Parcel”) located at 2989 E. Butler Avenue, Flagstaff, Arizona, more specifically described in *Exhibit A* (collectively, the “**Property**”).

B. Developer proposes to develop a residential community of approximately 50 detached condominium homes as more specifically described in the approved Preliminary Plat containing City Staff conditions dated May 1, 2019, attached hereto as *Exhibit B*, and the approved Site Plan containing City Staff conditions also dated May 1, 2019, and included as part of the Preliminary Plat (the “**Project**”).

C. In order to develop the Project, Developer intends to purchase parcel 106-04-007B (the “City Parcel”) from the City. As a condition of this purchase, Developer has committed to construct and sell five affordable units as set forth in more detail below.

D. The City has an interest in ensuring that the development of the Property complies with the City's standards for development and engineering improvements and all other City standards and for ensuring that affordable units are constructed in exchange for the sale of the City Parcel.

E. Developer acknowledges that this development will be beneficial and advantageous to Developer and that purchasing the City Parcel will enable Developer to construct additional units and realize cost savings by securing a secondary access across the City Parcel.

F. The City and Developer are entering into this Agreement pursuant to Arizona Revised Statutes § 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, whenever capitalized in this Agreement, shall have the meanings set forth below, except where the context clearly indicates otherwise:

2.1 **"Agreement"** shall mean this Development Agreement between the City and Developer.

2.2 **"A.R.S."** shall mean Arizona Revised Statutes.

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

2.4 **"Construction Permits"** shall mean any permit issued by the City or other jurisdiction that is required in order to begin construction on any On-Site or Off-Site phase or stage of the Project, including but not limited to public improvements, grading, electrical, gas, plumbing, or mechanical.

2.5 **"Developer"** shall mean and refer to Woodshire on Butler, LLC, an Arizona limited liability company, and any successor and/or assignee of Woodshire on Butler, LLC pursuant to Section 6.16 of this Agreement.

2.6 **"Effective Date"** shall mean the date this Agreement becomes effective as set forth in Section 6.1 of this Agreement.

2.7 **"Parties"** shall mean a collective reference to the City and Developer, and its successors and/or assigns.

2.8 **"Roadway Improvements"** shall mean improvements to public roadway segments and intersections.

2.9 "Site" shall have the same meaning as the term Property.

2.10 "Zoning Code" shall mean the City's Zoning Code.

3. APPLICABLE REGULATION AND DEVELOPMENT STANDARDS

3.1 Development Standards. The development of the Project, as well as the requirements 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 standards, 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 occurring 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. Regardless of the time of development, current City Engineering Standards, Building Code, Fire Code, and other Code provisions, regulations, rules, and guidelines will apply to the Project.

3.2 Permits & Building Fees. Developer agrees and understands that all building permits, development fees, and other fees normally applicable to construction within the City at the time of application shall apply to the Project. Developer further 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. Denial of a Developer's permit application for failure to meet the City's criteria for such permit shall not be deemed a breach by the City of this Agreement.

4. IMPROVEMENT AND CONTRIBUTION REQUIREMENTS

4.1 General Roadway Improvements

The Parties agree that Developer's traffic mitigation will be accomplished as described in this Section.

4.1.1 General Off-Site Roadway Improvements. Developer shall widen Butler Avenue, as shown on the Preliminary Plat, to provide a left-turn lane at the Site driveway. Additionally, Developer shall pay cash-in-lieu for constructing the required roadway frontage improvements (curb/gutter and sidewalk) and a future right-turn lane at the Butler Avenue driveway, in the amounts set forth in *Exhibit D*. The fees will be used when the City widens Butler Avenue in the future. The calculations for the estimated in-lieu fees are subdivided according to the two parcels associated with the development. In the event Developer elects to construct the project in phases (1 and 2), the fees associated with each parcel shall be paid in advance of obtaining Construction Permits on the parcel. All right-of-way dedications required for this development as set forth in the Preliminary Plat will be completed prior to issuance of Construction Permits.

4.1.2 Temporary Easement. The City will grant a temporary access easement ("the Easement") across the remaining portion of the City parcel located at 2989 E. Butler

Avenue, as defined and depicted in *Exhibit C*. The Easement will be granted after the City Parcel is acquired, at close of escrow. In the event the City Parcel is not acquired by the Developer, the Easement will not be granted by the City.

4.2 **General Water and Sewer Requirements**

The required Water and Sewer Impact Analysis (“WSIA”) was waived by the City of Flagstaff for the Project. Instead, the Parties agree that Developer’s water and sewer requirements will be accomplished as described in this Section.

4.2.1 **Off-Site Water Requirements.** Per the City of Flagstaff Water Services memorandum dated November 29, 2018, Developer will make a cash-in-lieu contribution of twenty-eight thousand six hundred and sixty dollars and thirty cents (\$18,181.76) for Parcel 106-04-006C. In addition, Developer agrees to make a cash-in-lieu contribution of six thousand nine hundred and forty-five dollars and ninety cents (\$4,288.65) for the portion Developer intends to purchase of Parcel 106-04-007B. Both payments are for the development’s portion of the off-site improvement costs of the secondary water source and must be made prior to Construction Permits being issued.

4.3 **Affordable Housing**

4.3.1 **The Developer’s Obligations.** Developer agrees to provide a minimum of five (5) permanently affordable ownership units. The affordable ownership units will be deed-restricted, utilizing deed restrictions approved by the City, to secure permanent affordability and must be sold to households earning up to no more than 100% of the Area Median Income (AMI), as defined by the U.S. Department of Housing and Urban Development (HUD) or its successor. Developer must finance the costs of construction for the affordable housing units, which shall be comparable in construction quality and exterior design to the market rate units within the development. Developer will work with the City to ensure that the affordable units are dispersed throughout the Project. Each unit shall be priced a minimum of 20% less than the fair market value per square foot of comparable units, with qualifying buyers spending no more than 30% of monthly income on mortgage payments. The five units shall be two-bedroom units. The units shall be constructed and offered for sale within five (5) years from the date the property is sold.

4.3.2 **The City’s Obligations.** The City will provide income qualification of homebuyers and buyer education services for qualified homebuyers. The City will also work with the Developer to develop a mutually agreeable deed restriction for the affordable units.

4.3.3 **Term.** The provisions of this Section 4.3 shall survive termination of this Agreement up to and until all affordable units have been sold to qualified homebuyers.

5. **DEFAULT; REMEDIES**

5.1 **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.

5.2. 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.

5.3. 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 5.1 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.

5.4 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 5.1 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.

5.5 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.

5.6 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.

5.7 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.

6. **GENERAL PROVISIONS**

6.1 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). Except as otherwise stated herein, the term of this Agreement shall extend from the Effective Date of this Agreement and shall automatically terminate ten (10) years from such date.

6.2 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:

Woodshire on Butler, LLC
Attn: Phil Petersen
3550 North Central Suite 1101
Phoenix, AZ 85012

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.

6.3 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.

6.4 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.

6.5 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 Arizona 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.

6.6 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" Preliminary Plat

Exhibit "C" Easement

Exhibit "D" Roadway Contributions

6.7 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.

6.8 Construction of Agreement. This Agreement has been arrived at by negotiation and shall not be construed against either Party.

6.9 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which together shall constitute but one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.

6.10 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.

6.11 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, and any lawsuit to dispute or enforce any provision of this Agreement must be brought in Coconino County, Arizona.

6.12 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.

6.13 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.

6.14 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.

6.15 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.

6.16 Successors and Assigns; Restriction on Assignment by Developer. All of the covenants and conditions set forth herein shall be binding upon the successors in interest of each of the Parties hereto, except that transfer of any portions of right-of-way from the City to the State of Arizona will not result in a transfer of obligations in this Agreement to the State. Obligations accruing after a transfer of ownership will not be deemed to be an obligation of the transferor, though no transfer will relieve a transferor of any obligation that accrued prior to the transfer.

Developer's rights and obligations hereunder may only be assigned to a person or entity that has acquired the Property or a portion thereof and only by a written instrument, recorded in the Official Records of Coconino County, Arizona, expressly assigning such rights and obligations. Such assignment must be approved by the City before the assignment is valid, which approval shall not be unreasonably withheld.

7. 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 Resolution Number 2019-18, CUP Number PZ-18-00105-06 and Ordinance Number 2005-10 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 , upon the Property.

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

City of Flagstaff

Woodshire on Butler, LLC, an Arizona 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 Woodshire on Butler, LLC, an Arizona limited liability company, for the purposes therein contained.

Notary Public
My Commission Expires: _____

List of Exhibits

- Exhibit A: Legal Description of the Property**
- Exhibit B: Approved Preliminary Plat**
- Exhibit C: Easement**
- Exhibit D: Roadway Contribution**