

Return to:

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

## DEVELOPMENT AGREEMENT

### Flagstaff Rehab Campus

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is entered into by and between the City of Flagstaff, an Arizona municipal corporation (“**City**”) and Flagland LLC an Arizona Limited Liability Company, (“**Developer**”). City and Developer may be referred to in this Agreement as “**Party**” in the singular, and collectively as the “**Parties.**”

### RECITALS

A. Developer (also the “**Owner**”) owns that certain real property located at 7000 North Highway 89, in Flagstaff, Arizona, designated as Coconino County Assessor Parcel Numbers 301-50-005G and 113-17-011A, which consists of approximately 12.19 acres, depicted and legally described in *Exhibit “A”* and *Exhibit “B”* attached hereto (collectively the “**Property**”).

B. It is the desire and current intention of the Developer to construct a 174-bed mental and behavioral health and substance abuse treatment campus, and set aside two areas for future development (“**Project**”). Part of the Property (Coconino County Assessor Parcel Number 301-05-005G, which consists of approximately 10.05 acres) is currently outside of the corporate boundaries of the City of Flagstaff and has the Coconino County Zoning Designation of Commercial Heavy 10,000 (CH-10,000). The Developer is requesting an Annexation of Coconino County Assessor Parcel Number 301-05-005G into the City of Flagstaff corporate boundaries and receive City of Flagstaff Highway Commercial, Resource Protection Overlay (HC RPO) zoning in Annexation Application No. PZ-20-00164-03. Upon annexation, the Developer is requesting 1.09 acres of the Property receive a Rezone to Rural Residential, Resource Protection Overlay (RR, RPO) zoning in Concept Rezone Plan Application No. PZ-20-00164-04.

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 plan for the Project (the “**Concept Plan**”), a copy of which is attached as *Exhibit “C”*, and as set forth in this Agreement and as conditioned by Ordinance No. 2022-01 and Ordinance No. 2022-02.

E. 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.

F. 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 pursuant to this Agreement 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 City: The City of Flagstaff, an Arizona municipal corporation.

2.2 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.

2.3 Developer: Flagland, LLC, an Arizona limited liability company and or its affiliates, assignees, or successors-in-interest.

2.4 Project: A 174- bed mental and behavioral health and substance abuse treatment campus and two areas for future commercial development located at 7000 North Highway 89, Flagstaff, Arizona 86004 and shown on the Concept Plan attached hereto as Exhibit C.

2.5 Property: The property located at 7000 North Highway 89, Flagstaff, AZ. 86004, Assessor Parcel Number 301-50-005G, approximately 10.05 acres legally described in Exhibit A and depicted on Exhibit B.

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

### **3. Entitlements**

3.1. Requested Annexation and Rezoning. Developer intends to develop the Property for use as mental and behavioral health and substance abuse treatment campus, and set aside two areas for future commercial development. Coconino County Assessor Parcel Number 301-05-005G is currently zoned Coconino County Commercial Heavy 10,000 (CH-10,000). Developer seeks to Annex this parcel, receive City of Flagstaff Highway Commercial zoning (HC) with a Resource Protection Overlay (RPO) upon Annexation. Upon annexation, the Developer seeks to Rezone 1.09 acres of the Property to Rural Residential (RR) with a Resource Protection Overlay (RPO).

3.2. Conditions of Development. The subject property shall be developed in substantial conformance with the Concept Plan, Natural Resource Protection Plan, and project narrative including but not limited to the proposed density, intensity, and general layout of the site, deemed “Complete with Conditions” by the City of Flagstaff Inter-Division Staff (IDS) on March 16, 2021 in Application No. PZ-20-00164-01. The allowed uses on two areas set aside for future commercial development (shown as restaurant uses in the Concept Plan for conceptual purposes only) shall be all uses allowed in the Highway Commercial (HC) zone. Developer agrees to be subject to all the terms, conditions, and stipulations of the Annexation Ordinance No. 2022-01 and Rezoning Ordinance No. 2022-02.

3.3. Development Standards. For a period of five (5) years from the Effective Date, development of the Property, as well as the requirements for Improvements, will be governed by the Flagstaff Zoning Code, ordinances, regulations, rules, guidelines, and standards in effect on the Effective Date. For any development application(s) made after five (5) years from the Effective Date, the codes, ordinances, regulations, rules, guidelines, and standards in effect at the time of application shall apply. Regardless of the time of development, current City Engineering Standards, Building Code, Fire Code and other Code provisions, regulations, rules and guidelines shall apply to the Project.

### **4. Developer Obligations**

4.1. Generally. Developer shall, at its own expense, construct or cause to be constructed all public and private improvements as required to support the Project by City’s code or ordinances 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.

Specifically, the scope and nature of the on-site and off-site improvement to be:

4.2. Traffic Improvements. In accordance with the Project’s Traffic Impact Statement submitted to City prepared by CivTech dated June 8, 2021, the Developer shall construct two right turn lanes and two driveways to access the subject Property in accordance with the requirements of Arizona Department of Transportation.

4.3. Street Frontage Improvements. Developer shall construct all street frontage improvements according to City of Flagstaff Engineering Standards along the property

frontages adjacent to North Highway 89 and Trails End Drive. Developer shall dedicate public right of way to the Arizona Department of Transportation and the City of Flagstaff as necessary to accommodate required traffic and street frontage improvements.

4.4. Water and Sewer Improvements. Developer shall be responsible to construct all water and sewer improvements as shown in the Water and Sewer Impact Analysis for the Project dated October 26, 2021 (the “WSIA”). 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. The improvements shall be designed and built-in accordance with the City Engineering Standards and ADEQ requirements. 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.

4.4.1. Sewer: Developer shall extend an existing 8” sewer main from Trails End Drive through Coconino County Assessor Parcel Numbers 113-17-011A and 301-05-005G to the northern boundary of the Property.

4.4.2. Water: Developer shall extend a 12” water line in the right-of-way of North Highway 89 across the entire frontage of the subject Property. Developer will also extend the looped 8” water line connection from Trails End Drive to North Highway 89. The Developer shall obtain the necessary approvals from the Arizona Department of Transportation for placement of the public water line in North Highway 89.

4.5. Stormwater. Developer shall meet all pre versus post retention requirements per Drainage Impact Analysis Letter dated June 8, 2021 and the requirements of the City of Flagstaff Stormwater Management Design Manual, including but not limited to peak flow mitigation, Low Impact Development, and rainwater harvesting requirements per the Preliminary Drainage Report dated June 8, 2021 and Concept Plan. The Parties agree that no off-site infrastructure improvements are required other than to serve the Project.

4.6. Easements. Water, sewer, and public utility, and other easements necessary to accommodate required infrastructure improvements 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.

4.7. 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 **Default and Remedies**

5.1 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.

- 5.2 Developer's Remedies. Subject to the provisions of **Section 5.4**, 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 5.1**, 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.
- 5.3 City's Remedies. Subject to the provisions of **Section 5.4**, 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 5.1**, 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.
- 5.4 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.
- 5.5 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.
- 5.6 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.
- 5.7 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.

## 6 General Provisions.

- 6.1 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.
- 6.2 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).
- 6.3 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:
  - 6.3.1 Assignment by Developer in connection with obtaining financing and the exercise of lender remedies with respect thereto;
  - 6.3.2 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
  - 6.3.3 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.

- 6.4 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.
- 6.5 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.
- 6.6 Choice of Law. This Agreement shall be construed under and in accordance with the laws of the State of Arizona.
- 6.7 Compliance with All Laws. Developer will comply with all applicable Federal, State, County and City laws, ordinances and regulations.
- 6.8 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.
- 6.9 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.
- 6.10 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.
- 6.11 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.
- 6.12 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).
- 6.13 Integration. This Agreement, together with Ordinance No. 2022-01 and Ordinance No. 2022-02, 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. 2022-01 and Ordinance No. 2022-02 are to be interpreted *in para materia*. To the extent of any discrepancy or inconsistency, Ordinance No. 2022-01 and Ordinance No. 2022-02 shall Control.

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

6.15 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.

6.16 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.

6.17 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:

Mike Zipprich  
Flagland, LLC  
7114 E. Stetson Dr., Suite 350  
Scottsdale, AZ 85251

Copy to:

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

Franklyn D. Jeans  
General Counsel  
Americas Rehab Campuses, LLC  
7114 E. Stetson Dr., Suite 350  
Scottsdale, AZ 85251

- 6.18 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.
- 6.19 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect construction or interpretation of this Agreement.
- 6.20 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.
- 6.21 Time is of the Essence. For the purposes of enforcing the provisions of this Agreement, time is of the essence.
- 6.22 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.

## 7 **Waiver of Claim for Diminution in Value**

- 7.1 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. 2022-01 and Ordinance No. 2022-02 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. 2022-01 and Ordinance No. 2022-02, 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**

**Flagland, LLC**

\_\_\_\_\_  
Paul Deasy, Mayor

\_\_\_\_\_  
By Mike Zipprich, Member and Manager

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 Mike Zipprich, 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: