

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
Flagstaff at 4th, LLC

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is entered into this ____ day of _____, 2020, by and between the City of Flagstaff, an Arizona municipal corporation (“**City**”), and Flagstaff at 4th, LLC, a Delaware limited liability company (“**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 the north east corner of Butler Avenue and Fourth Street, and currently is addressed as 1002 North 4th Street, Flagstaff, Arizona, known as Coconino County Assessor’s Office Parcel Number 106-08-005J, which is more specifically described in *Exhibit “A”* (the “**Property**”).

C. The Property is currently zoned Medium Density Residential (“**MR**”) within the Resource Protection Overlay (“**RPO**”), and the Developer is requesting a Direct to Ordinance Zoning Map Amendment to rezone the parcel to Highway Commercial (“**HC**”) within the RPO.

D. The Developer proposes a horizontal mixed-used development consisting of 224 multi-family residential units within four (4) four-story buildings, providing a unit mix of 36 studio, 124 1-bedroom and 64 2-bedroom units, a 4,756 SF two-story clubhouse and a 6,000 SF single-story multi-tenant suburban commercial building, as more specifically described in rezoning application Case Number PZ-18-00205-03 and as shown on the approved Site Plan Application Case Number PZ-18-00205-02. The site plan for said application is attached hereto as *Exhibit “B”*. The Project’s proposed public benefits will include an open outdoor amphitheater and plaza suitable for small public gatherings and events as well as the retention of the open space remaining post-development on the Property, which is to be left in as natural state as possible, accessed by a series of trails with benches.

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 approved Site Plan (PZ-18-00205-02).

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 Flagstaff at 4th, LLC, and any successor-in-interest or assignee, as contemplated pursuant to Section 7.14.

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 **“Project”** shall mean and refer to the development of the Property for the uses, intensities, and densities currently shown in the approved Site Plan package (PZ-18-00205-02) and the approved site plan as attached hereto at *Exhibit “B”*.

3. DEVELOPMENT PLAN

3.1 Scope of Development. The City and Developer hereby acknowledge that the City of Flagstaff Inter Division Staff (IDS) approved, subject to conditions, that site plan application (PZ-18-00205-02), a **portion of which is** attached hereto as Exhibit “B” and incorporated herein by this reference (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, subject to the approval of a Zoning Map Amendment (Case PZ-18-00205-03). As depicted on the Site Plan, a horizontal mixed-use project consisting of 224 residential units providing a unit mix of 36 studio, 124 1-bedroom and 64 2-bedroom units within (4) four-story structures on the Property and shall include a 4,756 SF 2-story clubhouse and a minimum of 6,000 square feet of commercial space to be constructed in a single phase. The Developer may request subsequent amendments to the Site Plan in accordance with the Flagstaff Zoning Code. Notwithstanding the forgoing, the unit mix may be modified no more than ten percent (10%) without City Council approval.

4. ENTITLEMENTS

4.1 Zoning Map Amendment. Developer hereby agrees to be subject to all of the terms, conditions, and stipulations of the rezoning ordinance for PZ-18-00205-03 (City Ordinance No. **2020-XX**) and Site Plan (PZ-18-00205-02) (collectively, the “**Entitlements**”). The Developer’s failure to obtain certificate of occupancy for the entirety of the Project within five (5) years of the effective date of the rezoning ordinance shall entitle, but not require, the City, in its sole discretion, to conduct a public hearing for the purpose of considering reverting the Highway Commercial (“HC”) zoning on the Property to its former zoning classification of Medium Density Residential (“MR”), in accordance with Arizona Revised Statutes § 9-462.01.

4.2 Development Standards. The development of the Property, 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, resource protection requirements, 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. Site Plan modifications may be made according to the Flagstaff Zoning Code so long as they conform to the conditions of the Zoning Map Amendment and this Agreement. Zoning cases are conditioned upon their associated approved Site Plan. 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.

4.3 Additional Mixed-Use Requirements. Developer acknowledges that mixed use developments must develop the commercial portion of the project prior to, or simultaneous with, the residential portion of the project. To comply with the City’s Zoning Code, Table 10-40.30.040.B, End Note 6, horizontal mixed-use projects that include Multiple-Family Development in the HC zone must remain on a single parcel in perpetuity; the underlying parcel cannot be split for any reason, including to locate the commercial portion of the project on a separate parcel.

5. DEVELOPER OBLIGATIONS

5.1 Additional Commercial Development Standards. The interior of the commercial structure shall be designed and constructed to include a complete concrete floor, unpainted complete suite demising walls, un-ducted but installed and operational HVAC system(s), complete restrooms and restroom plumbing for each suite or for common use among suites, unpainted complete interior face of all exterior walls, interior and exterior lighting, and electrical outlets.

5.2 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 those public and other related improvements as described in 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. City acknowledges and agrees that except as described in this Agreement, no offsite improvements shall be required by the City, now or in the future, in connection with the development of the Project or any other improvements shown in the Site Plan, and Developer will not be required to contribute to the cost of any such other offsite improvements.

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:

5.2.1. General Off-site Roadway Improvements: Per the City's Zoning Code, street improvements shall be constructed across the full frontage and side boundaries of the property being developed. However, in this case, the developer shall pay to the City, cash in-lieu of constructing the improvements, which will be included in a future Capital Improvements project by the City. The value of the street improvements for the Project is \$910,960.00 (see *attached Exhibit C for itemized list of improvements and associated costs*), which shall be paid prior to issuance of any construction permits for the development. Also, the Developer provided a Traffic Impact Analysis ("TIA") to determine the necessary traffic mitigation for the Project. The parties agree that Developer's traffic mitigation will be accomplished by the Developer making a cash contribution of \$23,600.00 as set forth in Exhibit C for the Project's proportional share of the future permanent traffic signal at the intersection of Butler Avenue and Fourth Street (the "Traffic Signal Payment"). The Traffic Signal Payment shall be paid prior to the issuance of any construction permits. In accordance with the approved TIA, if the Project has not received construction permits within two (2) years of the approval date of the TIA, a revised TIA may be required, at the discretion of the City of Flagstaff's Engineering Division. Should the City require completion of a revised TIA, additional off-site improvements may be required as part of the review and approval of that revised TIA. All right-of-way dedications required for this development will be completed prior to issuance of building permits. Developer's sole obligation with respect to off-site roadway improvements is described in this Section 5.2.1, and is limited to financial payments as described herein, and Developer shall have no obligation to construct or develop any such roadway improvements, except as set forth in this section.

5.2.2. On-site Water, Sewer, and Stormwater Improvement Requirements:

Developer will provide on-site water and sewer improvements in compliance with the Water and Sewer Impact Analysis dated 2/1/2019 (February 1, 2019) (“WSIA”) and Flagstaff City Code. In accordance with the approved WSIA, if the Project 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. In addition to the improvements required above, the Developer shall contribute their assessment cost per the “Cost Assessment Table” Appendix E of the John Wesley Powell Improvement District Waterline, per the plan dated May 24, 2016 (*attached as Exhibit D*). The total contribution shall be \$112,181.46. The Developer shall pay this amount in full prior to the issuance of first construction permits.

Developer will provide stormwater retention, in lieu of offsite analysis and improvements, and stormwater improvements as specified in the Drainage Impact Analysis Letter (“DIA”) dated September 17, 2019, and in accordance with the Flagstaff City Code. This offsite analysis may be performed in lieu of volumetric retention at time of final Civil design.

5.3 Affordable Housing. The Project is not utilizing the affordable housing incentives allowed in Division 10-30.20 of the City of Flagstaff Zoning Code, but the Developer desires to provide affordable housing units as described herein. Upon completion of development of the Project, Developer agrees to comply with the Affordability Plan set forth in *Exhibit “E”*, attached hereto and incorporated by this reference. The purpose of these requirements is to ensure that the Developer sets aside ten percent (10%) of the overall unit count (22 out of 224 units) as income-restricted rental units for households earning, on average, up to eighty percent (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. These affordable units must be maintained for thirty years from the date the affordable units are placed into service. Rental rates for the affordable units will be set at no more than thirty percent (30%) of the qualified tenant’s gross household income. Apart from the AMI thresholds set forth above, additional eligibility criteria and other requirements will be developed in more detail in the Affordability Plan and can be modified only with the express written consent of the Housing Director. The Affordability Plan only applies to the affordable units. At the expiration thirty years from the date the affordable units are placed into service, the Affordability Plan expires and there will be no further obligations associated therewith. For avoidance of doubt, Developer shall have no obligation to comply with the Affordability Plan, or provide affordable housing, unless and until Developer develops pursuant to this Agreement and the rezoning entitlements described above. Nothing herein shall actually require Developer to proceed with the Project.

Developer’s property manager shall not discriminate against an applicant’s source of income and will accept HUD Housing Choice Vouchers and Veterans Affairs Supportive Housing (“VASH”) Vouchers. No limits will be set on the number of vouchers accepted at the Project. Standards for applicant income shall be waived for voucher holders, as the rent affordability is reviewed and determined by the Flagstaff Housing Authority. Applicants that already possess a voucher will be placed in a market rate unit. Property management shall allow a tenant to break the lease on an affordable unit without penalty if awarded a Housing Choice Voucher or VASH Voucher, at which time the tenant may sign a new 12-month lease for market rate rent.

5.4 Mixed-Use Required. The Developer acknowledges that a mixed-use development requires more than residential occupancy under the City's Zoning Code. The Developer and the City further acknowledge that it is in the best interests of the community to ensure, to the extent practical, that commercial portions of the Project do not remain unoccupied for extended periods of time. Therefore, if following issuance of a final certificate of occupancy for the Project (including for any commercial space), any suite or suites within the commercial space remains vacant for more than twelve (12) months, and provided that Developer is not then in negotiations with an identifiable prospective tenant for the lease of such space (so long as negotiations do not exceed two months), then the Developer shall cooperate with the City to create a rental plan to allow rental of such vacant space by non-profit tenants at a discounted or zero rent rate. The rental plan would be for no more than a one (1) year period, during which period the Developer would be permitted to continue to market the commercial space for a market rate tenant (to take occupancy at the conclusion of the lease term of the current occupant, if any). At the end of the rental plan period, the commercial space can return to a vacant status (if not otherwise renewed at the discretion of the Developer) and be marketed as such for another twelve (12) month period, conclusion of which without an occupant shall require the Developer to enter into a new rental plan. In no case would the Developer be required under any rental plan to lease to any non-profit tenant on a reduced rent schedule for more than 12 months as at time. The Developer may be authorized to offer any discounted lease on a month-to-month or other short-term basis while it markets the space to commercial tenants paying market rent.

5.5 Safety Plan. 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.

5.6 Undisturbed Open Space Areas. The areas on the Landscape Plan (Sheet LP.1) labeled as "Undisturbed Natural Forest Area" shall remain undeveloped and undisturbed except for any necessary cleanup, additional new landscaping, and reseeded of disturbed areas with native seed mix.

5.7 Materials Management. Developer agrees to incorporate infrastructure to support recycling activities on-site. This includes providing space for recycling receptacles, chutes, or dumpsters immediately next to those dedicated for trash within units, trash rooms, and other disposal locations. These areas for trash and recycling should be properly signed with information on items accepted in each stream. 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 Project utilizes best-practices in communicating proper recycling protocol to tenants and obtains from the Sustainability Section resources available at no cost to assist in this communication.

5.8 Electric Vehicle Charging. Developer will provide power stubs to a parking area outside each building to support the installation of future electric vehicle charging stations. One (1) electric vehicle charging station shall be installed by the Clubhouse prior to final Certificate of

Occupancy. All electric vehicle charging stations will provide power to two (2) parking spaces for an eventual total of twelve (12) electric vehicle charging parking spaces. Future electrical vehicle charging stations will be installed by the Developer as tenant demand dictates.

- 5.9 Bicycle Parking. Developer shall install no less than the following bicycle parking:
- a. Interior Lockers (secured, interior bicycle parking) – 40 per Residential Building.
 - b. Exterior Racks (uncovered, unsecured bicycle racks) – 6 per Residential Building and Commercial Building.
 - c. Total Provided – 190 Bicycle Parking Spaces (interior and exterior).

5.10 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.

6. **DEFAULT; REMEDIES**

6.1 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; provided, however, that if the nature of the default is such that it cannot reasonably be cured within the 30-day period, no default shall be deemed to exist if the party failing to perform commences a cure within such 30-day period and thereafter diligently and expeditiously pursues such cure to completion within one hundred eighty (180) days.

6.2. 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.

6.3. 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 6.1 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.

6.4 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 6.1 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.

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

6.6 No Personal Liability. No current or former member, manager, officer, director, agent, representative, official, employee or other natural person 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.

7. GENERAL PROVISIONS

7.1 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. Notwithstanding the termination date of this Agreement, Developer has the obligation to provide the affordable units for term of thirty (30) years from the date the affordable units are placed into service.

7.2 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

XXXX

To Developer:

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.

7.3 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.

7.4 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.

7.5 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.

7.6 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" Traffic R.O.W. estimate and drawing incl. proportional share of Butler/Fourth intersection

Exhibit "D" John Wesley Powell Improvement District Waterline Plan

Exhibit "E" Affordability Plan

Exhibit "F" Zoning Ordinance No. XXXXX, approving Case PZ-18-00205-03

7.7 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.

7.8 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.

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

7.10 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.

7.11 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.

7.12 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.

7.13 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.

7.14 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:

(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.

With the exception of those instances set forth in Section 7.14(a) and 7.14(c) or if the Developer retains an ownership and management interest as set forth in Section 7.14(b), 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 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.

7.15 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.

7.16 Estoppel Certificate; Financing. Developer may request of the City Manager by providing written notice, and the City Manager shall, within thirty (30) calendar days respond in writing to Developer: (a) certifying that this Agreement is unmodified and in full force and effect (or if modified, stating the nature of such modification and certifying that this Agreement, as so modified, is in full force and effect); and (b) acknowledging that there are not, to City's knowledge, any uncured defaults on the part of Developer hereunder, or specifying such defaults if they are claimed.

7.17 Time of the Essence. Time is of the essence in implementing the terms of this Agreement.

8. **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 2020-XX** 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 2020-XX**, upon the Property.

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

City of Flagstaff

Flagstaff at 4th, LLC, a Delaware 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 _____, 2020, 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 Flagstaff at 4th, LLC, a Delaware limited liability company, for the purposes therein contained.

Notary Public
My Commission Expires: _____