

**WHEN RECORDED, RETURN
TO:**

(The Above Space For Recorder's Use Only)

ASSIGNMENT OF DEVELOPMENT AGREEMENT AND WAIVER

This Assignment of Development Agreement and Waiver (this “**Assignment**”) is made as of the ____ day of December, 2021, by and between the City of Flagstaff, an Arizona municipal corporation (“**City**”), Flagstaff at 4th, LLC, a Delaware limited liability company (“**Assignor**”), and Flagstaff Elkwood Partners LP, a Delaware limited partnership (“**Assignee**”) (individually and collectively, “**Party**” and “**Parties**”).

The following recitals of fact are a material part of this Agreement:

A. City and Assignor are parties to a certain Development Agreement and Waiver, dated November 10, 2020, and recorded on November 30, 2020 at Instrument No. 3896757, Official Records of Coconino County, Arizona (the “**Development Agreement**”);

B. The Development Agreement addresses the development of certain real property more particularly described in the Development Agreement (the “**Property**”);

C. Assignee is acquiring the Property from Assignor, and Assignor desires to assign the Development Agreement and all of Assignor’s rights and obligations under the Development Agreement, to Assignee, and Assignee desires to accept the assignment and assume all of Assignor’s obligations thereunder;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Effectiveness of Assignment. This Assignment shall be effective upon recordation, provided that simultaneously therewith, Assignor has conveyed title to the Property to Assignee (the “**Effective Date**”).

Section 2. Assignment and Assumption. Assignor hereby irrevocably assigns, sets over, transfers and conveys to Assignee, all of Assignor’s rights, title, interest and obligations (as Assignor and as Developer) in, to and under the Development Agreement.

Assignee hereby accepts this assignment and the rights granted in the Development Agreement and hereby expressly assumes all of the duties, obligations and liabilities, fixed and contingent, under or related to the Development Agreement arising and accruing from and after the date of this Assignment. Assignee acknowledges its acceptance of the Development Agreement and all terms and conditions therein. Assignor and Assignee hereby provide record and constructive notice of the transfer and assignment, and acceptance by Assignee, of Assignor's and Developer's rights and obligations under the Development Agreement.

Section 3. Release. The City hereby acknowledges Assignor's assignment to Assignee as set forth in Section 2 and releases Assignor from any and all obligations arising under the Development Agreement from and after the Effective Date.

Section 4. Modifications to General Provisions. Section 7.2 of the Development Agreement is amended to delete any requirement to send notices to Assignor, and to set forth the following as the notice address for Assignee:

Flagstaff Elkwood Partners LP
777 S. Flagler Drive
Suit 602 East
West Palm Beach, Florida 33401
Attn: Sam Gordon
Email: sgordon@wexforddevelopments.com
cgoode@wexforddevelopments.com

With a copy to:

Osborn Maledon, P.A.
2929 N. Central Avenue, Suite 2100
Phoenix, Arizona 85012
Attn: Thayne Lowe
Email: tlowe@omlaw.com

Section 5. General.

5.1 Arizona Law. This Assignment shall be governed by, and construed in accordance with, the laws of the State of Arizona.

5.2 Captions. The descriptive headings of the Articles and the Sections of this Assignment are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

5.3 No Agency Created. Nothing contained in this Assignment creates any partnership, joint venture, or agency relationship between the City and Developer. No term or provision of this Assignment is intended to be for the benefit of any person, organization, or corporation not a party hereto, and no other person, firm, organization, or corporation may have any right or cause of action hereunder.

5.4 Additional Documents. City, Assignor, and Assignee each agree to execute and deliver all documents and take all actions reasonably necessary to implement this Assignment.

5.5 Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Assignment.

5.6 Capitalized Terms. All capitalized terms in this Assignment shall have the same meaning as set forth in the Development Agreement unless defined herein.

[Signature Pages to Follow]

**SIGNATURE PAGE 2 OF 3 TO
ASSIGNMENT OF DEVELOPMENT AGREEMENT**

FLAGSTAFF AT 4TH, LLC,
a Delaware limited liability company

By: _____

Print: _____

Its: _____

STATE OF ARIZONA)
)
County of _____) ss

I, _____ a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of Flagstaff at 4th, LLC, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this _____ day of _____, 2021.

NOTARY PUBLIC

(SEAL)

