

Upon recording, return to:

City Clerk
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001

FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT

The City of Flagstaff, an Arizona municipal corporation (“City”) and Miramonte Presidio, LLC, an Arizona limited liability company (“Developer”) enter into this Fourth Amendment to Development Agreement (“Fourth Amendment”) effective this ____ day of _____, 2020.

RECITALS

A. Section 9-500.05 of the Arizona Revised Statutes, and Section 10-20.40.060 of the Flagstaff City Code, authorizes the City to enter into development agreements with landowners and persons having an interest in real property located in the City.

B. Developer owns real property located at 2940 South Woody Mountain Road, Flagstaff, Arizona (APN 112-62-483), which is more specifically described in Exhibit “A” (the “Property”).

C. The City and Developer’s predecessors-in-interest entered into a Development Agreement dated September 16, 2004 and recorded as Instrument No. 3283782 on September 20, 2004 in the Official Records of Coconino County, Arizona (the “2004 Development Agreement”). The 2004 Development Agreement was subsequently amended by agreement of the City and Developer’s predecessors-in-interest in the following recorded instruments: First Supplement to Development Agreement dated November 21, 2006 and recorded as Instrument No. 3430464 on March 30, 2007 in the Official Records of Coconino County; Second Supplement to Development Agreement dated December 1, 2008 and recorded as Instrument No. 3507952 on December 10, 2008 in the Official Records of Coconino County; and Third Supplement to Development Agreement dated August 2, 2012 and recorded as Instrument No. 3635272 on August 8, 2012 in the Official Records of Coconino County.

D. The Development Agreement covered the development of a much larger area than the Property owned by Developer. The Development Agreement sets forth the land uses permitted on the Property. Section 6.6 of the 2004 Development Agreement provides that the Property shall be “developed as a church use, [or] alternative development of the [Property] shall be limited to neighborhood indoor uses permitted in the Urban Commercial zoning district as defined in Section 10-03-002-0004(B) of the Land Development Code.” Neighborhood indoor uses in the Land Development Code include churches, neighborhood community or recreational centers, day care centers, gymnasiums, branch libraries, indoor recreational centers, public or private schools, indoor swimming pools, tennis, racquetball, handball courts, and similar indoor institutional uses; they do not include Multiple-Family Development.

E. Developer seeks to amend the 2004 Development Agreement to permit the Property to be used for Multiple-Family Development utilizing the standards of a Planned Residential

Development, as those terms are defined in Section 10-80.20 of the Flagstaff City Code.

F. The Property is identified in Section IX and accompanying maps of the Flagstaff Regional Plan 2030 for future growth as a Suburban Area Type. Multiple-Family Development on the Property is consistent with the Regional Plan in effect on the date this Fourth Amendment is executed.

G. The Property is located within an HC (Highway Commercial) zone under the City's Zoning Map and as defined in Section 10-40.30.040 of the Flagstaff City Code. Multiple-Family Development is a permitted use in this zone, and Planned Residential Development in this zone is allowed subject to a conditional use permit.

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 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 Fourth Supplement as though fully set forth herein.

2. Restatement of Section 6.6 of the 2004 Development Agreement. Pursuant to Section 13.1 of the 2004 Development Agreement and Section 10.4 of the Third Supplement to Development Agreement, Section 6.6 of the 2004 Development Agreement is stricken and replaced with the following:

6.6 Church Site Development.

- a. Approved Development. Subject to any requirement for a conditional use permit and other requirements as set forth in the Flagstaff City Code or in this section, the Church Site depicted on Exhibit 4 of the Master Plan shall be developed as for-sale, condominium, Multiple Family Development as set forth in the Presidio in the Pines Tract M Site Plan (PZ-19-00204-01) approved by the City on September 25, 2020 (herein, the "Project").
- b. Homeowners' Association. Prior to the submittal of the first application for a building permit to the City and pursuant to a condominium declaration ("Declaration") by Developer, Developer will form one or more Arizona nonprofit corporations to serve as the homeowners' association(s) ("HOA") for the Project and exercise all rights and obligations as may be granted, undertaken, or assigned to the HOA(s). The Declaration will:
 - i. Incorporate the requirements of this Fourth Amendment.
 - ii. Provide that either the HOA, a sub-association, or Developer (until such time as Developer, as "Developer," relinquishes control of the HOA(s) to the property owners, as provided in the Declaration) shall manage and

- maintain the common elements of the Project;
 - iii. Identify the HOA that will be assigned all of the Developer's rights and obligations to operate the attainable housing components of the Project; and
 - iv. Include a provision requiring any lease period be a minimum of thirty (30) days.
- c. Attainable Housing. The Project will designate a minimum of ten percent (10%) of the total residential condominium ownership units to be initially sold at or below 100% of the Area Median Income ("AMI") affordability level ("Attainable Units") as follows:
- i. *Attainable Units*. Attainable Units will range in size across all offerings for the Project and be dispersed through the Project as feasible. Attainable Units must be occupied by the owner(s) as a primary residence and cannot be rented. The Attainable Units will be available beginning in the first phase of construction with a unit-mix dictated by buyers' preference and construction timing.
 - ii. *Program Management*. Developer will assign responsibility for the attainable housing program to an HOA for the Project. Developer or its assignee intends to contract with a third party entity to manage and oversee the buyer income qualification of the attainable housing component of the Project.
 - iii. *Deed Restrictions*. Attainable Units will be subject to permanent deed restrictions or other binding affordability restrictions that run with the land and require transfer of the Attainable Units to another income qualified household for a maximum sales price in a form agreed upon by the City of Flagstaff Housing Director or designee ("Deed Restrictions"). Prior to the conveyance of an Attainable Unit from Developer to a third party purchaser ("Initial Sale"), Deed Restrictions for the particular Attainable Unit incorporating the requirements of this Agreement and will be recorded by Developer in the official records of Coconino County.
 - iv. *Initial Sale Price*. Developer agrees to restrict the Initial Sale of Attainable Units to purchasing households with a maximum household income at or below 100% of the AMI affordability level for Flagstaff based on then current figures as determined by the United States Department of Housing and Urban Development ("HUD") adjusted for household size ("Initial Sales Price"). In determining the Initial Sales Price, the eligible buyers housing expense ratio will not exceed thirty-five percent (35%) without approval by the Director of the City of Flagstaff Housing Section or designee. Developer will offer Attainable Units at a price point of at least twenty-five percent (25%) lower than the market rates for comparable units.
 - v. *Resale Procedure*. Resale of Attainable Units will be regulated through the Deed Restrictions which will outline the maximum future resale price and

define future buyer income eligibility and incorporate the relevant portions of this Agreement regarding attainable housing. The HOA assigned responsibility for the attainable housing program will establish the practical procedures consistent with the deed restriction document and this Agreement for when the owner of an Attainable Unit wishes to sell or transfer the unit. The procedures will address notification to the HOA, commission and payment for a market valuation of the unit (appraisal), and calculation of maximum resale price.

- vi. *Maximum Resale Price.* The maximum purchase price an Attainable Unit may be sold to a new eligible buyer will be equal to the lesser of: (1) the current appraised value of the Attainable Unit; or (2) the sum of then owner's purchase price of the Attainable Unit plus twenty five percent (25%) of the increase in the market value of the unit when appraised as if not deed restricted (determined by subtracting the purchase price from the current appraised value) ("Maximum Resale Price"). Resale of Attainable Units will be restricted to income eligible buyers with a maximum household income at or below 125% of the AMI affordability level for Flagstaff based on then current HUD figures as adjusted for household size. In determining the Maximum Sales Price, the eligible buyers' housing expense ratio will not exceed thirty-five percent (35%) without approval by the City of Flagstaff Housing Director or designee.
- vii. *Alternate Disposition.* If an Attainable Unit is not under contract for sale within 120 days from the date the unit is first listed by the current owner with the Multiple Listing Service or similar real estate listing service, the Deed Restriction for that unit will terminate. If the Attainable Unit is sold without the Maximum Resale Price requirements, the difference between the Maximum Resale Price and the unrestricted market rate purchase price shall be paid to the City of Flagstaff for down payment assistance or comparable direct assistance for up to 125% AMI homebuyers.
- viii. *Conveyance to an Attainable Housing Program.* Developer may convey any Attainable Unit at the Initial Sale Price with deed restrictions agreed upon by the City of Flagstaff Housing Director or designee to a third party entity that operates an affordable housing program whether for affordable ownership or affordable rentals. An Owner of an Attainable Unit may convey the Unit at the Maximum Resale Price with deed restrictions agreed upon by the City of Flagstaff Housing Director or designee to a third party entity that operates an affordable housing program whether for affordable ownership or affordable rentals.

3. Ratification of Terms. All other terms and conditions of the 2004 Development Agreement, as previously supplemented or amended, shall remain in force and effect. To the extent of any inconsistency between the 2004 Development Agreement, as previously supplements, and this Fourth Amendment, the terms of this Fourth Amendment shall control.

IN WITNESS WHEREOF, the City has caused this Agreement to be executed by its duly authorized representatives, and Developer has signed the same on or as of the day and year first above written.

City of Flagstaff, an Arizona municipal corporation

Coral Evans, Mayor
Date: _____

Attest:

City Clerk
Date: _____

Approved as to form:

City Attorney
Date: _____

Miramonte Presidio, LLC, an Arizona limited liability company

By: _____
Title: _____
Date: _____

STATE OF ARIZONA)
)
County of Coconino)

On this ____ day of _____, 2020, before me personally appeared _____, known to me or shown by satisfactory evidence to be the person whose signature appears above, and acknowledged to me that he signed the foregoing document.

Seal: _____
Notary Public

Exhibit A

Legal Description

Tract M, as shown on the Final Plat of Presidio in the Pines, recorded as Instrument 3322439, at Case 9, Map 72, recorded May 19, 2005 in the Official Records of Coconino County.