

When recorded, mail to:

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

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

The following Third Amendment to the Timber Sky Annexation and Development Agreement (this "Amendment") is made this 18 day of September, 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, and any amendments thereto, (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").

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:

A. Amendments. The parties amend the Development Agreement as follows:

A. Section 8.5.1.1, Westside Sewer Interceptor, is deleted in its entirety and replaced with the following:

8.5.1.1 Westside Sewer Interceptor. The installation of sewer line connecting manholes 2A-422 and 2A-360 with a combination of an 18", 21" and 24" diameter pipe (the "Westside Sewer Interceptor") will be divided into two phases. Phase I consists of a 24" line in the Clay Avenue Wash as set forth in the plans titled "West Side Sewer Interceptor, Phase I – Clay Avenue Wash, COF Project No. WW3320" ("Clay Avenue Wash Extension" or "Phase I"). Phase II includes a combination of 18", 21", and 24" lines along Thompson and Kaibab as set forth in the plans titled "West Side Sewer

Interceptor, Phase II – Thompson-Kaibab, COF Project No. WW3220” (“Thompson-Kaibab Portion” or “Phase II”).

The City Plans to complete Phase I of the Westside Sewer Interceptor on or before November 30, 2018.

Owner agrees to publicly procure and construct Phase II of the Westside Sewer Interceptor and the City agrees to reimburse Owner for the Cost of Construction for Phase II pursuant to Section 8.5.3 below. The City agrees that Owner may proceed with the construction of Phase II concurrently with, or in advance of, the City’s construction of Phase I. However, should Owner not begin construction on Phase II prior to October 1, 2019, the City reserves the right to notify Owner that City will take over construction of Phase II and Owner will not be reimbursed. Owner agrees to complete Phase II of the Westside Sewer Interceptor within one year from the date of permit issuance for the improvement.

The City agrees that no assurances under Section 7.3 of this Agreement are required for the Westside Sewer Interceptor. Until Phase II of the Westside Sewer Interceptor is completed, the City agrees that there is capacity in the current system for 125 single family dwelling units or an equivalent number of condominium/townhome units (the “Initial Units”) to be developed within the Property and consequently, the City will issue such permits on the Property in advance of the completion of Phase II of the Westside Sewer Interceptor for the Initial Units. No permits for any additional units will be issued until Phase II of the Westside Sewer Interceptor is complete.

B. Section 8.5.3 Reimbursement to Owner, and its subsections are deleted in their entirety and replaced with the following:

8.5.3 Reimbursement to Owner. It is estimated that the total cost of the Phase II Westside Sewer Interceptor will be one million four hundred thousand dollars (\$1,400,000.00) (the “Phase II Sewer Cost”). The City agrees to reimburse the Owner for all costs associated with the construction of Phase II of the Westside Sewer Interceptor, including permit fees and reasonable project management expenses to be approved by the City. Based on the City’s current Utilities 5-Year Plan, and in the event that Owner completes Phase II prior to May 30, 2020, it is anticipated that payments for reimbursement will be made in accordance with the following schedule:

- 1) Twenty-four thousand six hundred and 00/100 dollars (\$24,600.00) to be paid within 30 days of Owner’s completion of Phase II; and
- 2) The remaining balance for Phase II to be paid by August 31, 2020 or sooner if funds are accelerated in the City’s budget and Phase II construction is


complete. If the remaining Phase II Sewer Cost balance is not paid by August 31, 2020, interest on the remaining balance will accrue at an annual rate of eight percent (8%). The balance must be paid no later than August 31, 2021.

C. 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 shall remain in full force and effect.

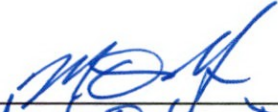
D. Conflict of Interest. This Amendment and the Development Agreement may be cancelled by the City pursuant to A.R.S. § 38-511.

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.

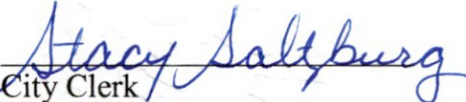
**City of Flagstaff, a municipal
corporation "City"**


Coral Evans, Mayor

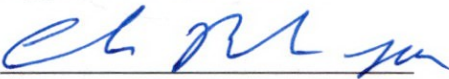
**VP 66 & Woody Mountain,
L.L.C.,
an Arizona limited liability
company
"Owner"**

By: 
Name: Mark Orthman Jr
Its: Manager

Attest:


City Clerk

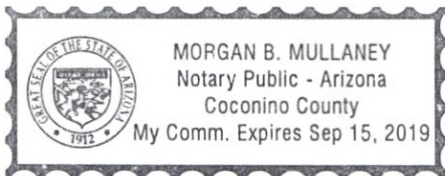
Approved as to form:


City Attorney

STATE OF ARIZONA)
COUNTY OF COCONINO)

ACKNOWLEDGMENT

On this 18TH day of SEPTEMBER, 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.



Morgan B. Mullaney
Notary Public
My Commission Expires: 09-15-2019

STATE OF ARIZONA)
COUNTY OF Maricopa)

ACKNOWLEDGMENT

On this 6 day of September, 2018, before me, a Notary Public, personally appeared Mark Kortman 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 V.P. of Woody Mountain LLC, its Manager, for the purposes therein contained.



Lesa A Blunt
Notary Public
My Commission Expires: November 12, 2021