

When recorded, mail to:

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

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**AGREEMENT FOR ROADWAY DEDICATION AND CONSTRUCTION (JWP)**

THIS AGREEMENT FOR ROADWAY DEDICATION AND CONSTRUCTION (JWP) (this “Agreement”) is entered into as of this \_\_\_ day of \_\_\_\_\_, 202\_\_, by and among the City of Flagstaff, an Arizona municipal corporation (“City”), and Little America Hotels and Resorts, LLC, a Wyoming limited liability company, formerly known as Little America Hotels & Resorts, Inc. (“Little America”). City and Little America may be referred to in this Agreement as “Party” in the singular, and collectively as the “Parties.”

**RECITALS**

A. Little America is the owner of that certain real property consisting of approximately 531 acres within the City of Flagstaff, Arizona, and legally described on Exhibit “A” attached hereto (the “Little America Property”).

B. City desires to complete a roadway extension project, which will extend the public right-of-way of John Wesley Powell Boulevard (as now existing or hereafter expanded or improved, “JWP”) from its current terminus near the existing Pine Canyon development to the boundary of the Canyon del Rio development (the “New JWP Right of Way”).

C. In order to facilitate the design and construction of the New JWP Right of Way, City is in the process of entering into agreements with the applicable property owners that own the private property within which the New JWP Right of Way is planned to be located.

D. A portion of the New JWP Right of Way is located on the Little America Property. In consideration of the future development of the Little America Property, Little America will dedicate to the City at the time specified herein (1) certain real property being approximately one hundred and one feet (101’) in width, and (2) necessary slope and drainage easements for the City’s construction and operation of the Initial Buildout (defined herein) of the New JWP Right of Way over the Little

America Property. The exact scope of the New JWP Right of Way that Little America will dedicate to the City shall be determined as further set forth herein.

E. The Parties acknowledge that, at the time of future development of the Little America Property, Little America would have certain obligations to contribute to the design and construction of the Initial Buildout (as defined herein) of the New JWP Right of Way located within the Little America Property. The City has also previously acknowledged the importance of expanding JWP and has raised funds, through tax revenue funded by Proposition 419 and other sources, to pay for a portion of the design and construction of the Initial Buildout of the New JWP Right of Way. At present, Little America does not have a timeline for the development of its property. As such, the City would either need to exercise its condemnation authority under A.R.S. § 12-1111 to acquire the necessary right-of-way for the New JWP Right of Way within the Little America Property or wait until Little America develops the Little America Property and, at such time, require that Little America contribute to the design and construction of the New JWP Right of Way as a condition to development. Accordingly, to facilitate an earlier construction of the New JWP Right of Way, the Parties desire to provide for the design and construction of, and payment of design and construction costs for, the Initial Buildout of the New JWP Right of Way, which will satisfy all future obligations of Little America with respect to the design and construction of JWP, as further set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the premises and of the mutual covenants and agreements herein contained, the Parties hereto agree as follows:

1. Dedication and Scope of New JWP Right of Way.

a. Agreement to Dedicate. Subject to the performance by the City of its obligations hereunder, and the other terms of this Agreement, Little America agrees (i) to dedicate to the City fee title to that portion of the New JWP Right of Way located within the Little America Property (the "ROW Dedication"), and (ii) grant the City non-exclusive slope, temporary construction, and drainage easements required in connection with the construction and operation of the Initial Buildout of the New JWP Right of Way located within the Little America Property (each an "Easement" and together the "Easements"). Notwithstanding the foregoing, Little America reserves from such Easements the right to utilize and construct improvements within the areas subject to such Easements provided the same does not materially and adversely impact the construction or operation of the New JWP Right of Way within the Little America Property. The City agrees that the ROW Dedication for the New JWP Right of Way will be used as a public right-of-way only (and will not be expanded beyond a four (4) lane roadway), that no overhead powerlines will be located within the New JWP Right of Way, and that all sewer, water, gas, communication and electrical utilities that are now or hereafter placed within the New JWP Right of Way will be placed underground, to the extent it is commercially reasonable to do so.

b. Alignment of New JWP Right of Way and Preparation of Dedication Documents.

i. The Parties agree that the current proposed alignment of the New JWP Right of Way is as shown on Exhibit "B" attached hereto. The Parties acknowledge and agree that the final alignment and cross sections of the New JWP Right of Way within the Little America Property shall be mutually agreed to by the Parties and determined by the Dedication

Document submitted to and approved by the City pursuant to Section 1(b)(ii) below; provided, however, that the end points of the New JWP Right of Way within the Little America Property terminating at the Canyon del Rio property to the northeast and at the Gibson property to the southwest shall remain substantially the same as shown in Exhibit “B”.

ii. Within sixty (60) days after the Effective Date, Little America shall prepare (at its sole cost and expense) and submit to the City, for City review, a map of dedication or separate instrument to effectuate a dedication (the “Dedication Document”) for the ROW Dedication to the City. The Dedication Document will also include a final legal description of Little America’s ROW Dedication. The Dedication Document is subject to approval through normal City processes, provided that the City agrees to use commercially reasonable efforts to review and process such Dedication Document within thirty (30) days after receipt. The Dedication Document and the legal description for the ROW Dedication by Little America will be consistent with the current alignment of the New JWP Right of Way as shown in Exhibit “B”, it being understood by the Parties that the final alignment within the Little America Property may deviate from the current alignment shown in Exhibit “B” (except for the end points which are to remain the same per Section 1(b)(i) above).

iii. The Parties will use commercially reasonable efforts to cause the Dedication Document to be approved by the City within one hundred twenty (120) days after the Effective Date. Little America agrees to promptly respond to any City comments on the Dedication Document.

iv. Within sixty (60) days of the City providing Little America with final approved plans for construction of the initial Buildout of New JWP Right of Way (referred to hereinafter as the Roadway Plans), Little America will dedicate the Easements to the City through a map of dedication.

c. City Acceptance of ROW Dedications. Prior to the ROW Dedication, Little America will satisfy and cause to be removed from title to the ROW Dedication, any mortgage, deed of trust, tax lien, judgment lien, or mechanic’s lien encumbering such ROW Dedication. Subject to the foregoing sentence, the City agrees that if it approves of the Dedication Document for such ROW Dedication, the City will be deemed to have accepted and approved of such ROW Dedication subject to all matters of record.

d. Timing of Dedication. Within ten (10) business days after the Dedication Document has been approved by the City, Little America and City shall execute the Dedication Document and cause the same to be recorded in the Official Records of the Coconino County Recorder’s Office. City and Little America agree to execute such other documents and agreements, at no cost or liability to such party, as may be reasonably required in order to complete the ROW Dedication.

e. Adjustments to Final ROW Dedications. The Parties acknowledge that in connection with the final design and construction of the Initial Buildout of the New JWP Right of Way, the final dimensions and alignment of the ROW Dedication may need to be modified to consider various engineering or construction changes or modifications. Once the final approved plans for the construction of the Initial Buildout of the New JWP Right of Way are complete, the City (through review by City Staff and approval by the City Manager) and Little America agree to execute an

additional Dedication Document as may be needed to reflect any changes to the New JWP Right of Way; provided, however, the City agrees not to make any changes to the dimensions and alignment of the New JWP Right of Way, as set forth on Exhibit “B”, that would, in Little America’s reasonable judgment, materially and adversely impact Little America’s development of the Little America Property or the costs to construct the Initial Buildout (increases in costs of more than \$50,000 will be deemed material and adverse), without Little America’s consent.

f. Conditions Precedent to Obligation to Dedicate. Notwithstanding anything to the contrary contained herein, Little America shall have no obligation to dedicate to the City its ROW Dedication until all other applicable owners of the other properties within which the New JWP Right of Way is located have entered into agreements for the dedication, design, and construction of the remaining portions of the New JWP Right of Way.

g. Reversion of Fee Title. If City does not receive a construction permit and commence construction of the Roadway Section within three (3) years following the Effective Date of this Agreement, then unless otherwise mutually agreed to by the Parties, City shall promptly convey, by special warranty deed, fee title to the ROW Dedication (which is the portion of the New JWP Right of Way located within the Little America Property dedicated by Little America to the City per this Agreement) back to Little America at no cost to Little America. Upon the conveyance by the City of fee title to the ROW Dedication to Little America pursuant to this Section 1(g), this Agreement shall automatically terminate and be of no further force or effect.

2. Design and Construction for Initial Buildout; Reimbursement Obligations of Little America.

a. General. As further set forth herein, City agrees, at its sole cost and expense, to design and construct the Initial Buildout of the New JWP Right of Way located within the Little America Property (the “Roadway Section”).

b. Scope of Initial Buildout. The Roadway Section improvements to be constructed by the City pursuant to this Agreement shall only consist of a two-lane roadway consistent with interim cross-sections No. 2 and No. 3, as such interim cross-sections are further described and shown on Exhibit “B” (the “Initial Buildout”). The Parties acknowledge the New JWP Right of Way is not being fully built out, and that the City’s design and construction obligations hereunder with respect to the Roadway Section is limited to the Initial Buildout, it being understood that the City’s design and construction obligations for the Initial Buildout include all elements of design and construction, including, but not limited to, grading work and construction of all wastewater, water, storm drain, dry utilities (which will be requested by the City but subject to final dry utility company approvals), concrete, paving, street lights, sidewalks, FUTs trails, landscaping, retaining walls, culverts and/or bridges per the approved Roadway Plans. If, following the completion of the Initial Buildout, City desires to complete full buildout of the Roadway Section, City shall be responsible for constructing the full buildout and Little America shall have no obligation to contribute to the costs of such construction.

c. Design.

i. By City. City agrees, at its sole cost and expense, to cause the Roadway Section to be fully designed, including the preparation of all required plans and specifications

therefor (the “Roadway Plans”). The Roadway Plans will comply with this Agreement. City will use commercially reasonable efforts to cause the Roadway Plans to be completed and approved by the City, and obtain required federal permitting approvals, within eighteen (18) months after the Effective Date.

ii. Cooperation on Design. The City and Little America will work together in connection with the preparation of the Roadway Plans to ensure that the Initial Buildout contains landscaping and design elements that will be installed at the sole cost and expense of City. The Parties recognize and agree that the landscaping will be designed and installed to harmonize with the natural setting, similar to the existing segment of JWP from Lake Mary Road to its current northern terminus near the existing Pine Canyon development. The landscaping will include native pine trees, grasses, and other vegetation within the center median and on cut and fill slopes. Ample native pine tree plantings will be provided on cut and fill slopes to allow these areas to more quickly return to a natural forested appearance. The City further recognizes that Little America is especially interested in the portion of the Roadway Section that crosses the Rio de Flag within the Little America Property. The Initial Buildout will be designed in a manner so that it will safely accommodate a vehicular speed of no less than 40 miles per hour; provided, however, the Parties agree that the posted speed limit for the New JWP Right of Way will not exceed 35 miles per hour, subject to future City Council consideration and revisions.

iii. Approval of City Roadway Plans by Little America. Prior to preparing the Roadway Plans, to commence the design process, the City and Little America shall hold a meeting at a time and place mutually agreed to by the Parties to discuss the design of the Initial Buildout (the “Design Kick-off Meeting”). Following the Design Kick-off Meeting, once the Roadway Plans have achieved 30%, 60% and 90% design drawings, at each of such stages, a meeting shall be held at a time and place mutually agreed to by the Parties (each a “Stage-Gate Meeting”) for Little America (and any of its respective consultants engaged by Little America) to comment on and approve of the Roadway Plans, which approval will not be unreasonably withheld, conditioned, or delayed. To the extent Little America has any comments, the Parties will work together in good faith during and after each Stage-Gate Meeting to resolve those comments in a manner reasonably acceptable to the Parties. Furthermore, during review and finalization of the 60% design drawings, the City and Little America will agree on the locations abutting the Little America Property that will connect with the New JWP Right of Way. After the 90% design drawings are mutually approved by City and Little America, Little America will have no further right to approve the City Roadway Plans unless the City desires to make any material changes. Once the final Roadway Plans are complete, the City will provide the same to Little America so it can confirm no material changes were made.

d. Construction.

i. By City. Within one-hundred eighty (180) days after the approval of the Roadway Plans (or such longer time as may be reasonably necessary to comply with the Public Bidding and Procurement Laws (as defined below)), City will select a contractor to construct the Roadway Section and will enter into a contract with such contractor acceptable to City, provided that such contract will provide for a warranty of all improvements for the applicable warranty periods required by the City. Subject to Force Majeure Delays (as defined herein), City will cause the Roadway Section to be constructed in a good and workmanlike manner, and in substantial accordance with the Roadway Plans, within twenty-four (24)

months after the first construction permit is issued for the Roadway Section. Subject to any reimbursements provided herein, City will be solely responsible for all costs and expenses incurred to design and construct the Roadway Section. City agrees that the bidding, procurement and contracting for the design of the Roadway Plans and the construction of the Roadway Section will be conducted in accordance with all applicable laws, rules, regulations, and ordinances of the State of Arizona and the City of Flagstaff applicable thereto, including, without limitation, to the extent applicable, Title 34 of the Arizona Revised Statutes (Public Buildings and Improvements) and the Arizona Procurement Code (A.R.S. §§ 41-2501 et. seq.) (collectively, the “Public Bidding and Procurement Laws”).

ii. Force Majeure Delay. The applicable commencement and/or completion time periods for the construction of the Roadway Section by the City required pursuant to this Agreement shall be extended by a time equal to any period that progress and/or construction is delayed due to any cause beyond the reasonable control of the City, including without limitation, strikes, riots, national emergency, fire or other casualty, natural disaster, acts of war, acts of violence, injunction in connection with litigation or arbitration, acts of God, or any governmental agency having jurisdiction over the Little America Property (each, a “Force Majeure Delay”). If City obtains notice of any proposed or pending Force Majeure Delay, City shall promptly provide written notice of such Force Majeure Delay to Little America, which notice shall reasonably detail the reason(s) giving rise to the Force Majeure Delay and what efforts the City intends to take to minimize the Force Majeure Delay, and which shall also set forth a good faith estimate of the anticipated duration of the Force Majeure Delay.

e. Reimbursement by Little America.

i. While Little America is not contributing upfront to the costs to design and construct the Initial Buildout of the New JWP Right of Way either within or outside the Little America Property (the “Overall JWP Costs”), Little America agrees to pay to the City certain amounts that constitute Little America’s proportionate share of the Overall JWP Costs (“Proportionate Share”), which shall be paid by Little America to the City as development of the Little America Property occurs in accordance with Sections 1(e)(ii)-(vi) below.

ii. The amount of Little America’s Proportionate Share of the Overall JWP Costs shall hereby be set at \$5,599,223 (the “Total Reimbursement Amount”).

iii. Payment by Little America of its Proportionate Share to the City shall only be required and become due upon pulling a building permit for a development on the Little America Property that utilizes (or ties in to) the New JWP Right of Way for vehicular access (including required secondary access). Any future development of the Little America Property that does not include a vehicular driveway that connects to the New JWP Right of Way shall be deemed not to utilize (or tie in to) the New JWP Right of Way for vehicular access (including required secondary access).

iv. In recognition of the large size of the Little America Property and that development of the Little America Property will likely occur in phases over time, Little America’s payment of its Proportionate Share shall be paid by Little America in installments proportionate to the actual development of the Little America Property as development occurs, which will include all development on the Little America Property (e.g., residential,

commercial, resort amenities, etc.). As such, if the Little America Property is developed in a manner that utilizes the New JWP Right of Way for access (thereby triggering Little America's reimbursement obligation pursuant to subsection (iii) above), Little America's payment amount shall be calculated based on the percentage of the currently undeveloped Little America Property that is developed (by way of example: if ten percent (10%) of the Little America Property is developed, then the payment amount due to the City as a condition to pulling a building permit for such development shall be an amount equal to ten (10%) of the Total Reimbursement Amount). The Parties acknowledge and agree that, for purposes of calculating Little America's payment amount pursuant to this Section 2(e)(iv), the portion of the Little America Property that is "currently undeveloped" is comprised of 492 acres (consisting of Coconino County Assessor Parcel Numbers 104-12-004, 106-04-005B, 106-09-001, 106-09-002, 106-10-001B, 106-10-001C, 106-10-001D, and 106-10-002). The Parties further acknowledge and agree that the City may condition a building permit for development of the Little America Property on payment of Little America's Proportionate Share in the amount due pursuant to this Section.

v. Any and all reimbursement obligations of Little America pursuant to this Agreement, including, but not limited to, any and all reimbursement and payment obligations under this Section 2(e), shall expire on the date that is ten (10) years after the Effective Date of this Agreement.

f. Turn Lanes, Traffic Signals, and Intersection Improvements. If, upon development of the Little America Property, the City requires any turn lanes, traffic signals, or intersection improvements for the development of the Little America Property that are not included in the Initial Buildout, then Little America will be responsible to construct and pay for such improvement(s) when it develops the portion of the Little America Property requiring such turn lanes or traffic improvements; provided, however, such improvements shall only be required by the City if warranted by a traffic impact analysis submitted for the Little America Property.

g. Future Sidewalks. The Parties acknowledge that in connection with the Initial Buildout, a sidewalk and related improvements are only being constructed on one side of the New JWP Right of Way. Little America agrees that, except as provided in this Section 2(g), when it develops any portion of its Property that abuts the New JWP Right of Way, it will complete the sidewalk and related improvements on the side of the New JWP Right of Way that abuts the portion of its Property being developed (the "Remaining Sidewalk"). The improvements for the Remaining Sidewalk will be as shown on the applicable Roadway Plans cross sections. For purposes of this Section 2(g), for a development to abut the New JWP Right of Way (thereby triggering Little America's obligation to construct the Remaining Sidewalk), such development must satisfy the following conditions: (i) the property being developed must adjoin and share a border with the New JWP Right of Way; and (ii) the property being developed must utilize (or tie in to) the New JWP Right of Way for vehicular access (including required secondary access). The Parties acknowledge and agree that, in the event Little America develops a portion of its Property that abuts the New JWP Right of Way, Little America shall only be responsible for constructing the portion of the Remaining Sidewalk improvements within the New JWP Right of Way along the perimeter of the abutting property being developed. The Parties further acknowledge and agree that Little America's obligation to construct the Remaining Sidewalk improvements shall expire upon the City's construction of a FUTS on the side of the New JWP Right of Way where the Remaining Sidewalk improvements are to be located, as shown by the future four-lane cross-section on Exhibit "B".

3. No Further Obligations For JWP. In consideration for Little America's agreement to make its ROW Dedication at no cost and expense to the City and to contribute to the costs of the design and construction of the Initial Buildout of the New JWP Right of Way pursuant to this Agreement, the City agrees that this Agreement contains all obligations and liabilities of Little America with respect to the New JWP Right of Way, and the design, construction, and improvement thereof, and that Little America will not be obligated, now or in the future, to further design, construct, or otherwise improve the New JWP Right of Way (except for the improvements identified in Sections 2(f) and 2(g) above), regardless of the ultimate development that occurs on Little America's Property. Any further design, construction, or improvement of the New JWP Right of Way (including, but not limited to, expansions, realignments, and additions of sidewalks not identified in Section 2(g), landscaping, trails, bike lanes and/or other related improvements), or payment for the costs thereof, will be a regional improvement and the obligation of the City or other third-party property owners (excluding Little America and other future owners of the Little America Property).

4. Land Swap or Sale for Severed Property. The Parties acknowledge and agree that the alignment for the New JWP Right of Way within the Little America Property would result in the bifurcation of certain portions of the Little America Property, with portions of the Little America Property located on the east side of the New JWP Right of Way ("Severed Property") separated from the remaining Little America Property on the west side of the New JWP Right of Way, as illustrated by the exhibit in Exhibit "C" attached hereto. In the event the construction of the Initial Buildout of the New JWP Right of Way results in Severed Property, Little America shall be entitled to elect (in its sole discretion) one of the following options: (i) enter into an agreement with the City for the exchange of all or a portion of the Severed Property with any other properties owned by the City that abut the Little America Property and are of substantially equal value pursuant to the authority granted to the City pursuant to Flagstaff City Charter, Article I, Section 3 and A.R.S. § 9-407 (for purposes of this option (i), abutting City property shall include, but is not limited to, the City-owned properties depicted in Exhibit "D" attached hereto); or (ii) sell to the City all or a portion of the Severed Property an amount equivalent to the per-acre price the City pays to the applicable owners of the Canyon del Rio project (the "CDR Owners") for the right-of-way dedication to be made by the CDR Owners for the New JWP Right of Way pursuant to the separate agreement entered into between the City and the CDR Owners (either prior to, even date with or after this Agreement).

5. City Water and Sewer Capacity Reservations. The Parties acknowledge and agree that the Initial Buildout of the New JWP Right of Way will include appropriately sized water and wastewater infrastructure improvements along the entire segment of the New JWP Right of Way (as set forth in the final Roadway Plans), it being understood that the intent of such improvements is to accommodate the reasonable development opportunity for properties abutting the new JWP Right of Way, including the Little America Property. In consideration for Little America agreeing to make its ROW Dedication at no cost and expense to the City and to contribute to the costs of the design and construction of the Initial Buildout of the New JWP Right of Way pursuant to this Agreement, the City agrees to (i) permit Little America to connect to the water and wastewater infrastructure improvements upon development of the Little America Property, (ii) reserve sufficient capacity within the City's water system to provide water service to the Little America Property upon development, and (iii) reserve sufficient capacity within the City's wastewater collection and treatment facilities to treat the wastewater discharged from future development on the Little America Property; provided, however, that notwithstanding the foregoing, the City's obligation to reserve such capacity terminates upon the date that is thirty (30) years from the Effective Date of this Agreement.

6. Herold Ranch Road. The City acknowledges that a portion of Herold Ranch Road is located on the Little America Property. Upon the completion of the Initial Buildout, the City acknowledges and agrees that it will not interfere with Little America's right to secure its private property by taking any action to close, block or otherwise prevent public access to, from, or across any portion of Herold Ranch Road that is located on the Little America Property (including, but not limited to, closing the existing curb cut at the intersection of Herold Ranch Road and Butler Avenue). The City further acknowledges and agrees that the New JWP Right of Way shall serve as the primary ingress and egress route for all neighborhoods and property owners who currently use Herold Ranch Road for access to and from Butler Avenue. The City agrees to make a good faith effort to communicate Little America's intent to close Herold Ranch Road in public meetings. Finally, the City agrees that it will, upon recordation of the Map of Dedication by Little America, remove Herold Ranch Road and all other roadways running through the Little America Property from the City's Roadway Functional Classification Map (as now existing or hereafter amended in any way, including, but not limited to, by amendment to the City's Regional Plan or City Code).

7. Default; Remedies.

a. Events Constituting Default. A Party hereunder shall be deemed to be in default under this Agreement if such Party breaches any obligation required to be performed by the respective Party hereunder within any time period required for such performance and such breach or default continues for a period of thirty (30) days after written notice thereof (or other period of time as expressly provided herein) from the Party not in default hereunder; provided, however, that if the nature of the default is such that it cannot reasonably be cured within the 30-day period, no default shall be deemed to exist 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 one hundred eighty (180) days.

b. Dispute Resolution. In the event that there is a dispute hereunder which the Parties cannot resolve between themselves, the Parties agree that there shall be a forty-five (45) 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 mediations shall be held under the commercial mediation rules of the American Arbitration Association. The mediator selected shall have at least five (5) years' experience in mediating or arbitrating disputes relating to commercial property development. The costs of any such mediation shall be paid one-half by the City and one half by Little America or in such other fashion as the mediator may order. The results of the mediation shall be nonbinding on the Parties and any Party shall be free to initiate litigation upon the conclusion of mediation.

c. Little America's Remedies. In the event that the 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 7(a) above, then Little America shall be entitled to terminate this Agreement by written notice delivered to the City and/or exercise all other rights and remedies under this Agreement and those which may be available at law or in equity.

d. City's Remedies. In the event that Little America is in default under this Agreement, and Little America thereafter fails to cure any such default within the time period described in Section 7(a) above, then, the City may pursue all of its rights and remedies available to it under applicable law against Little America.

e. No Personal Liability. No current or former member, manager, officer, director, agent, representative, official, employee or other natural person of the City or Little America when acting within the scope of their official capacity shall be personally liable (a) in the event of any default or breach by the City or Little America, 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 the City or Little America, as applicable, under the terms of this Agreement.

f. Power of Condemnation. Nothing in this Agreement shall be deemed to abrogate, impede, or constitute a waiver of the City's power of eminent domain, which power may be exercised by the City in accordance with applicable law. Furthermore, if the City initiates eminent domain proceedings after the failure of Little America to dedicate its ROW Dedication to the City as and when required by this Agreement, the Little America shall be liable to the City for all additional costs and expenses incurred by the City to exercise its power of eminent domain.

g. Waiver of Certain Damages. Notwithstanding anything to the contrary contained herein, no Party shall be liable to another Party for special, consequential, or punitive damages, each Party agreeing that it shall only be entitled to recover its actual damages. The foregoing shall not apply if a Party's damages arise due to another Party's breach arising from such Party's fraud, bad faith, or willful misconduct.

8. General Provisions.

a. Effective Date and Term. This Agreement shall be effective (the "Effective Date") upon execution by the Parties hereto. The term of this Agreement shall extend from the Effective Date of this Agreement and shall automatically terminate when all obligations required by this Agreement have been met by the Parties.

b. Notices. All notices and communications provided for herein, or given in connection herewith, shall be validly made if in writing and delivered personally or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid to:

To City:  
City Manager  
City of Flagstaff  
211 West Aspen Avenue  
Flagstaff, Arizona 856001

To Little America:  
\_\_\_\_\_  
\_\_\_\_\_  
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or to such other addresses as either party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective. Notices given by mail shall be deemed

delivered 72 hours following deposit in the United States Postal Service in the manner set forth above or immediately upon personal delivery.

c. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement.

d. Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions of the Agreement.

e. Authority. The undersigned, each as to themselves only, represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. Little America represents and warrants that it is duly formed and validly existing under the laws of the state of its organization and that it is duly qualified to do business in the State of Arizona and is in good standing under applicable state laws. Little America and the City warrant to each other that the individuals executing this Agreement on behalf of such Party are authorized and empowered to bind the Party on whose behalf each individual is signing.

f. Entire Agreement. This Agreement, including the following exhibits which are incorporated in this Agreement by reference, constitutes the entire agreement between the Parties and supersedes any prior written or oral understandings or agreements between the parties. This provision applies only to the entirety of this Agreement; additional and separate zoning stipulations and agreements with the City may apply to the Little America Property, and this provision has no effect on them.

- Exhibit "A" Legal Description of Little America Property
- Exhibit "B" Depiction of New JWP Right of Way and Description of Initial Buildout and Cross-Sections
- Exhibit "C" Depiction of Severed Property
- Exhibit "D" Depiction of Abutting City-Owned Property

g. Amendment of the Agreement. This Agreement may be amended, in whole or in part, and with respect to all or any portion of the Little America Property, only with the mutual written consent of the Parties to this Agreement or, as to Little America, by its successors in interest or assigns that own (at the time of the Amendment) the portion(s) of the Little America Property that are included in the Amendment. Consent is not required from owners of the Little America Property that are not included in the Amendment. The City shall record the amendment or cancellation in the official records of the Coconino County Recorder.

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

i. Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. This Agreement has been made and entered into in Coconino County, Arizona, and any lawsuit to dispute or enforce any provision of this Agreement must be brought in Coconino County, Arizona.

j. Recordation of Agreement and Subsequent Amendment Cancellation. The City will record this Agreement, and any amendment or cancellation of it, in the official records of the Coconino County Recorder no later than ten (10) days after the City and Little America execute the Agreement, amendment, or cancellation.

k. No Partnership; Third-Party. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between Little America and the City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization, or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.

l. Conflict of Interest. Pursuant to Arizona law, rules, and regulations, no member, official, or employee of the 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.

m. Successors and Assigns. The Little America Property shall be held, transferred, sold, conveyed, leased, occupied and used subject to the terms, covenants and conditions of this Agreement, which shall run with the land and be appurtenant to and binding upon, and shall benefit and burden, the Little America Property, it being agreed that all persons having or acquiring any right, title or interest in or to any portion of the Little America Property shall be bound by this Agreement (subject to the remaining provisions of this Section). Notwithstanding the foregoing, this Agreement shall be automatically (without the necessity of recording any document) released of record as to any Public Sale Property (as defined below) within The Little America Property upon the initial conveyance of such Public Sale Property to a purchaser or transferee thereof. As used herein, the term “Public Sale Property” shall mean each of the following: (a) platted residential lot within the Little America Property on which a residence has been constructed and completed (as evidenced by the City's issuance of a certificate of occupancy for such residence) upon conveyance of the lot to a bona fide retail homebuyer, (b) any common areas upon the dedication and conveyance to any homeowners association, and (c) except for the ROW Dedication, any parcel or tract upon the dedication and conveyance of such parcel or tract to the City; provided, however, that such termination and release of this Agreement upon the conveyance of a Public Sale Property shall not release, relieve or otherwise affect the continued rights, obligations and liabilities of the Parties under this Agreement, and all such rights, obligations and liabilities shall survive such termination and release. Any title insurer may rely on this Section to not show this Agreement as an exception to title to such property.

n. Restriction on Assignment by City. The City shall not transfer or assign all or any part of its rights and obligations under this Agreement without the prior written consent of Little America, which consent may not be unreasonably withheld, conditioned, or delayed.

o. Time of the Essence. Time is of the essence in implementing the terms of this Agreement.

\_\_\_\_\_

*[signatures follow]*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement For Roadway Dedication and Construction (JWP) effective as of the Effective Date.

**City of Flagstaff**, an Arizona municipal corporation

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

Attest:

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

Approved as to form and authority:

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

STATE OF ARIZONA)

County of \_\_\_\_\_ ) ss.  
\_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, as \_\_\_\_\_ of the **City of Flagstaff**, an Arizona municipal corporation, on behalf of the City

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_



**Exhibit "A"**

**LEGAL DESCRIPTION OF LITTLE AMERICA PROPERTY**

**Exhibit "B"**

**DEPICTION OF NEW JWP RIGHT OF WAY AND DESCRIPTION OF INITIAL  
BUILDOUT AND CROSS SECTIONS**

**Exhibit "C"**

**DEPICTION OF SEVERED PROPERTY**

**Exhibit "D"**

**DEPICTION OF ABUTTING CITY-OWNED PROPERTY**