

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

**SECOND AMENDMENT
To The
TIMBER SKY ANNEXATION AND DEVELOPMENT AGREEMENT**

The following Second Amendment to the Timber Sky Annexation and Development Agreement (this "Amendment") is made this 14 day of March, 2018 and is incorporated into and made a part of that certain Timber Sky Annexation and Development Agreement dated November 15, 2016, and recorded in the Coconino County Records as Document No. 3772624 (the "Original Agreement"), and the First Amendment to the Timber Sky Annexation and Development Agreement dated September 18, 2017, and recorded in the Coconino County Records as Document No. 3796196 (the "First Amendment") (the Original Agreement and the First Amendment, collectively, the "Development Agreement"). Capitalized terms not defined herein shall have the meaning assigned to them in the Development Agreement. This Amendment is made pursuant to Section 15.4, of the Development Agreement, which permits the City and the Owner to amend the Development Agreement. Accordingly, this Amendment is made by the City of Flagstaff ("City") and VP 66 & Woody Mountain, L.L.C., an Arizona limited liability company ("Owner").

WHEREAS, the Development Agreement provides that Owner will deliver 100 AMI-accessible units as part of the Project;

WHEREAS, after the Original Agreement was executed, the City's engineering fees, which are codified in City Code, Section 3-10-001-0002 ("Engineering Fees"), were amended by Ordinance 2017-16, effective August 1, 2017 ("2017 Engineering Fees"), attached hereto as Exhibit 1 and incorporated herein by reference;

WHEREAS, prior to the adoption of the 2017 Fees, the Engineering Fees were charged pursuant to the schedule in Ordinance 2013-17 ("2013 Engineering Fees"), attached hereto as Exhibit 2 and incorporated herein by reference;

WHEREAS, the 2017 Engineering Fees will result in additional, unexpected costs to Owner;

WHEREAS, the parties desire to amend the Development Agreement to apply the 2013 Engineering Fee schedule to the Project for phases that include AMI-accessible units.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Amendments. The Development Agreement is amended as follows:

A. Section 5.2, Workforce Housing, is amended to delete the last sentence of the first paragraph and replace it with the following:

Further, if “permanently affordable” AMI-accessible units remain unsold after an extended period of time due to market, financing or other external conditions, the Affordability Plan may be amended to adjust the AMI for qualified buyers to 125% of the AMI affordability level.

B. Section 13, City Services, is deleted in its entirety and replaced with the following Section 13, City Services and User Fees, and Section 13.1, Alternate Payment Schedule for Engineering Fees, City Code Section 3-10-001-0002:

13. City Services and User Fees. The City has annexed the Property and included the Property in the City’s municipal service area and, upon completion of the construction and installation of the necessary Infrastructure Improvements by Owner as provided in or as required by this Agreement and the Rules, the City shall provide to the Property such utility and other services in a manner that is similar to that by which the City provides such utilities and services generally to the residents of similarly situated property in the City, including sewer, water, garbage, fire and police. Except as otherwise provided in this Agreement, the City agrees to assess and collect user fees or rates for each municipal utility service provided by the City consistent with the fees or rates established by the City and applied for other similarly-situated property and projects (residential property and projects greater than five acres) in areas of the City receiving similar municipal services. Failure by the Owner to promptly pay any amount owed will constitute a breach of this Agreement and the City may collect such amounts owing by utilizing the remedies set forth this Agreement, and further may withhold the issuance of building permits for improvements on the Property until such amount is paid.

13.1 Alternate Payment Schedule for Engineering Fees. The City agrees that the 2013 Engineering Fees apply for the term of the Agreement as an incentive for the provision of the 100 AMI-accessible units described in Section 5.2. The maximum incentive permitted under this Agreement is one million six hundred thousand dollars (\$1,600,000.00). In the event that the difference between the 2013 Engineering Fees and current Engineering Fees (i.e., engineering fees in place at time building permit applications are submitted) reaches one million six hundred thousand dollars (\$1,600,000.00), Owner will receive no further reduction in fees and current Engineering Fees will be applied to the development going forward. Additionally, if at the time of the first final plat approval within Phase 4, 75% of the AMI-accessible units have not been sold to a qualified purchaser and transferred to the community land trust program administered by the

City, no plat for any block within Phase 4 shall be recorded until payment has been made to the City in the amount of \$16,000 per remaining AMI-accessible unit. By way of example, if only 68 of the 100 AMI-accessible units have been sold at the time of the first plat within Phase 4, \$512,000.00 is due to the City prior to recordation of that plat. This amount is a penalty and will not be credited to Owner at a future date, even if all 100 AMI-accessible units are delivered prior to project completion. Payment of this penalty does not modify Owner's obligation to develop and sell all 100 AMI-accessible units.

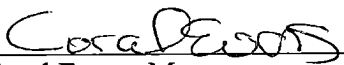
2. Effect of Amendment. In all other respects, the Development Agreement is affirmed and ratified and, except as expressly modified herein, all terms and conditions of the Development Agreement and First Amendment shall remain in full force and effect.

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


[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their duly authorized representatives as of the day and year first above written.

City of Flagstaff, a municipal corporation "City"


Coral Evans, Mayor

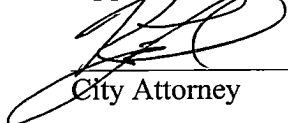
**VP 66 & Woody Mountain, L.L.C.,
an Arizona limited liability company
"Owner"**

By: 
Name: Mark Dethman Jr
Its: Manager

Attest:


City Clerk

Approved as to form:

 For
City Attorney

Unofficial Copy

STATE OF ARIZONA)
COUNTY OF COCONINO)

ACKNOWLEDGMENT

On this 14 day of March, 2018, before me, a Notary Public, personally appeared Coral Evans, Mayor of the City of Flagstaff, known to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same on behalf of the City of Flagstaff, for the purposes therein contained.



Stacy Saltzburg
Notary Public
My Commission Expires: 01/24/2022

STATE OF ARIZONA)
COUNTY OF Maricopa)

ACKNOWLEDGMENT

On this 13th day of March, 2018, before me, a Notary Public, personally appeared Mark E. Varman, Jr. known 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 LLC + Wendy Mountain, LLC, its Manager, for the purposes therein contained.



Cara Cook
Notary Public
My Commission Expires: April 24, 2020

Unoffi...

EXHIBIT 1

Unofficial Copy

3-10-001-0002 Engineering**Engineering Fees**

Soils Report Review	\$	59
Public Improvement Plan Review	\$	513
Inspections (Private Development)		8.00 %
Inspections (Right-of-Way Permit)	\$	547
Traffic Impact Analysis Level 1	\$	1,128
Traffic Impact Analysis Levels 2 & 3	\$	3,785
Traffic Impact Analysis Levels 4 & 5	\$	10,280
Materials Testing (Private & Capital)		3.00 %
Inspections (Capital Improvements)		7.00 %
Parking Lot Maintenance Permit	\$	186
Chip Seal Fee	\$	4.50 Unit
Stormwater-1st – Construction & Grading – Drainage Report	\$	266
Stormwater-1st – Construction & Grading – Engineering Review, per Sheet	\$	166

(Ord. 2017-16, Rep&ReEn, 06/20/2017)

EXHIBIT 2

Unofficial Copy

3-10-001-0002 Engineering**Engineering Fees**

1st – Constr. & Grading – Drainage Report	\$266
1st – Constr. & Grading – Engineering Review, per Sheet	\$166
Public Improvement Plan Check - Road/Drainage/Water/Sewer	\$395
Public Improvement Inspection – Road	1.55%
Public Improvement Inspection – Drainage	4.71%
Public Improvement Inspection – Water	2.57%
Public Improvement Inspection – Sewer	3.31%
As Builts – Revisions to Original Plans	0.24%
General ROW Permit	\$275
Traffic Impact Analysis – 0 and 1	\$469
Traffic Impact Analysis – 2M	\$8,456
Traffic Impact Analysis – 2L + 2 Multi	\$11,387
Soils Report Review	\$59
Materials Testing as a Percentage of the Public Improvement Construction Cost	2.15%

(Ord. 2013-17, Rep&ReEn, 07/23/2013)