

WHEN RECORDED, RETURN TO:

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

**FIFTH AMENDMENT TO  
DEVELOPMENT AGREEMENT**

The City of Flagstaff, a political subdivision of the state of Arizona (“City”) and Nestle Purina PetCare Company, a Missouri corporation (“Purina”) enter into this Fifth Amendment to Development Agreement effective this \_\_\_\_\_ day of \_\_\_\_\_, 2020 (the “Fifth Amendment”).

**RECITALS:**

- A. Purina owns and operates a pet food manufacturing and warehousing facility located in the City of Flagstaff on the property legally described in Exhibit 1.
- B. City and Purina entered into a Fourth Amendment to Development Agreement, recorded on November 7, 2016 in the official records of the Coconino County, Arizona as Instrument No. 3768807 (“the Fourth Amendment”), for an odor reduction plan, in two phases, to achieve at least a 50% reduction in maximum odor from the baseline 55 dilution threshold (“D/T”).
- C. Purina has implemented Phase 1 of the odor reduction plan, and achieved a 44% reduction in maximum odor, but reports that the actual costs of implementation exceeded its original estimate by \$870,000.
- D. The parties are willing to proceed with modified Phase 2, in order to achieve the original goal of at least a 50% reduction in maximum odor, and in light of the fact that costs of the odor reduction plan have exceeded original estimates.

**AGREEMENT**

NOW THEREFORE, IN CONSIDERATION FOR THE MUTUAL PROMISES CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

The Fourth Amendment to Development Agreement, sections 10, 13, and 15 are amended to read as follows (additions shown in capitalized, underlined text, and deletions shown as stricken), and Exhibit 5 to the Fourth Amendment to Development Agreement is deleted and replaced with Exhibit 5 to this Fifth Amendment to Development Agreement:

## Phase 2

### 10. Dispersion Stacks for Dryers.

- a. Equipment. PURINA WILL EXTEND ONE(1) DRYER EXHAUST PIPE INTO A NEW TALL STACK SUPPORTED BY THE MILL BUILDING. ~~Purina will connect all dryer exhausts in a bundle and extend the exhaust piping into four or five new tall stacks supported by the mill building (“Dryer Stacks”).~~ A conceptual rendering and description of the dryer stacks is attached hereto as part of Exhibit 5. PURINA WARRANTS THAT THIS MODIFIED PHASE 2 WILL NOT HAVE THE EFFECT OF LIMITING ADDITIONAL ODOR REDUCTION EFFORTS IN THE FUTURE.
- b. Cost. Purina will pay for all costs of the Dryer Stacks #3, estimated at a cost of \$250,000, \$670,000, according to Purina.
- c. Schedule. Purina shall use its reasonable efforts to obtain approval from its ultimate parent company to spend capital to install the Dryer Stacks and startup use of the Dryer Stacks on or before OCTOBER 30, 2020 ~~June 30, 2018~~. In the event Purina is unable to obtain approval for such capital expenditure, Purina will continue to use its reasonable efforts to obtain such approval as soon as possible thereafter and complete installation and startup as soon as reasonable feasible upon receipt of approval to spend the capital.
- d. Post Installation Testing. Within 60 days after installation of the Dryer Stacks, Purina at its own cost will conduct post installation testing and modeling at the property line testing point(s) using the Testing Procedures. The estimated cost is \$50,000, according to Purina. Purina will provide a summary of testing results to City.
- e. Measurable Reduction in Odor. Based on current operations, it is anticipated the Dryer Stacks (in conjunction with the ATA Stack) will reduce modeled ground-level odor at the Facility’s property line by at least 50% when measured using the Testing and Modeling Procedures and compared to the Baseline Test: Maximum odor at property line 27.5 D/T (*European Method*).
- f. Maintenance and Operations. Purina will keep and operate the Dryer Stacks in good repair for at least 10 years after the technology is installed and operational. Purina will pay all ongoing repair and operational costs, including an estimated \$5,000 to \$10,000 ~~\$205,000~~ in annual energy usage and maintenance costs (FY 20 DOLLARS) (~~FY 16 dollars~~). In the event Purina desires to remove or decommission the Dryer Stacks during such 10 year period, it will implement similar (or improved) odor mitigation technology at the Facility and keep and operate in good repair such replacement odor mitigation technology for the balance of the 10 year period, not counting any time when odor mitigation equipment was not in service. Example: Dryer Stacks ~~are~~ IS taken out of service on January 1 of year 8, replacement odor mitigation technology is

installed in and becomes operational on January 1 of year 10 (equipment is out of service for 3 years): Purina will operate the replacement odor mitigation technology in good repair for at least three (3) more years. The obligations set forth herein will survive upon expiration of the 10 year period as described above, except in the event Purina, its successor and/or assigns ceases to operate a pet manufacturing food operation in Flagstaff altogether within the promised minimum operation period(s), this obligation shall automatically expire.

\* \* \*

13. All other terms and conditions of the Development Agreement (as previously amended) as further amended by this Fourth Amendment AND FIFTH AMENDMENT shall remain in effect and are incorporated herein. PURSUANT TO THE NOTICE OF EXPIRATION OF DEVELOPMENT AGREEMENT RECORDED ON OCTOBER 16, 2017 IN THE OFFICIAL RECORDS OF THE COCONINO COUNTY RECORDER, INSTRUMENT NO. 3798786, ONLY THE FOURTH AMENDMENT, AS AMENDED BY THIS FIFTH AMENDMENT, REMAIN AN ENCUMBRANCE ON THE PROPERTY.

\* \* \*

15. The parties agree that until all requirements of this Fourth Amendment AS AMENDED BY THIS FIFTH AMENDMENT are met, general provisions related enforcement to and remedies as found in the original Development Agreement will apply (including but not limited to Section 8 Default and Remedies, Section 9 General Provisions) will apply.

NESTLE PURINA PETCARE COMPANY

\_\_\_\_\_

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

Its: \_\_\_\_\_

CITY OF FLAGSTAFF

\_\_\_\_\_

By: Mayor Coral Evans

Attest:

\_\_\_\_\_

By: Stacy Saltzburg, City Clerk

Approved as to form:

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City Attorney's Office

Attachments:

Exhibit 1 Purina Facility property (with Map, Exhibits A, B, C and D)

Exhibit 5 Dispersion Stack for Dryer #3

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