

When recorded, mail to:

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

FIRST AMENDMENT TO  
MILL TOWN DEVELOPMENT AGREEMENT

This First Amendment to Mill Town Development Agreement (“**Amendment**”) is entered into effective as of \_\_\_\_\_, 2021 (“**Amendment Date**”), by and between City of Flagstaff, a municipal corporation organized and existing under the laws of the State of Arizona (“**City**”), and Vintage Partners, LLC, an Arizona limited liability company (“**Vintage**”).

RECITALS

A. City and Vintage entered into that certain Mill Town Development Agreement dated June 4, 2018 and recorded in the Official Records of Coconino County as Instrument Number: 3816763 (the “**Agreement**”). Unless otherwise defined in this Amendment, initially capitalized terms used herein have the meanings given them in the Agreement.

B. The Agreement provides for Vintage to administer the design and construction of the Combined Roadway Project.

C. The City desires to assume responsibility for administering the design and construction of the Combined Roadway Project.

D. The parties desire to amend the Agreement on the terms and conditions more fully set forth below to provide for the City to assume the obligation to administer the design and construction of the Combined Roadway Project, which amendment is made pursuant to Section 10.4 of the Agreement.

AMENDMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Administration of Combined Roadway Project. The Parties agree that (i) the City shall be responsible for administering the remaining design of the Combined Roadway Project and the construction of the Combined Roadway Project, and (ii) the City will be responsible for all of the remaining costs to complete the design of the Combined Roadway Project and all of the costs of constructing the Combined Roadway Project, except for the Vintage Contribution (as defined below). In furtherance of the foregoing, the City and Vintage agree as follows:

(a) Design Escrow Account. Pursuant to Section 7.4.1 of the Agreement, each Party has deposited their allocation share of the costs to design the Combined Roadway Project, as determined by the Design Budget, into an escrow account (“**Design Escrow Account**”) established with Pioneer Title Agency, Inc. (“**Pioneer Title**”), pursuant to the terms of that certain Beulah Blvd. Extension and University Ave. Re-Alignment Final Design Draw Escrow Instructions dated October 22, 2020 and entered into by and between Pioneer Title, Vintage, the City, and Engineer (“**Design Escrow Agreement**”). Promptly following the completion of the design work, the Parties shall cause the Design Escrow Agreement to be terminated and the remaining funds; if any, deposited into the Design Escrow Account by a Party shall be distributed to that Party. If the funds on deposit in the Design Escrow Account are insufficient to pay for the costs of completing the design work for the Milton Underpass Improvements, then the City shall pay such additional costs, and such additional costs shall be added to the True-Up Payment (as defined below).

(b) Vintage Contribution.

(i) On or before ten (10) days following the date that the City notifies Vintage in writing that the City has entered into a contract with a contractor to construct the Combined Roadway Project, Vintage shall pay to the City the fixed sum of One Million Six Hundred Fifty Thousand and 00/100 Dollars (\$1,650,000.00) (“**Fixed Payment**”).

(ii) Promptly following the date that the Milton Underpass Improvements are completed and opened to the public (“**MU Completion**”), the City shall deliver to Vintage a summary of the out-of-pocket fees and costs incurred by the City to design and construct the Milton Underpass Improvements (“**MU Costs**”), together with reasonable supporting documentation of the MU Costs. No later than five (5) years following MU Completion, Vintage shall pay to the City the difference; if any, between: (A) the total MU Costs minus Four Hundred Thousand Dollars (\$400,000) and (B) the Fixed Payment (“**True-Up Payment**”).

(iii) As used in this Amendment, the term “**Vintage Contribution**” means: (A) the Fixed Payment, plus (B) the True-Up Payment. The Vintage Contribution shall be Vintage’s sole required financial contribution to any additional costs of designing and the costs of constructing the Combined Roadway Project.

(c) Security for Payment. The obligation of Vintage to make the True-Up Payment shall be secured by the Deed of Trust, in the form attached hereto as **Exhibit A** (“**Deed of Trust**”), recorded against Lot 2 of Final Plat for Mill Town Mixed-Use recorded in the Official Records of Coconino County at Instrument No. 3861259 (“**Lot 2**”). Concurrently with the execution of this Amendment, Vintage shall execute, have acknowledged and deliver the Deed of Trust to the City and the City shall cause the Deed of Trust to be recorded in the Official Records of Coconino County. If the True-Up Payment is not paid when due, and such failure is not cured within five (5) business days following written notice from the City to Vintage, then the City may enforce payment of

the amount due, or Deed of Trust, by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies set forth below, the City does not prejudice or waive its right to exercise the other remedy or such additional remedies as may be available under applicable law): (i) bring an action at law against Vintage; and/or (ii) enforce the Deed of Trust.

(d) Completion of Combined Roadway Project. The City shall diligently complete the design of the Combined Roadway Project and, subject to receipt of the Fixed Payment, the City shall diligently complete the construction of the Milton Underpass Improvements in combination with the remainder of the Combined Roadway Project. The City shall construct the Milton Underpass Improvements in accordance with: (i) the design contemplated by the approved Entitlements, (ii) the approved Traffic Impact Analysis dated October 30, 2017 for Milltown, and (iii) the 60% Construction Plans for Beulah Boulevard Extension & University Avenue Realignment, dated June 2021, and prepared by Shephard Wesnitzer, Inc. under Job Number 18121 (collectively, the “**Design Standards**”).

(e) Easements for Milton Underpass Improvements. The City shall be responsible for the costs of obtaining any easements for the Milton Underpass Improvements; however, the costs of such easements shall be added to the True-Up Payment.

(f) Financial Assurances. The Vintage Contribution will satisfy any requirement for financial assurances from Vintage with respect to the Milton Underpass Improvements.

(g) Certificate of Occupancy. No certificate of occupancy will be issued for any portion of the Mill Town Property until the Fixed Payment is paid to the City and the Milton Underpass Improvements are complete, except that two (2) of the three (3) commercial pads may receive certificate of occupancy earlier at the discretion of the City Engineer in consultation with the ADOT.

(h) Self-Help. If the City does not diligently pursue the construction of the Combined Roadway Project to completion, then Vintage has the right, but not the obligation, to assume responsibility for administering the construction of the Combined Roadway Project by written notice to the City in which event (i) the City will reasonably cooperate with Vintage to allow Vintage to assume responsibility for administering the construction of the Combined Roadway Project, (ii) the City will be responsible for the costs of constructing the Combined Roadway Improvements, except for the Milton Underpass Improvements, and shall pay such costs pursuant to customary draw request procedures and as set forth in the Agreement, (iii) Vintage shall be responsible for the costs of the Milton Underpass Improvements minus Four Hundred Thousand Dollars (\$400,000), which is the City’s contribution to the Milton Underpass Improvements; and (iv) the City will pay the City’s \$400,000 contribution to the Milton Underpass Improvements to Vintage within thirty (30) days following completion of the Milton Underpass Improvements. Notwithstanding the foregoing, if Vintage has made the Fixed

Payment as of the date that Vintage exercises self-help, then the City will pay the costs of the Milton Underpass Improvements pursuant to customary draw request procedures and as set forth in the Agreement until such time as the City has paid costs of the Milton Underpass Improvements in the amount of the Fixed Payment.

Notwithstanding the foregoing, if the Fixed Payment is not made when due, and such failure is not cured within five (5) business days following written notice from the City to Vintage, then Vintage will have no right to exercise the self-help remedy in this subsection (h).

3. Effective Date; Extension of Entitlements. The Parties acknowledge and agree that the Effective Date of the Agreement is December 14, 2018. The City agrees to extend the right to develop the Mill Town Property in accordance with the Entitlements set forth in the Development Agreement for an additional two (2) years, for a total of seven (7) years from the Effective Date. If, however, the Fixed Payment is not made when due, and such failure is not cured within five (5) business days following written notice from the City to Vintage, then there will be no extension and the Entitlements will terminate on December 13, 2023. In the event that the City fails to diligently pursue the construction of the Combined Roadway Project to completion and Vintage exercises its right to assume responsibility for administering the construction of the Combined Roadway Project, then the Entitlements will terminate on December 13, 2025.

4. Miscellaneous. Except as stated herein, the Agreement shall remain in full force and effect and is hereby ratified and approved. If there is any inconsistency between the terms of the Agreement and the terms of this Amendment, the provisions of this Amendment will govern and control the rights and obligations of the Parties. This First Amendment may be signed in counterparts.

5. Conflict of Interest. This Amendment and the Development Agreement may be cancelled by the City pursuant to A.R.S. § 38-511.

[Balance of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, City and Vintage have executed this Amendment as of the date first set forth above.

**“City”**

City of Flagstaff, an Arizona municipal corporation

\_\_\_\_\_  
\_\_\_\_\_, Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

**“Vintage”**

Vintage Partners, LLC, an Arizona limited liability company

By: Edward & Company, LLC, an Arizona limited liability company  
Its: Administrative Member

By: \_\_\_\_\_  
Mark Ortman, Jr.  
Its: Manager

STATE OF ARIZONA       )  
COUNTY OF COCONINO   )

ACKNOWLEDGMENT

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, a Notary Public, personally appeared \_\_\_\_\_, Mayor of the City Flagstaff, known to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that she executed the same on behalf of the City of Flagstaff, for the purposes therein contained.

\_\_\_\_\_  
Notary Public  
My Commission Expires:\_\_\_\_\_

STATE OF ARIZONA       )  
COUNTY OF MARICOPA   )

ACKNOWLEDGMENT

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, a Notary Public, personally appeared Mark Ortman, Jr., known to me to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that he/she executed the same on behalf of Vintage Partners LLC, an Arizona limited liability company, for the purposes therein contained.

\_\_\_\_\_  
Notary Public  
My Commission Expires:\_\_\_\_\_

**EXHIBIT A**

When recorded, return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**DEED OF TRUST**

TRUSTOR: Vintage Partners, LLC, an Arizona limited liability company

TRUSTOR'S MAILING ADDRESS: \_\_\_\_\_

BENEFICIARY: City of Flagstaff, a municipal corporation organized and existing under the laws of the State of Arizona

BENEFICIARY'S MAILING ADDRESS: \_\_\_\_\_

TRUSTEE: \_\_\_\_\_

TRUSTEE'S MAILING ADDRESS: \_\_\_\_\_

PROPERTY in Coconino County, State of Arizona, described as:

**See attached Exhibit A**

THIS DEED OF TRUST is made between the Trustor, Trustee and Beneficiary named above. Trustor irrevocably grants and conveys to Trustee in trust, with power of sale, the above-described Property and all buildings, improvements and fixtures located thereon or hereinafter erected thereon, subject to only to the covenants, conditions, restrictions, rights-of-way, and easements described in that certain Report of Title issued by Pioneer Title Agency, Inc., dated September 17, 2021 under file number 70515537. Trustor is the owner of legal and beneficial title to the Property, subject to this Deed of Trust.

THIS DEED OF TRUST IS MADE FOR THE PURPOSE OF SECURING: (a) performance of each agreement of Trustor herein contained; and (b) payment of the True-Up Payment pursuant to that certain First Amendment to Mill Town Development Agreement (“**DA Amendment**”) entered into effective as of \_\_\_\_\_, 2021, by and between Trustor and

Beneficiary. Trustor has no right to set-off any amount that may be owned by Beneficiary to Trustor against the amounts secured by this Deed of Trust.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

1. To keep the Property in good condition and repair; to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting the Property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon the Property in violation of law; and do all other acts which from the character or use of the Property may be reasonably necessary.

2. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee and to pay all costs and expenses of Beneficiary and Trustee, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear or be named and in any suit brought by Beneficiary to foreclose this Deed of Trust.

3. To pay, before delinquent, all taxes and assessments affecting the Property, and to pay, when due, all encumbrances, charges and liens, with interest, on said Property or any part thereof which appear to be prior or superior hereto; all costs, fees and expenses of this Trust including, without limiting the generality of the foregoing, the fees of Trustee for issuance of any Deed of Partial Release and Partial Reconveyance or Deed of Release and Full Reconveyance and all lawful charges, costs and expenses in the event of reinstatement of, following default in, this Deed of Trust or the obligations secured hereby.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, without obligation to do so and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purposes: appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel, and pay counsel's reasonable fees.

4. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, together with interest from the date of expenditure at the rate of ten percent (10%) per annum. Any amounts so paid by Beneficiary or Trustee shall become part of the debt secured by this Deed of Trust and a lien on the Property or shall become immediately due and payable at option of Beneficiary or Trustee.

5. To maintain, during the term of this Deed of Trust, in full force, at their own expense, a policy or policies of comprehensive liability insurance, including property damage, written by one or more insurance companies licensed to do business in Arizona, which shall insure both Trustor and Beneficiary against liability for injury to persons or property and for the death of any person occurring in or about the Property.

IT IS MUTUALLY AGREED:

6. That any award of damages in connection with any condemnation, or any such taking, or for injury to the Property by reason of public use or for damages for private trespass or injury thereto, is assigned and shall be paid to Beneficiary as further security for all obligations secured hereby (reserving unto the Trustor, however, the right to sue therefor and for the ownership thereof subject to this Deed of Trust) and, upon receipt of such moneys, Beneficiary shall apply the same to the True-Up Payment.

7. That time is of the essence of this Deed of Trust and that, by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

8. That, at any time or from time to time, and without notice, upon written request of Beneficiary and presentation of this Deed of Trust, without liability therefor, without affecting the personal liability of any person for payment of the indebtedness secured hereby, without affecting the security hereof for the full amount secured hereby on all property remaining subject hereto and without the necessity that any sum representing the value or any portion thereof of the property affected by the Trustee's action be credited on the indebtedness, the Trustee may: (a) release and reconvey all or any part of the Property; (b) consent to the making and recording, or either, of any map or plat of the Property or any part thereof; (c) join in granting any easement thereon, and (d) join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance or charge hereof.

9. That, upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust, and upon payment of its fees, Trustee shall release and reconvey, without covenant or warranty, express or implied, the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

10. Trustor will be in default upon the occurrence of any of the following: (a) Trustor fails, after the expiration of any applicable grace period, to pay the True-Up Payment when due, (b) Trustor fails to perform any of its obligations contained in this Deed of Trust and such default continues for a period of ten (10) days after Trustor receives written notice thereof from Beneficiary, (c) Trustor shall become insolvent or make a general assignment for the benefit of creditors, (d) a petition in bankruptcy is filed by Trustor, or against Trustor and is not dismissed within ninety (90) days of filing, (e) Trustor is adjudicated a bankrupt, (f) any court of competent jurisdiction appoints a receiver or other custodian (permanent or temporary) for Trustor or Trustor's assets or property or any part thereof, whether or not consented to by Trustor, where possession of such assets or property is not restored to Trustor within ninety (90) days following such appointment, (g) any attachment, execution or other judicial seizure of substantially all of Trustor's assets takes place, which attachment, execution or judicial seizure is not discharged within ninety (90) days, or (h) upon the sale or transfer, without Beneficiaries prior written consent,

which consent may be withheld by Beneficiary in its sole and absolute discretion, of all or any part of the Property, or any interest in the Property.

11. That, upon an event of default by Trustor, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written notice thereof, setting forth the nature thereof, and of election to cause the Property to be sold under this Deed of Trust. Trustee shall record and give notice of Trustee's sale and shall sell the Property at public auction, all in the manner required by law. Any persons, including Trustee or Beneficiary, may purchase at such sale. Trustee shall deliver to such purchaser its Deed conveying the Property so sold, but without any covenant or warranty, express or implied. Trustor requests that a copy of any notice of Trustee's sale hereunder be mailed to Trustor at his address set forth above.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale and reasonable attorney's fees, Trustee shall apply the proceeds of sale in the manner provided by law. To the extent permitted by law, an action may be maintained by Beneficiary to recover a deficiency judgment for any balance due hereunder.

In lieu of sale, pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary shall also have all other rights and remedies available to it hereunder and at law or in equity. All rights and remedies shall be cumulative.

12. That Trustee may resign by mailing or delivering notice thereof to Beneficiary and Trustor. Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee herein shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers and duties.

13. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.

14. That Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of a pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

15. That the trust relationship created by this Deed of Trust is limited solely to the creation and enforcement of a security interest in real property. All of Trustee's duties, whether fiduciary or otherwise, are strictly limited to those duties imposed by this instrument and A.R.S. §33-801 *et seq.* and no additional duties, burdens or responsibilities are or shall be placed on Trustee.

16. That this Deed of Trust applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns.

17. Trustor hereby agrees to indemnify, defend, protect and hold harmless Trustee and Beneficiary and their respective employees, members, managers, shareholders, officers, and directors from and against any and all liabilities, claims and obligations which may be incurred,

