

Return to:

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

DEVELOPMENT AGREEMENT

The Lofts at Continental

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is entered into by and between the City of Flagstaff, an Arizona municipal corporation (“**City**”), Mongini & Selna Childrens Irrevocable Living Trust (the “**Owner**”) and Miramonte Holdings, LLC, an Arizona limited liability company (“**Developer**”). City and Developer are referred to in this Agreement collectively as the “**Parties**” or individually as a “**Party**.”

RECITALS

A. Mongini & Selna Childrens Irrevocable Living Trust (the “**Owner**”) owns that certain real property located at 5531 E Cortland Boulevard, in Flagstaff, Arizona, designated as Coconino County Assessor Parcel Number 113-37-001E, which consists of approximately 19.26 acres. Developer is under contract to acquire a portion of the real property and develop approximately 11.22 acres legal described in Exhibit A and depicted on Exhibits B and B-1 (the “**Property**”). Developer is authorized by the current owner of the Property to make the commitments described herein.

B. It is the desire and current intention of the Developer to construct a 139-unit multi-family residential community on the Property (“**Project**”). Developer proposes to amend the City of Flagstaff’s Highway Commercial (HC), Light Industrial-Open (LI-O), and Research and Development (RD) zoning designation for the Property to High Density Residential (HR). Developer seeks an Authorization to Rezone with a Concept Zoning Plan, under Section 10-20.50.040(D) of the Flagstaff Zoning Code. Upon approval of the rezoning by City, Developer will acquire the Property, proceed with site plan approval, and seek to develop and construct the Project.

C. Arizona Revised Statutes Section 9-500.05 allows a municipality and a landowner or any other person having an interest in real property located in the municipality to enter into a development agreement pertaining to any matter relating to the development of such real property, including applicable land use rules, regulation, and official policies, permitted land uses, density and intensity of land use, phasing of the development and duration of the development agreement, and development fees.

D. The Parties desire to enter into this Agreement in order, among other things, to facilitate development of the Property by providing for and establishing the community character of the Property, the type of land uses and the location, density, and intensity of such land uses, as depicted in the concept zoning plan for the Project (the “**Concept Plan**”), a copy of which is attached as **Exhibit D**, and as set forth in this Agreement and as conditioned by Ordinance No. _____.

E. In addition, the Parties desire to promote strategies and goals set forth in City’s November 2018 Climate Action and Adaptation Plan.

F. In addition, the Parties desire to respond to City’s December 2020 “Housing Crisis Emergency Declaration” (Resolution No. 2020-66) by providing 139 additional housing units for residents of the city of Flagstaff.

G. The City believes that the development of the Property pursuant to this Agreement would provide certain benefits to the City, and result in planning, safety and other benefits to the city of Flagstaff and its residents.

H. Developer acknowledges that development of the Property pursuant to this Agreement will be beneficial and advantageous to Developer by providing assurances to Developer that it will have the ability to develop the Property within the city of Flagstaff pursuant to this Agreement, under the zoning described in Recital B above, and in accordance with the Concept Plan.

AGREEMENT

Now, therefore, in consideration of the foregoing recitals and the representations and mutual promises contained in this Agreement, the Parties agree as follows:

1. Incorporation of Recitals and Exhibits

1.1. Recitals and Exhibits. The recitals above, and any exhibit referenced or attached hereto, are incorporated into this Agreement.

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: An official authorization to occupy a structure as issued by the Community Development Director. Flagstaff Zoning Code 10-80.20.030.

2.2 City: The City of Flagstaff, an Arizona municipal corporation.

2.3 Concept Plan: A generalized plan that conceptually illustrates a development proposal, including the identification of proposed land uses, land use intensity, circulation, and open space/sensitive areas. The relationship of the proposed development to existing surrounding development and uses should also be reflected. Flagstaff Zoning Code 10-80.20.30.

2.4 Developer: Miramonte Holdings, LLC, an Arizona limited liability company and or its affiliates, assignees, or successors-in-interest.

2.5 FUTS (Flagstaff Urban Trail System): A city-wide network of non-motorized, shared-use pathways that are used by bicyclists, walkers, hikers, runners, and other users for both recreation and transportation. Flagstaff Zoning Code 10-80.20.070.

2.6 HERS (Home Energy Rating System): A scoring system established by the Residential Energy Services Network (RESNET) in which a home built to the specifications of the HERS Reference Home (based on the 2006 International Energy Conservation Code) scores a HERS Index of 100 while a net zero energy home scores a HERS Index of 0. The lower a home's HERS Index, the more energy-efficient it is. Flagstaff Zoning Code 10-80.20.080.

2.7 LED (Light Emitting Diode): A semiconductor device that emits light when an electric current flows through it.

2.8 Low VOC (Volatile Organic Compounds): Low VOC refers to volatile organic compounds that are not harmful to the environment or humans.

2.9 Project: A 139-unit multi-family residential community located at 5531 E. Cortland Boulevard, Flagstaff, Arizona 86004 and shown on the Concept Plan attached hereto as Exhibit D.

2.10 Property: A portion of the property located at 5531 E. Cortland Boulevard, Flagstaff, AZ. 86004, Assessor Parcel Number 113-37-001E, approximately 11.22 acres legal described in Exhibit A and depicted on Exhibits B and B-1.

2.11 Owner: Owner means, any current or future owner of the Property.

3. Entitlements

3.1. Requested Zoning. Developer intends to develop the Property for use as a high-density multifamily residential community with a maximum of 139 dwelling units in conformance with the Flagstaff Regional Plan 2030. The Property is currently zoned Highway Commercial (HC), Light Industrial-Open (LI-O), and Research and Development (RD). Developer is concurrently requesting a rezone of the Property to High Density Residential (HR).

3.2. Conditions of Zoning Map Amendment. Developer agrees to be subject to all the terms, conditions, and stipulations of the rezoning ordinance for PZ-20-00183 (Ordinance No. _____), including any approved development standards, engineering, or other modification(s). In addition to the provisions for reversion set forth in Ordinance No. _____ and the Flagstaff City Code, Developer's failure to obtain a building permit for the entirety of the Project within two years of the effective date of the rezoning ordinance shall entitle City, in its sole discretion, to conduct a public hearing for the purpose of reverting zoning on the Property to its former zoning classifications, in accordance with Arizona Revised Statutes § 9-462.01.

3.3. Subdivision Plat. Following the zoning map amendment approval, Owner will record a subdivision plat to create the Property subject to the zoning map amendment allowing for acquisition by the Developer. The final subdivision plat will abandon an existing 88-foot wide

easement for ingress, egress and utilities granted to the City of Flagstaff as set forth in the deeds recorded in the office of Coconino County Recorder Instrument Nos., 3149889, 3149890, and in Case 4 Map 152 as well the abandonment of an adjacent 8' PUE as shown in Case 4 Map 152; dedicate an unimproved 45-foot wide public right-of-way to the City of Flagstaff in fee simple which the City may use for future access to a regional park facility; as well as create a remainder parcel within the Highway Commercial (HC) Zone not subject to the zoning map amendment approval or this Agreement.

4. Development Plan

4.1. Project Description. The Project contemplated by this Agreement shall consist of a multi-family housing development consisting of a maximum of 139 rental units (12.38 units per acre) on the Property as set forth in the Concept Plan. There will be a total of 25 buildings. The project will include, 30 one-bedroom units, 79 two-bedroom units, and 30 three-bedroom units. Two-bedroom/two-bedroom combination units may be replaced with a three-bedroom/one bedroom combination and not affect minimum parking requirements. Fourteen of the rental units will be permanently affordable in accordance with Division 10-30.20 of the Flagstaff Zoning Ordinance (30-year term) and subject to the Affordability Plan, described in **Section 5.5** below and attached as **Exhibit C**. Developer may request amendments to the Concept Plan or the eventual site plan in accordance with the Flagstaff Zoning Code and accordance with Ordinance No. _____ Notwithstanding the foregoing, the unit mix within the Project may be modified no more than ten percent without City approval. The Project will include the following amenities and benefits:

4.1.1 Project Amenities:

A dog park will be included for residents to meet and allow their dogs to play in a safe and controlled area and will include benches, and a ramada. Each unit will have a covered patio and a storage unit.

4.1.2 Open Space/Common Area. The Project shall include not less than 1.68 acres of common open space. The project has been designed to preserve the greatest number of existing trees on the site, the stand of ponderosa pine trees that is in the northwest portion of the site will remain. This will help to maintain the animal community and will increase the overall value of the project.

A FUTS will be constructed abutting the new cul-de-sac continuing along the southern property line and terminating at the eastern property line, providing direct access to over 70 acres of City owned property **Sections 4.1.3, 5.1.5 and 5.2.2**.

4.1.3 Civic Space. The Project shall include not less than 0.56 acres of civic space. Developer may satisfy this requirement through the extension of the concrete FUTS trail, **Sections 4.1.2, 5.1.5 and 5.2.2**.

4.1.4 Recycling. Developer will provide recycling collection facilities at all solid waste enclosures within the Project which will include signage on City approved recycling materials. All units will include double heavy duty hidden waste baskets in the kitchen cabinets to promote recycling. Property managers

will include educational materials to residents at move in on what can and cannot be recycled. Residents will also be provided with information on local valet services for recycling and composting and how they can learn more about ways to recycle by contacting the City of Flagstaff Sustainability Program at 928-213-2152 or sustainability@flagstaffaz.gov.

4.1.5 Prohibition on Short Term Rentals. No lease or rental agreement shall be for a period of less than sixty (60) days.

4.1.6 Bicycle Storage and Amenities. Developer will provide bicycle parking facilities for 24 bicycles 16 uncovered and 8 covered.

4.1.7 Department of Energy / Environmental Protection Agency. All units will be ENERGY STAR certified and documentation will be provided prior to certificate of occupancy. Low- VOC and formaldehyde free materials will be used for the carpet, cabinets, and paint. The units will include energy recovery ventilators for air quality and engineered HVAC to ensure efficiency. HERS scores will be below 58. Units shall achieve the Department of Energy ENERGY STAR certification for multifamily new construction verified by a third-party verification professional and Environmental Protection Agency and Indoor airPLUS label through verification by a certified home energy rater using the Indoor airPLUS Verification Checklist. All appliances except for the furnaces will be electric.

4.1.8 Landscaping. The Project will provide native drought tolerant plants as identified in the Landscaping Plan approved by the City of Flagstaff and will be planted in compliance with the City of Flagstaff Landscaping Standards Section 10-50.60. Rainwater harvesting will be utilized by collecting roof runoff in gutters and downspouts to passively irrigate At-Grade landscaping. The added plants will help with runoff, provide clean air into the environment, and provide natural habitat for insects, pollinators, birds, and small animals.

4.1.9 Butterfly Nectar Plants. The Project will provide butterfly nectar plants as shown on the Landscape Plan in support of the Mayor's Monarch Pledge. This approximately 1,900 square foot area will be located at the entrance of the development for the residents to enjoy. No chemicals or pesticides will be used to maintain the garden.

4.1.10 Electric Vehicle (EV) Parking. The Project will provide four parking spaces with EV ready outlets per the requirements of the Flagstaff City Code, Title 4 Building Regulations, and two EV charging stations

4.1.11 Development Standards. Unless otherwise modified by this Agreement, the development of the Property shall be governed by City's ordinances, rules, guidelines, and policies in existence as of the Effective Date of this Agreement controlling permitted uses of the Property, the density and intensity of uses, the maximum height and size of the buildings within the Property, and the standards for off-site and on-site public improvements.

5. Developer Obligations

5.1.1 Construction of Public, Private and Other Related Improvements. Prior to issuance of public improvement 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 own expense, construct or cause to be constructed all public and private improvements as required by City's code or ordinances and this Agreement, and in accordance with approved specifications. Following construction of the described public improvements, and dedication of the same to City, City shall assume, at its expense, and in accordance with City policies, the maintenance and repair of all public improvements to be constructed. Developer agrees that the construction of the public and other related improvements will coincide with the development of the Project.

Specifically, the scope and nature of the on-site and off-site improvement to be constructed in connection with the Project are as follows:

5.1.2 General Off-site Roadway Improvements: Developer will construct a cul-de-sac at the end Cortland Boulevard per City standards, Standard Detail 10-04-010 City of Flagstaff Engineering Standards.

5.1.3 Traffic. In accordance with the Project's Traffic Impact Statement submitted to City prepared by CivTech dated May 20, 2021, traffic from the completed Project will have a minimal effect on existing conditions in the surrounding area and no mitigation measures are warranted or recommended.

5.1.4 Adjacent Right-of-Way Landscaping Maintenance. All landscaping and irrigation in adjacent right-of-way areas, including parkways, shall be maintained by the Developer or assignee(s).

5.1.5 Flagstaff Urban Trail System. Developer shall construct a concrete FUTS trail within the Property according to the City of Flagstaff Engineering Standards Section 14-01-010 Flagstaff Urban Trails System Details as it concerns width, drainage, lighting, landscaping, and all other necessary requirements, as generally depicted on the Concept Plan. FUTS access pathways shall not be gated or otherwise obstructed and shall be open to the general public at all times. Developer agrees that the construction of the trail system will coincide with the development of the Property. Developer will dedicate a public easement to facilitate the FUTS as set forth in **Section 5.2.2**. The City shall maintain the FUTS and shall have the right of reasonable access to the easement for maintenance, repair, or reconstruction of the Trail.

5.1.6 Infrastructure Improvements: Developer shall construct all public and private improvements required to support the Project. Developer shall design and install water and sewer mains and services within the project site per the City of Flagstaff's Engineering and Design and Construction standards.

5.1.7 Off-site Water and Sewer Improvement Requirements.

Sewer: Developer shall be responsible to construct offsite sewer improvements as shown in the Water and Sewer Impact Analysis for the Lofts at Continental dated April 30, 2021 (the "WSIA"). Developer will upsize an existing 8" downstream sewer main to a 10" sewer main and construct a sewer line on the City of Flagstaff parcel, APN 113-37-001F to connect to a future sewer stub located on parcel 113-37-002F. Developer will secure the necessary public utility easements across the private property and from the City of Flagstaff for the project. In the case that the sewer has not been upsized on APN 113-37-002F, and therefore the future sewer stub has not been constructed, the Developer shall construct a 10" sewer main to manhole 23-087 as shown on the civil site plan for Cortland Apartments sealed May 2, 2019.

Water: There is an 8" PVC water line in the right-of-way of Cortland Boulevard. The onsite system will loop the property and connect to a newly installed 18" waterline that crosses I-40.

The water and sewer improvements must be completed and accepted by the City prior to the issuance of the first Certificate of Occupancy for the Project. The improvements shall be designed and built-in accordance with the City Engineering Standards and ADEQ requirements.

5.1.8 Stormwater. Developer shall meet all City of Flagstaff storm water, pre versus post retention, peak flow mitigation, Low Impact Development, and rainwater harvesting requirements per the approved drainage report and drainage impact analysis dated 3/29/2021 and Concept Plan. The Parties agree that no off-site infrastructure improvements are required other than to serve the Project.

5.2 Public Easements.

5.2.1 Utility and Drainage. Public utility and drainage easements must be identified on the construction plans and dedicated prior to the approval of civil plans. Dimensions for these easements must be in accordance with City requirements.

5.2.2 FUTS Trail. As part of the development of the Property and to facilitate the expansion of FUTS, Developer will dedicate a 20-foot wide FUTS easement to the City as part of the required subdivision plat for the Property described in **Section 5.1.5**.

5.2.3 Sewer, Waterlines, Ingress and Egress Access Easement Reservation Abandonment. City and Developer shall execute and record an abandonment of an existing 20-foot-wide reservation of easement for sewer, waterline, ingress and egress over, under, and across APN 113-37-001F per deeds recorded in the Office of the Coconino County Recorder Instrument Nos. 3149889, and 3149890, on the form attached as **Exhibit E**.

5.3 Materials Management. Developer agrees to incorporate infrastructure to support residents' recycling activities on-site, including the provision of adequate space to locate recycling receptacles next to receptacles dedicated for trash. During construction, Developer will have a written solid waste program that includes a plan for recycling or reuse of paper, cardboard, plastics, and metals; recycling or reuse of lumber scraps; and diversion of masonry, cementitious and possibly gypsum material from the landfill. To the extent feasible, Developer will reuse native materials on-site. To ensure compliance with this section Developer agrees to work with the City and allow City access to the Project site as needed (including during construction).

5.4 Rental and Management Policies. Developer will adhere to the following policies in the rental and management of the rental units:

- No lease or rental agreement, direct or indirect sublease, assignment, or transfer of obligations of a tenant shall be for a period of less than 60 days.
- All lease or rental agreements shall include an eviction addendum prohibiting illegal, nuisance and dangerous conditions and activity.
- Developer will implement and maintain, City's Crime-Free Multi-Housing Program, if one is in place, including having a Crime Free Multi Housing Plan approved by the City Police Department, prior to receiving a certificate of occupancy.
- Developer will provide annual training to property management for the purposes of managing, operating, and maintaining the Project in accordance with the provisions of this Section.

5.5 Affordable Housing.

5.5.1 Plan Details. Developer shall provide ten percent (10%) of the overall unit count (based on the Concept Plan, 14 of 139 units) (the "**Affordable Units**") as income-restricted rental units for households earning, on average, up to eighty percent (80%) of the Area Median Income ("**AMI**"), as defined by the United States Department of Housing and Urban Development ("**HUD**"), or its successors, with no single household exceeding one hundred percent (100%) of AMI. Additional eligibility criteria and other requirements pertaining to this affordability program are set forth in the Affordability Plan attached as **Exhibit C**. The Affordability Plan may be modified by and between the City's Housing Director and Owner without further Council action or need to formally amend this Agreement. Affordable Units must remain affordable as described above and subject to

the Affordability Plan for thirty years (30) following the Project's certificate of occupancy.

6 City Obligations

6.2 City Water and Sewer Easement Reservation. City agrees to reserve a non-exclusive 20-foot wide strip of land for City water and sewer purposes on APN parcel 113-37-001F using the form of reservation with accompanying legal description attached as **Exhibit F** to allow the Developer to make the required sewer upgrades as described in this agreement. Developer is responsible for obtaining all other easements necessary to complete the work on private property.

6.1 Abandon Easement. The City of Flagstaff agrees to abandon an existing 88-foot-wide easement for ingress, egress and utilities as set forth in the deeds recorded in the office of Coconino County Recorder Instrument Nos. 3149889 and 3149890 and in Case 4 Map 152, as well as the abandonment of an adjacent 8' PUE as shown in Case 4 Map 152 with the agreement to construct the concrete FUTS described above in Section 5. And dedication of an unimproved 45-foot-wide public right-of-way to the City of Flagstaff in fee simple for future access to a regional park facility and any other use as deemed appropriate by the City of Flagstaff with the recordation of the final subdivision plat as noted in **Section 3.3**.

7 **Termination of Real Estate Exchange Agreement.** The parties have completed all terms and agreement of the real estate exchange agreement dated May 22, 2002, except for provisions 15 and 18. The parties agree that these provisions are no longer necessary and required to complete the exchange. Provision 16 and 17 have been terminated through the abandonment of easements by both parties as described herein. The parties agree to execute the Termination of Real Estate Exchange Agreement attached as **Exhibit G**.

8 Default and Remedies

8.1 Events Constituting Default. A Party is in default if such Party breaches an obligation required of the Party under this Agreement and such breach continues for a period of thirty days after written notice thereof from the Party not in default; provided, however, that if the nature of the default is such that it cannot reasonably be cured within the 30-day period following written notice, then in that case the default may be cured 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 ninety days of the written notice.

8.2 Developer's Remedies. Subject to the provisions of **Section 8.4**, in the event that 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 8.1**, then, in that event, in addition to all other legal and equitable remedies which Developer may have, Developer may terminate this Agreement by written notice delivered to City.

- 8.3 City's Remedies. Subject to the provisions of **Section 8.4**, in the event that Developer is in default under this Agreement, and Developer thereafter fails to cure any such default within the time period described in **Section 8.1**, then, in that event, in addition to all other legal and equitable remedies which City may have, City may terminate this Agreement by written notice delivered to Developer.
- 8.4 Dispute Resolution. In the event there is a dispute hereunder that the Parties cannot resolve between themselves, the Parties agree that there shall be a forty-five-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 mediation shall be held under the commercial mediation rules of the American Arbitration Association. The mediator selected shall have at least five years' experience in mediating or arbitrating disputes relating to commercial property development. Each Party agrees to bear its own costs in mediation. The Parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation. This section does not constitute a waiver of a Party's right to initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if provisional relief is sought under the Arizona Rules of Civil Procedure.
- 8.5 Development Rights in the Event of Termination. Upon the termination of this Agreement as provided herein, Developer shall have no further rights to develop the Property pursuant to this Agreement.
- 8.6 No Personal Liability. No current or former member, manager, officer, director, agent, representative, official, employee or other natural person of 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 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 City or Developer, as applicable, under the terms of this Agreement.
- 8.7 Liability and Indemnification. Developer shall indemnify, protect, defend and hold harmless City, its Council members, officers, employees, and agents for, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the performance of this Agreement by City or Developer, or nonperformance of this Agreement by Developer.

9 **General Provisions.**

- 9.1 Action in Furtherance of Agreement. Each Party, promptly upon the request of the other, will take such further actions and will execute, acknowledge and deliver to the other any and all additional instruments as may be necessary or proper to carry out

the purpose and intent of this Agreement.

- 9.2 Amendments. This Agreement may be amended or cancelled in whole or in part at any time by written amendment executed by the Parties or by their successors in interest. All amendments to this Agreement must be recorded in the Official Records of Coconino County, Arizona, within ten days following execution, as required by A.R.S. § 9- 500.05(D).
- 9.3 Assignment; Successors. The provisions of this Agreement shall inure to the benefit and be binding upon any 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:
- 9.3.1 Assignment by Developer in connection with obtaining financing and the exercise of lender remedies with respect thereto;
 - 9.3.2 Assignment of all rights and obligations of Developer under this Agreement to a real estate developer reasonably acceptable to and approved by City; however, if Developer or a current principal of Developer retains an ownership interest and management control in such real estate developer, then, in that event, City's prior approval shall not be required; or
 - 9.3.3 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 exceptions noted above, Developer shall not transfer or assign any part of its rights and/or obligations arising under this Agreement without the prior written approval of 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 City's consent (provided that 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 City.

- 9.4 Attorney's Fees and Costs. If legal action by any Party is brought because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees and court costs.
- 9.5 Authority to Sign. The person executing this Agreement on behalf of Developer warrants and represents that they have the authority to execute this Agreement on behalf of Developer, and that the execution of this Agreement has been approved by all required actions on the part of such Parties, and that this Agreement is fully binding on such Parties.

- 9.6 Choice of Law. This Agreement shall be construed under and in accordance with the laws of the State of Arizona.
- 9.7 Compliance with All Laws. Developer will comply with all applicable Federal, State, County and City laws, ordinances and regulations.
- 9.8 Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of 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.
- 9.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which will constitute an original, but all of which will constitute one and the same agreement.
- 9.10 Covenants Run with the Land. The covenants and agreements contained in this Agreement are mutual covenants and also constitute conditions to the subsequent or concurrent performance of the Party benefitted thereby. All covenants shall be covenants running with the land and shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns.
- 9.11 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.
- 9.12 Estoppel Certificate; Financing. Developer may request of City’s Manager by providing written notice, and City’s Manager shall, within sixty calendar days of such request, respond in writing to Developer certifying, if such be true, (a) this Agreement is in full force and effect; and (b) there are not, to City’s knowledge, any uncured defaults on the part of Developer, or specifying such defaults if they are claimed.
- 9.13 General Plan Compliance. This Agreement ensures that all development on the Property shall be consistent with City’s General Plan recommendation for the Property as required by A.R.S. § 9-500.05(B).
- 9.14 Integration. This Agreement, together with Ordinance No. _____, constitutes the entire agreement among the Parties and shall not be changed or added to except in the manner provided herein. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, other than those specifically incorporated in this Agreement, are superseded by this Agreement. This Agreement and Ordinance No. _____ are to be interpreted *in para materia*. To the extent of any discrepancy or inconsistency, Ordinance No. _____ shall Control.

9.15 No Obligation to Develop. Except as specifically set forth in this Agreement, there shall be no obligation for Developer to construct the Project.

9.16 No Partnership; No Agency. It is specifically understood and agreed by and among the Parties that the development of the Project on the Property is a private development, that no Party is acting as the agent of any other Party in any respect, and that each Party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. The Parties acknowledge and agree that this Agreement does not create a partnership, joint venture, or similar entity, and that no such partnership, joint venture, or similar entity has been created by City and Developer.

9.17 No Third-Party Beneficiaries. No person or entity other than a Party to this Agreement or legal representative, successor in interest, or assign of such party shall be entitled to rely on this Agreement or the performance of any Party. This Agreement is not made for the benefit of any person or entity not a Party.

9.18 Notices. Unless otherwise specifically provided in this Agreement, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly delivered upon personal delivery or as of the third business day after mailing by United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed as follows:

To City:

City Manager
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, AZ 86001

To Developer:

Miramonte Holdings, LLC
102 S. Mike's Pike
Flagstaff, AZ 86001

Copy to:

City Attorney
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, AZ 86001

Aspey, Watkins & Diesel, PLLC
123 N. San Francisco St., Suite 300
Flagstaff, AZ 86001

9.19 Recording of Agreement. In accordance with A.R.S. § 9-500.05(D), this Agreement shall be recorded in its entirety in the Official Records of Coconino County no later than ten days from the date of its execution.

9.20 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect construction or interpretation of this Agreement.

9.21 Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.

9.22 Time is of the Essence. For the purposes of enforcing the provisions of this Agreement, time is of the essence.

9.23 Waiver. No waiver by any Party to this Agreement of a breach of any of the terms, covenants, conditions of this Agreement shall be construed or be held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant, or condition of this Agreement.

10 **Waiver of Claim for Diminution in Value**

10.1 Developer hereby waives and fully releases any and all financial loss, injury, claims, and causes of action that 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 City’s existing land use laws and including Ordinance No. _____ 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 City’s existing land use laws, including Ordinance No. _____, upon the Property.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Developer has executed this Agreement, and City has caused this Agreement to be executed by its duly authorized representatives.

City of Flagstaff

Miramonte Holdings, LLC

Paul Deasy, Mayor

By Chris Kemmerly, Member

Date _____

Date _____

Attest:

City Clerk

Approved as to form and authority:

City Attorney

STATE OF ARIZONA)
) ss.
County of Coconino)

On this ____ day of _____, 2022, before me, the undersigned Notary Public, personally appeared Chris Kemmerly, personally 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 for the purposes therein contained. IN WITNESS WHEREOF, I have set my hand and official seal.

Notary Public

Seal:

Exhibit A
Property Legal Description

EXHIBIT "A"

The following is a description of a parcel of land, being a portion of the parcel described in Instrument 3695021, Coconino County Records (CCR), situate in section 8, Township 21 North, Range 8 East, G.& S.R.M., Flagstaff, Coconino County, Arizona, being more particularly described as follows:

Beginning at the southeast corner of said parcel:

Thence North $05^{\circ}43'31''$ West along the east line of said parcel a distance of 330.34 feet to a point which is the beginning of a non-tangent curve concave to the south and to which point a radial line bears North $06^{\circ}03'39''$ West having a radius of 14,078.95 feet;

Thence westerly along said curve a distance of 277.81 feet through a central angle of $01^{\circ}07'50''$;

Thence South $81^{\circ}21'17''$ West a distance of 391.02 feet to a point which is the beginning of a non-tangent curve concave to the south and to which point a radial line bears North $08^{\circ}38'04''$ West having a radius of 8955.00 feet;

Thence westerly along said curve a distance of 659.63 feet through a central angle of $04^{\circ}13'14''$ to a point which is the beginning of a compound curve concave to the southeast and having a radius of 78.50 feet;

Thence southerly along said curve a distance of 156.31 feet through a central angle of $114^{\circ}05'24''$;

Thence South $36^{\circ}56'42''$ East a distance of 88.97 feet to a point which is the beginning of a non-tangent curve concave to the west and to which a radial line bears North $19^{\circ}56'10''$ West and having a radius of 73.50 feet;

Thence easterly and southerly along said curve a distance of 157.85 feet through a central angle of $123^{\circ}02'56''$ to the beginning of a reverse curve concave to the east and having a radius of 13.00 feet;

Thence southerly along said curve a distance of 8.06 feet through a central angle of $35^{\circ}30'31''$ to the beginning of a reverse curve concave to the west and having a radius of 251.00 feet;

Thence southerly along said curve a distance of 50.14 feet through a central angle of $11^{\circ}26'40''$;

Thence South $10^{\circ}57'05''$ East a distance of 35.67 feet to a point on the south line of said parcel;

Thence North 78°05'39" East along the south line of said parcel a distance of 1243.53 feet to the **True Point of Beginning**.

Said parcel contains 11.22874 acres of land more or less as shown on attached Exhibit B which by this reference is made a part hereof.

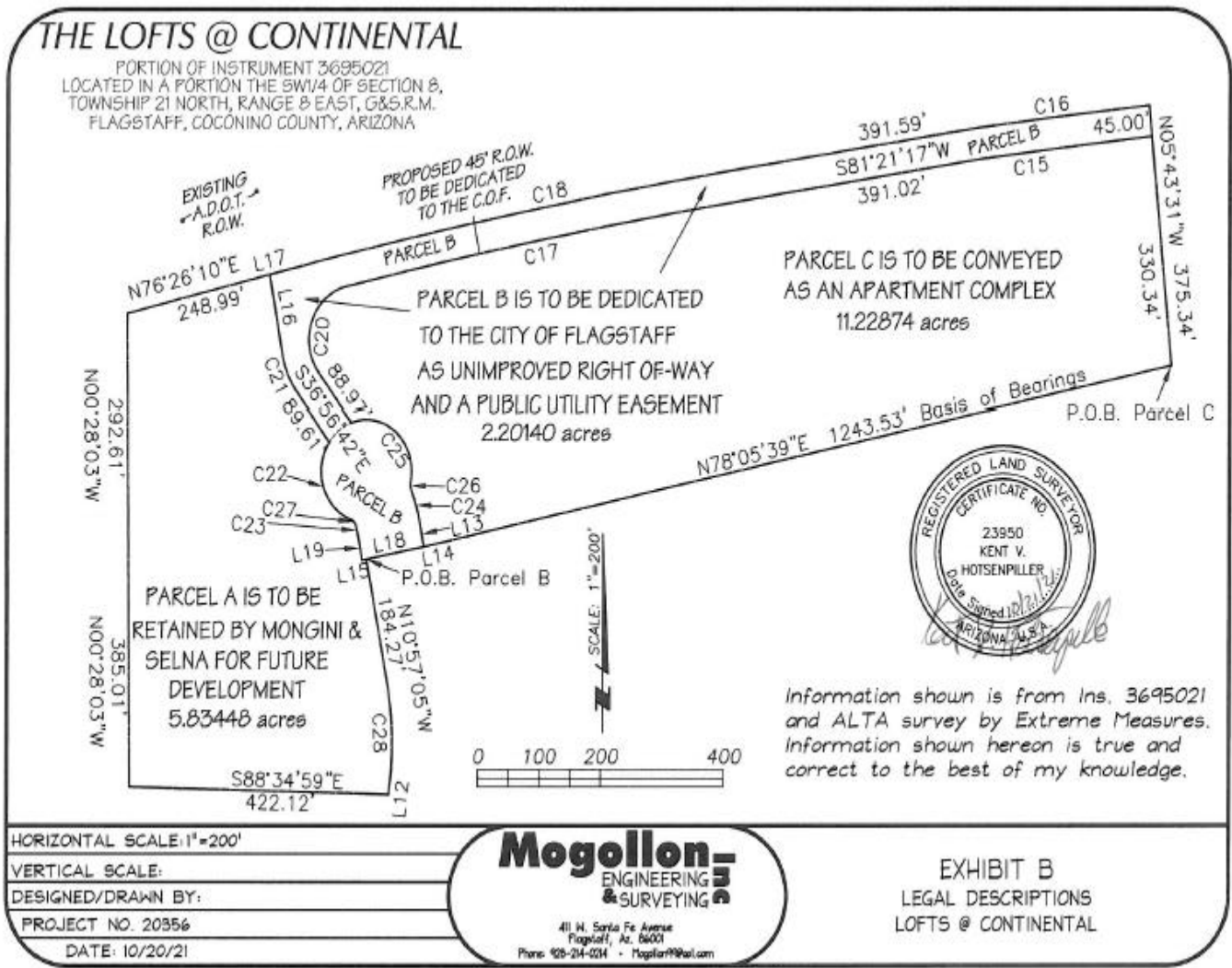
Parcel C



Mogollon Engineering and Surveying, Inc.

411 W Santa Fe Ave. Flagstaff, AZ 86001-mogollon99@aol.com- 928-214-0214

Exhibit B
Property Legal Description Exhibit



**Exhibit B-1
Property Legal Description Exhibit**

THE LOFTS @ CONTINENTAL

PORTION OF INSTRUMENT 3695021
LOCATED IN A PORTION THE SW1/4 OF SECTION 8,
TOWNSHIP 21 NORTH, RANGE 8 EAST, G&S.R.M.
FLAGSTAFF, COCONINO COUNTY, ARIZONA

Parcel Line Table

Line #	Length	Direction
L12	9.88	N6° 43' 11"E
L14	7.00	N78° 05' 39"E
L18	88.00	N79° 04' 33"E
L13	35.67	N10° 57' 05"W
L15	7.00	N79° 04' 33"E
L17	10.65	N76° 26' 10"E
L16	117.29	S10° 16' 31"E
L19	35.74	N10° 57' 05"W

Curve Table

Curve #	Length	Radius	Delta
C15	277.81'	14078.95'	1°07'50"
C16	279.53'	14123.95'	1°08'02"
C17	659.63'	8955.00'	4°13'14"
C18	770.40'	9000.00'	4°54'16"
C20	156.31'	78.50'	114°05'24"
C21	57.49'	123.50'	26°40'12"
C22	133.99'	73.50'	104°27'00"
C23	14.75'	149.00'	5°40'16"
C24	50.14'	251.00'	11°26'40"
C25	157.85'	73.50'	123°02'56"
C26	8.06'	13.00'	35°30'31"
C27	12.12'	13.00'	53°25'08"
C28	147.49'	448.67'	18°50'06"



HORIZONTAL SCALE: 1"=200'

VERTICAL SCALE:

DESIGNED/DRAWN BY:

PROJECT NO. 20356

DATE: 10/19/21

Mogollon
ENGINEERING
& SURVEYING

41 W. Santa Fe Avenue
Flagstaff, Az. 86001
Phone: 928-214-0214 • mogollon99@aol.com

EXHIBIT B-1
LEGAL DESCRIPTION
LOFTS @ CONTINENTAL

Exhibit C
Affordability Plan

This Affordability Plan is referenced in the Development Agreement between Developer and the City of Flagstaff, approved by Council through Ordinance No. _____. This document may be modified by and between the City’s Housing Director and property Owner without further council action or need to amend the Development Agreement. The Development is comprised of up to 139 multi-family units, of which 10% (i.e., 14 units) will be designated as rent restricted for the Affordable Housing Program (the “**Program**”). This document serves to detail the requirements set forth in **Section 5.5**, and is referred to as **Exhibit C**, in the Development Agreement. The Program will be run by the chosen property management company and overseen by the City of Flagstaff Housing Section.

Program Details

- 14 of the 139 units will be designated as affordable
- The affordable unit mix is as follows:

Unit Mix		
Unit Size	Designated Affordable	Total in Project
One bedroom	3	30
Two bedroom	8	79
Three bedroom	3	30

- Applicants who initially qualify for an affordable unit shall earn an income no greater than 80% of the Area Median Income (AMI), refer to Attachment A for the 2021 Flagstaff Income Limits.
- The maximum monthly rental price will be implemented according to the affordable rent limits in Attachment B. The rent limits are provided by City staff annually by _____ date and account for different unit sizes and varying income levels (30% - 80% AMI). Developer will use rent limits provided by the City for leases commencing thirty (30) days after receipt. In the event that market rate rents are lower than the rent limits provided, the tenant shall be charged market rate rent. Developer agrees at all times to maintain 14 affordable units.
- Management shall refer to the local utility allowances provided in Attachment C and deduct the allowance from the base rent. City staff will work with the property management company before certificates of occupancy are issued to calculate the utility allowance based on unit size and utility services onsite.
Affordable units will be managed by the property management company and overseen by the City of Flagstaff Housing Section. Biannual reports must be submitted to Housing staff, refer to Reporting Requirements below. Lease terms shall be no less than 60 days.

Eligibility Requirements

Applicants who qualify for an affordable unit shall earn an income no greater than 80% AMI. Developer will collect reasonable financial information from tenants to confirm eligibility. When

a question arises about a tenant's eligibility, management shall reference the "Qualifying Residents" section of the Arizona Department of Housing's Section 42 Low Income Housing Tax Credit (LIHTC) Compliance Manual for further eligibility criteria. Typically, full time students who are claimed as dependents on a guardian's taxes do not qualify for affordable units, however, management shall refer to the Compliance Manual for exceptions. Management shall refer to the procedures below for recertification and screening procedures, which differ from the LIHTC Compliance Manual. The parties acknowledge this Project is not a LIHTC project subject to the rules and regulation of that program. The LIHTC manual and forms referred to in this Agreement are for the convenience of the parties. Neither Developer nor Owner is subject to LIHTC reporting requirements or other requirements of the LIHTC program.

Recertification. Annual income recertification shall occur at lease renewal. Notice of recertification for affordable units will be required within 120 days prior to lease expiration. Any changes to household size and income shall be reported at lease renewal. Appropriate changes to the unit size will be determined by management in accordance with building codes and based on unit availability. At lease renewal, if the household income of an existing tenant exceeds 100% AMI, the tenant no longer qualifies for the unit and will be required to sign a new lease at market rate pricing or may choose to vacate the unit. Allowing long-time tenants, the opportunity to earn more over time while remaining in the affordable units shall be offset with lower incomes on new leases. Additionally, at lease renewal, if market rate rental pricing is lower than the provided rent limits, the tenant shall be charged market rate rent and will no longer be considered to occupy an affordable unit.

Screening Process. Program applicants will be subject to the same background screening process as all other applicants at the property. Unsatisfactory results from the screening process may lead to denial. Screening criteria shall comply with all state and federal laws.

Location of Units & Lease Up Period

Commencing at issuance of a Certificate of Occupancy the affordable units shall be scattered throughout the development to the extent feasible, however, the location of each unit does not have to be fixed. "Floating" units are permitted based on applicant requests and unit availability. Additionally, it is acceptable if the initial unit mix identified in this document shifts slightly over time based on demand and availability. The initial lease up period for all affordable units shall be one year from the date of Certificate of Occupancy for each building.

Reporting Requirements

A property management company will determine applicant eligibility and oversee administration of the affordable units. The City of Flagstaff Housing Section will monitor the performance of the property management company through a reporting process biannually and onsite file monitoring. The affordable unit report shall include the following information:

- Provide the unit number and size of all required affordable units (based on unit mix table)
- Name and household size of each affordable unit tenant
- Gross annual household income of all tenants residing in affordable units
- Monthly rental payment amount, including utility allowance deduction
- Proof that the required affordable unit count is maintained
 - Indicate which units are vacant

- Provide an up to date waiting list for affordable units and unit size requested

Advertising

If affordable units are available without a wait list, it is required that property management notify Coconino County’s Continuum of Care organization of available affordable units. Current contact information for the Continuum of Care representatives can be provided by City of Flagstaff Housing staff. This notification is in addition to advertising available affordable units on the property’s website and other rental listing websites, including www.SocialServe.com. This applies only, once the property manager has first contacted all applicants that may be on a waiting this. If afterwards affordable units remain, then the advertising requirements in this section shall apply.

Attachment A: Area Median Income Limits

2021 Area Median Income Limits for Flagstaff, AZ

Household size	30%	50%	60%	80%	100%
1	\$16,150	\$26,900	\$32,280	\$43,050	\$53,800
2	\$18,450	\$30,750	\$36,900	\$49,200	\$61,500
3	\$21,960	\$34,600	\$41,520	\$55,350	\$69,200
4	\$26,500	\$38,400	\$46,080	\$61,450	\$76,800
5	\$31,040	\$41,500	\$49,800	\$66,400	\$83,000
6	\$35,580	\$44,550	\$53,460	\$71,300	\$89,100
7	\$40,120	\$47,650	\$57,180	\$76,200	\$95,300
8	\$44,660	\$50,700	\$60,840	\$81,150	\$101,400

Income limits for all federal housing programs are determined by the US Department of Housing & Urban Development (HUD). The 30%, 50%, 80% and 100% AMI categories are provided annually by HUD. The 60% income category is provided by Arizona Department of Housing (ADOH). The City of Flagstaff will provide new income limits annually as they are made available.

Attachment B: Rent Limits

Rent Limits for 2021
(Based on 2021 AMI Income Limits)

Bedrooms (People)	Charts	60.00%	30.00%	40.00%	50.00%	70.00%	80.00%	90.00%	FMR
Efficiency (1.0)	▲▲	807	403	538	672	941	1,076	1,210	1,026
1 Bedroom (2.0)	▲▲	921	460	614	767	1,074	1,228	1,381	1,062
2 Bedrooms (3.0)	▲▲	1,036	518	691	863	1,209	1,382	1,554	1,315
3 Bedrooms (4.0)	▲▲	1,152	576	768	960	1,344	1,536	1,728	1,712
4 Bedrooms (5.0)	▲▲	1,243	621	829	1,036	1,450	1,658	1,865	2,058
5 Bedrooms (6.0)	▲▲	1,336	668	891	1,113	1,559	1,782	2,004	

Rent limits are available annually after the release of HUD's AMI limits. The City of Flagstaff will provide updated rent limits as they are available. The rent limits shown are considered the base rent payment, if utilities are included, that allowance is deducted from the numbers shown.

Attachment C: Utility Allowance Schedule

Utility Allowance Schedule

See Public Reporting and Instructions on back.

U.S Department of Housing and Urban Development

Office of Public and Indian Housing

OMB Approval No. 2577-0169

exp. 7/31/2022

The following allowances are used to determine the total cost of tenant-furnished utilities and appliances.

City of Flagstaff Housing Authority		Apartment					
Utility or Service	Fuel Type	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR
Heating	Natural Gas	\$19	\$21	\$26	\$35	\$42	\$49
	Bottled Gas	\$29	\$32	\$39	\$50	\$59	\$69
	Electric	\$39	\$48	\$87	\$116	\$155	\$194
	Electric – Heat Pump						
	Fuel Oil						
	Other						
Cooking	Natural Gas	\$2	\$3	\$5	\$6	\$10	\$13
	Bottled Gas	\$8	\$9	\$12	\$13	\$18	\$22
	Electric	\$5	\$6	\$10	\$15	\$20	\$25
	Other						
Other Electric		\$24	\$27	\$37	\$51	\$64	\$78
Air Conditioning							
Water Heating	Natural Gas	\$5	\$6	\$10	\$13	\$20	\$25
	Bottled Gas	\$12	\$13	\$18	\$22	\$31	\$38
	Electric	\$9	\$15	\$23	\$35	\$46	\$58
	Fuel Oil						
Water & Sewer		\$43	\$54	\$69	\$105	\$144	\$179
Trash Collection		\$20	\$20	\$20	\$20	\$20	\$20
Other – specify							
Actual Family Allowances – May be used by the family to compute allowance while searching for a unit.					Utility/Service/Appliance		Allowance
Head of Household Name					Heating		
					Cooking		
Unit Address					Other Electric		
					Air Conditioning		
					Water Heating		
Number of Bedrooms					Water		
					Sewer		
					Trash Collection		
					Other		
					Total		

|

Exhibit D
Concept Plan

Exhibit E

Easement Abandonment

When Recorded Return To:

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

**ABANDONMENT OF
RESERVATION OF EASEMENT FOR SEWER AND WATERLINES**

WHEREAS, M.T.N Investments, an Arizona limited partnership; Investments; Investments Unlimited, an Arizona limited partnership, and/or assigns; and G. M. Fratelli, an Arizona general partnership, and or assignee (collectively called “M.V.S.”), reserved a twenty foot (20’) wide easement for sewer and waterlines, together with a right of ingress and egress (“Reservation of Easement for Sewer and Waterlines”) over, under and across real property that was deeded to the City of Flagstaff, an Arizona municipal corporation (“City”), in the ~~Warranty~~ Deeds recorded July 12, 2002 in the Coconino County Recorder’s Office, Instrument Nos. ~~3149889, and~~ 3149890;

WHEREAS, Miramonte Holdings, LLC, an Arizona limited liability company (“Miramonte”), as successor in interest to M.V.S., currently owns the Reservation of Easement for Sewer and Waterlines;

WHEREAS, Miramonte and the City have agreed to new development obligations all as set forth in the Development Agreement approved by City of Flagstaff Ordinance No. 2021-___;

NOW, therefore, Miramonte Holdings, LLC hereby abandons all its rights, title and interest to the Reservation of Easement for Sewer and Waterlines.

DATED this _____ day of _____, 2022.

MIRAMONTE HOLDINGS, LLC

~~By:~~ By:

~~Its: -Its:~~

STATE OF ARIZONA)
) ss.
COUNTY OF COCONINO)

This instrument was acknowledged before me this _____ day of _____, 2022, by _____, being duly authorized in his capacity as the _____ on behalf Miramonte Holdings, LLC, an Arizona limited liability company.

Notary Public

My commission expires:

Attachment: Exhibit 1

S:\Legal\Forms\Real Estate Forms\Lofts Cortland Road Abandonment of 20 foot ezmt 10-11-21.docx

Exhibit F
Utility Easement

Exhibit G
Termination of Real Estate Exchange Agreement