

When recorded, mail to:

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

## FOURTH AMENDMENT TO TIMBER SKY ANNEXATION AND DEVELOPMENT AGREEMENT

This Fourth Amendment to Timber Sky Annexation and Development Agreement (“**Amendment**”) is entered into effective as of \_\_\_\_\_, 2022 (“**Amendment Date**”), by and between City of Flagstaff, a municipal corporation organized and existing under the laws of the State of Arizona (“**City**”), and VP 66 & Woody Mountain, L.L.C., an Arizona limited liability company (“**Owner**”).

### RECITALS

A. City and Vintage entered into that certain Timber Sky Annexation and Development Agreement dated November 15, 2016, and recorded in the Official Records of Coconino County as Document No. 3772624 (the “**Original Agreement**”), as amended by that certain First Amendment to Timber Sky Annexation and Development Agreement dated September 18, 2017, and recorded in the Official Records of Coconino County as Document No. 3796196 (“**First Amendment**”), and as further amended by that certain Second Amendment to Timber Sky Annexation and Development Agreement dated March 14, 2018, and recorded in the Official Records of Coconino County as Document No. 3810373 (“**Second Amendment**”), and as further amended by that certain Third Amendment to Timber Sky Annexation and Development Agreement dated September 18, 2018, and recorded in the Official Records of Coconino County as Document No. DEV-2018-188-AG1-AM3 (“**Third Amendment**”). The Original Agreement, as amended by the First Amendment, the Second Amendment and Third Amendment are referred to herein as the “**Agreement**”. Unless otherwise defined in this Amendment, initially capitalized terms used herein have the meanings given them in the Agreement.

B. The parties desire to amend the Agreement on the terms and conditions more fully set forth below, which amendment is made pursuant to Section 15.4 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. Density Average. The following is hereby added to the end of Section 5.1.3 of the Agreement:

“The density of the Project may be averaged between development parcels within the Project regardless of the zoning categories of the development parcels; provided, however, (i) the overall density of the Project, cannot exceed the maximum density for the Project, and (ii) the density of each development parcel cannot exceed the maximum density for that development parcel.”

2. Workforce Housing. Section 5.2 of the Agreement, and the last four (4) sentences of Section 13.1 of the Agreement, are hereby deleted and replaced with the following:

“5.2 The Project shall provide affordable housing by way of residential rental and ownership units.

(1) Land for Rental Units – “**Block 1**” of the Timber Sky Final Block Plat (“**Block Plat**”) recorded in the Official Records of the Coconino County Recorder at Instrument Number 3810031 (the “**Affordable Rental Property**”), shall be restricted for development of a minimum of 190 affordable residential rental units (“**Affordable Rental Unit**”). Owner is under contract to sell the Affordable Rental Property (“**Roers PSA**”) to Roers Flagstaff Apartment Owner LLC, a Minnesota limited liability company (“**Roers**”), who is a developer of affordable rental units. Roers has submitted to the City for review and approval that certain Concept Plan dated \_\_\_\_\_ and prepared by \_\_\_\_\_ under Case No. \_\_\_\_\_ (“**Concept Plan**”) and the Concept Plan provides for \_\_\_\_\_ Affordable Rental Units. For a period of thirty (30) years from the date the Affordable Rental Units are put into service, the leasing of Affordable Rental Units will be income-restricted, so that the average household income for lessees of the Affordable Rental Units (at the time of leasing, as reported by such households) equals, or is less than, sixty percent (60%) of the Area Median Income (“**AMI**”), as determined by the United States Department of Housing and Urban Development. On or before the conveyance of the Affordable Rental Property to a developer of affordable rental units, Owner shall cause a Restrictive Covenant to be recorded against the Affordable Rental Property, which restricts the development of the Affordable Rental Property as set forth in this sub-section (1) (“**Restrictive Covenant**”). The Restrictive Covenant shall provide that the City is an intended third-party beneficiary of the Restrictive Covenant with the right to enforce the same and that the Restrictive Covenant cannot be modified or removed without the consent of the City. Owner shall provide a copy of the Restrictive Covenant to the City for approval prior to recordation, which approval shall not be unreasonably withheld. The Owner’s obligation under this sub-section (1) shall be satisfied once the Restrictive Covenant is recorded and the City has accepted a complete rough grading certificate for Block 1; however, the restrictions on development set forth herein and in the Restrictive Covenant shall run with the Affordable Rental Property.

(2) Land for Ownership Units – The Owner shall convey no less than three (3) acres of land as generally depicted on **Exhibit A** attached hereto (the “**Habitat Property**”), to “Habitat for Humanity” or an affiliate thereof (“**Habitat**”), for development of at least forty (40) units intended for ownership (“**Affordable Ownership Units**”). Criteria for the sale of Affordable Ownership Units, once developed by Habitat, will be subject to a program approved by the City and Habitat (the “**Habitat Affordability Plan**”), and shall include the following terms and conditions: (i) Affordable Ownership Units will be sold to purchasers that have an income equal (at the time of purchase, as reported by such households) to or less than one hundred percent (100%) of AMI, and, (ii) the Affordable Ownership Units will be restricted for affordability as described in this sub-section, and (iii) will be starter homes in alignment with Habitat's existing starter home program with the City and (iv) placed in the City’s Community Land Trust; where, the Habitat Affordability Plan, and all terms and conditions thereof, including any restrictive covenant shall continue in perpetuity from the date the Affordable Ownership Units are placed into service, unless otherwise prescribed by State or Federal Law. The terms of the Habitat Affordability Plan may be agreed to and amended by the written consent of Habitat and the City Manager of the City and without the consent of Owner.

Owner shall provide a copy of the Restrictive Covenant to the City for approval prior to recordation which approval shall not be unreasonably withheld and be given so long as Restrictive Covenant is consistent with the terms of this Agreement. The Owner’s obligations under this sub-section (2) shall be satisfied upon the conveyance of the Habitat Property to Habitat, or to any other entity approved by the City Manager, however the restrictions on development set forth herein and in the Restrictive Covenant shall run with the Habitat Property. The parties acknowledge that, prior to conveyance of the Habitat Property to Habitat, Owner shall be required to process a new subdivision plat of “**Block 2**” of the Block Plat in order to legally subdivide the Habitat Property from the balance of Block 2, and the parties agree to use commercially reasonable efforts to prepare, process and approve such subdivision plat as soon as reasonably possible following the Amendment Date. Owner will provide access and stub utilities to the Habitat Property. The parties agree that the approved, completed and accepted Phase 1 infrastructure plan included road ingress and utility stubs to Habitat Property. The Habitat Property shall be conveyed pursuant to a special warranty deed which shall contain a right of reversion whereby the Habitat Property shall revert to the City or its assignee, if construction of the 40 units is not substantially complete as determined in the sole and absolute discretion of the City within 5-years

following the date that the Habitat Property is conveyed to Habitat. ~~Owner agrees~~The owner of fee title to Block 2 agrees to work in good faith with ~~all property owners in Timber Sky~~the owner of the Habitat Property regarding cross access for retention, detention and utilities. To further the objective of the Agreement to create unidentifiable affordable housing, concurrently with the conveyance of the Habitat Property to Habitat, the Habitat Property will be annexed into and subject to the Declaration of Covenants, Conditions and Restrictions for Timber Sky recorded as Instrument No. 2019-3859262 in the Official Records of the Coconino County Recorder (the “Declaration”) so that the Habitat Property is subject to the same design review process as the rest of the Project. ~~Owner will ensure that the~~The Restrictive Covenant ~~states that payment of fees will state that the~~Assessments (as defined in the Declaration) to the ~~Timber Sky Home Owners Association~~Association (as defined in the Declaration) shall be paid by Habitat through a payment ~~of the owner of the improvements, or by~~from the owner owners of the improvements/homes located on the Habitat Property (each, a “Homeowner”), or directly by a Homeowner, if requested by ~~the owner of the improvements~~such Homeowner, and that as between Habitat, the City, and the Homeowners, the City is not the responsible party.

- (3) Development Standards. Developers of the above workforce housing projects may elect to use current Zoning Code provisions where advantageous to the developer of the Affordable Rental Units and/or Affordable Housing Unit(s).
  - (4) Phase 4 Development. Owner agrees and acknowledges that the City will not sign any final plat(s) for “Tract ZZ” of the Timber Sky Final Block Plat – Phase 2 recorded in the Official Records of the Coconino County Recorder at Instrument Number 33937728 until (i) the Restrictive Covenant is recorded against the Affordable Rental Property and the City has accepted a complete rough grading certificate, and (ii) the Habitat Property has been conveyed to Habitat or other entity approved by the City Manager. However, the City shall review and consider for approval any site plan, preliminary plat and final plat prior to the satisfaction of Owner’s obligations as set forth in the preceding sentence.
3. Water System Improvement Requirements. The parties agree that Section 8.4.1, Section 8.4.1.1 and Section 8.4.1.2 of the Agreement are hereby deleted in their entirety and water capacity fees will instead be collected in the ordinary course of development.

4. Alternative Payment Schedule for Engineering Fees. In the first sentence of Section 13.1, the term “100 AMI-accessible units” is replaced with “Affordable Rental and Ownership Units”. The following sentences are added to the end of Section 13.1:

The monetary penalty as described above shall be satisfied or no longer required when the affordability obligations as modified in Section 5.2 of this Amendment are satisfied and the final plat for Tract ZZ is eligible for City signature. Notwithstanding anything to the contrary herein, Owner shall pay current Engineering Fees for Phase 4.

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

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

**“City”**

City of Flagstaff, an Arizona municipal corporation

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

Attest:

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

Approved as to form:

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

**“Vintage”**

VP 66 & Woody Mountain, L.L.C., an Arizona limited liability company

By: Vintage Partners, LLC, an Arizona limited liability company  
Its: Manager

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 \_\_\_\_\_, 2022, before me, a Notary Public, personally appeared Paul Deasy, 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 \_\_\_\_\_, 2022, 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 VP 66 & Woody Mountain, L.L.C., an Arizona limited liability company, for the purposes therein contained.

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

