

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: (i) the City of Flagstaff, an Arizona municipal corporation (“City”); (ii) STL405, LLC, an Arizona limited liability company (“STL 405”), (iii) Kelly J. Gibson and Christy R. Gibson (collectively, “Gibson”), and (iv) JP325, LLC, an Arizona limited liability company. Gibson and STL 405 are each referred to in this Agreement as a “Dedicating Owner” and collectively, the “Dedicating Owners.” JP 325, STL405, and Gibson are each referred to in this Agreement as an “Owner” and collectively, the “Owners”. City and each Owner may be referred to in this Agreement as “Party” in the singular, and collectively as the “Parties.”

**RECITALS**

A. STL 405 is the developer of approximately 405.36 acres of real property known as State Trust Land 405 generally located northeast of Pine Canyon Estates within the City of Flagstaff, Arizona, and legally described on Exhibit “A-1” attached hereto (the “STL 405 Property”). STL 405 was the successful bidder at an Arizona State Land Department (“ASLD”) public auction and was issued Certificate of Purchase No. 53-120834 (the “Certificate of Purchase”), which entitles STL 405 to pay the release price for and obtain patents to all or portions of the STL 405 Property. To date, STL 405 has patented and owns fee title to approximately 126 acres of the STL 405 Property and holds the remainder of the STL 405 Property subject to the Certificate of Purchase.

B. Gibson is the owner of that certain real property within the City of Flagstaff, Arizona, and legally described on Exhibit “A-2” attached hereto (the “Gibson Property”).

C. JP 325, or its affiliates, are collectively the owners of that certain real property within the City of Flagstaff, Arizona, and legally described on Exhibit “A-3” attached hereto (the “Juniper Point Property”).

D. The STL 405 Property, Gibson Property, and JP 325 Property are hereinafter referred to individually as a “Property” and collectively as the “Properties”.

E. In connection with the development of their respective Properties, the Dedicating Owners will dedicate to the City at the times specified below (1) certain real property being approximately one hundred and one feet (101’) in width and including all land necessary for intersection improvements, including signals and roundabouts and (2) necessary slope, temporary construction, and drainage easements for the construction and operation of the Initial Buildout (defined herein) of 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”). The exact scope of the New JWP Right of Way that the Dedicating Owners will dedicate to the City shall be determined as further set forth herein.

F. The Parties acknowledge that in connection with the development of each Owner’s Property, the Owners have certain obligations to contribute to the design and construction of the Initial Buildout (as defined herein) of the New JWP Right of Way. 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. Accordingly, 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, 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, each Dedicating Owner agrees to (i) dedicate to the City fee title to that portion of the New JWP Right of Way located within such Dedicating Owner’s Property and (ii) grant the City each non-exclusive slope, temporary construction, and drainage easements required in connection with the construction and operation of the New JWP Right of Way located within such Dedicating Owner’s Property (each of (i) and (ii) a “ROW Dedication” and collectively the “ROW Dedications”). The City shall work with the Dedicating Owners to establish a mutually agreeable size and location for any slope, temporary construction, or drainage easements on the affected Dedicating Owner’s property. Notwithstanding the foregoing, each Dedicating Owner reserves from such slope, temporary construction, and drainage easements the right to utilize and construct improvements within the areas subject to such slope and drainage easements provided the same does not materially and adversely impact the construction or operation of the New JWP Right of Way. The City agrees that the New JWP Right of Way will be used as a public right-of-way only (and will not be expanded beyond a 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 final alignment of the New JWP Right of Way is as shown on Exhibit "B" attached hereto.

ii. Within sixty (60) days after the Effective Date, each Dedicating Owner shall prepare (at its sole cost and expense) and submit to the City, for City review, its Dedication Documents (defined below), which will dedicate its portion of the ROW Dedication to the City.

iii. Within sixty (60) days of the City providing Gibson with final approved plans for construction of the Initial Buildout of New JWP Right of Way, Gibson will dedicate all required slope, temporary construction, drainage easements to the City.

iv. With respect to STL 405, its ROW Dedication will occur pursuant to the final plat for the first phase of its development on the STL 405 Property (unless otherwise agreed by STL 405 and the City) and (ii) with respect to Gibson, its ROW Dedication will occur pursuant to a map of dedication (collectively, the "Dedication Documents"). The Dedication Documents will also include a final legal description of such Dedicating Owner's ROW Dedication. The Dedication Documents are subject to approval through normal City processes; provided that the City agrees to use commercially reasonable efforts to review and process such Dedication Documents within thirty (30) days after receipt. The Dedication Documents and the legal descriptions for the ROW Dedications will be consistent with Exhibit "B".

v. The Parties and the City will use commercially reasonable efforts to cause the Dedication Documents to be approved by the City within one hundred twenty (120) days after the Effective Date and each Dedicating Owner agrees to promptly respond to any City comments on the Dedication Documents.

c. City Acceptance of ROW Dedications. Prior to each ROW Dedication, each Dedicating Owner will satisfy and caused to be removed from title to its portion of 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 all of the Dedication Documents have been approved by the City, each Dedicating Owner and the City shall execute the applicable Dedication Documents and cause the same to be recorded in the Official Records of the Coconino County Recorder's Office. City and each Dedicating Owner 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 Dedications.

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 Dedications may need to be modified to take into account various engineering or construction changes or modifications. Once the final approved plans for construction of the Initial Buildout of the New JWP Right of Way is complete, the City (through review by City Staff and approval by the City Manager) and each Dedicating Owner agree to execute such additional maps of dedication, plats, and/or other necessary instruments as may be needed to reflect any changes to the New JWP Right of Way, which agreements will not be unreasonably withheld, conditioned, or delayed. The City and Dedicating Owners agree 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 materially and adversely impact any Dedicating Owner’s development of its Property or the costs to construct the Initial Buildout (increases in costs of more than \$50,000 will be deemed material and adverse), without such Dedicating Owner’s consent.

f. Conditions Precedent to Obligation to Dedicate. Notwithstanding anything to the contrary contained herein, STL 405 and Gibson shall have no obligation to dedicate to the City its ROW Dedication until the City and the applicable owners of the Canyon del Rio project (the “CDR Owners”) and Little America Hotels and Resorts, LLC, a Wyoming limited liability company, formerly known as Little America Hotels & Resorts, Inc. (“Little America”), have entered into agreements, acceptable to City and the CDR Owners and Little America, for the dedication, design and construction of additional 2 lane portions of JWP (i) within a portion of the Canyon del Rio project, approximately from the border of the Little America Property to 4th Street (the “CDR JWP Right of Way”), and (ii) within a portion of the property owned by Little America and described on Exhibit A-2 attached hereto (the “Little America Property”), approximately from the border of the Gibson property north to the border of the Canyon del Rio project (the “Little America JWP Right of Way”). If the City approves this Agreement and the foregoing agreements at the same meeting, this Section 1(f) will be deemed satisfied. Additionally, Gibson shall have no obligation to dedicate to the City its ROW Dedication and the Gibson Dedication unless and until the City obtains the Gibson Access from ASLD as described in Section 5 of this Agreement.

2. Design and Construction for Initial Buildout; Reimbursement Obligations Gibson.

a. General. As further set forth herein, STL 405 agrees, at its sole cost and expense, to design and construct the Initial Buildout of the New JWP Right of Way located within the STL 405 Property (the “STL 405 Roadway Section”). The STL 405 Roadway Section will be constructed in two separate phases, with the first phase being that portion of the STL 405 Roadway Section from the current terminus of JWP near the existing Pine Canyon development to the proposed roundabout shown on Exhibit “B” (“Phase 1”) and the second phase being the remaining portion of the STL Roadway Section (“Phase 2”). 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 Gibson Property and the Little America Property (the “City Roadway Section” and together with the STL 405 Roadway Section, each a “Roadway Section”). At the time of construction of Phase 1, STL 405 hereby agrees to provide any assurances then required by City Code for construction of both Phase 1 and Phase 2 of the STL 405 Roadway Section prior to construction of Phase 1. City agrees that STL 405 may use two separate subdivision trusts for its assurances, one for Phase 1 and another for Phase 2.

b. Scope of Initial Buildout. The improvements to be constructed for the New JWP Right of Way by STL 405 and the City pursuant to this Agreement shall only consist of a two lane roadway generally described as follows (collectively, the “Initial Buildout”): (1) with respect to

the STL 405 Roadway Section (a) as to Phase 1, only those improvements contemplated by the cross-section No. 1 (b) as to Phase 2, only those improvements contemplated by the cross-section No. 1 and (2) with respect to the City Roadway Section, only those improvements contemplated by cross-section No. 2, and 3, all as such cross-sections are further described and shown on Exhibit “B”. The Parties acknowledge the New JWP Right of Way is not being fully built out, and that the design and construction obligations hereunder with respect to each Roadway Section are limited to the Initial Buildout.

c. Design.

i. By STL 405. STL 405 agrees, at its sole cost and expense, to cause the STL 405 Roadway Section to be fully designed, including the preparation of all required plans and specifications therefor (the “STL 405 Roadway Plans”). STL 405 will obtain the City’s approval of the STL 405 Roadway Plans through normal City processes. The City agrees to review the STL 405 Roadway Plans and will not withhold, condition, or delay its approval of the same provided such STL 405 Roadway Plans comply with this Agreement and any other applicable City Codes to the extent not contrary to this Agreement. STL 405 will use commercially reasonable efforts to cause the STL 405 Roadway Plans to be completed and approved by the City within twelve (12) months after the Effective Date, subject to Force Majeure Delay.

ii. By City. City agrees, at its sole cost and expense, to cause the City Roadway Section to be fully designed, including the preparation of all required plans and specifications therefor (the “City Roadway Plans” and together with the STL 405 Roadway Plans, the “Roadway Plans”). The City Roadway Plans will comply with this Agreement. The City acknowledges and agrees that although STL 405 has previously completed certain work with respect to the City Roadway Plans, which will be provided to the City at no cost, the City will be solely responsible for completing the City Roadway Plans. City will use commercially reasonable efforts to cause the City Roadway Plans to be completed and approved by the City and obtain required federal permitting approvals, within eighteen (18) months after the Effective Date. With respect to the City Roadway Plans, the City will submit all applications for any approvals required from the Army Corp of Engineers or other federal agency within sixty (60) days after obtaining 90% design for the City Roadway Plans.

iii. Cooperation on Design. The Dedicating Owners and the City will work together in connection with the preparation of the Roadway Plans to ensure that the Initial Buildout contains landscaping and design elements that achieve a cohesive and attractive looking roadway; provided that the landscaping and design elements are only required to satisfy City Code. 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, that 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.

iv. Approval of City Roadway Plans by Gibson and Little America. Once the City Roadway Plans have achieved 30% and 60% design drawings, Gibson and Little America (and any of their respective consultants engaged by a Dedicating Owner) will have the right to comment on and approve of the City Roadway Plans, which approval will not be unreasonably withheld, conditioned, or delayed. To the extent Gibson or Little America have any comments, the Parties will work together in good faith 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 Gibson and Little America will agree on the locations abutting their respective Properties that will connect with the New JWP Right of Way. After the 60% design drawings are approved, Gibson and Little America will have no further right to approve the City Roadway Plans unless the City desires to make any material changes. Once the City Roadway Plans are 90% complete, the City will provide the same to Gibson and Little America so they can confirm no material changes were made. Little America's rights under this section will be memorialized in a separate agreement between the City and Little America.

d. Construction.

i. By STL 405. Within one-hundred eighty (180) days after the approval of the STL 405 Roadway Plans, STL 405 will select a contractor to construct Phase 1 of the STL 405 Roadway Section and will enter into a contract with such contractor acceptable to STL 405, provided that such contract will provide for a warranty of all improvements for the applicable warranty periods required by the City. Any contract for the construction of Phase 2 of the STL 405 Roadway Section will also comply with the foregoing, but STL 405 may select a different contractor. Subject to Force Majeure Delays (as defined herein), STL 405 will cause the STL 405 Roadway Section to be constructed in a good and workmanlike manner, and in accordance with the City-approved STL 405 Roadway Plans, within thirty-six (36) months after the date the STL 405 Roadway Plans are approved. Subject to any reimbursements provided herein, STL 405 will be solely responsible for all costs and expenses incurred to design and construct the STL 405 Roadway Section. To facilitate the exercise of self-help rights, all contracts that STL 405 enters into for construction of the Initial Buildout will be freely assignable.

ii. By City. Within one-hundred eighty (180) days after the approval of the City 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 City 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 City Roadway Section to be constructed in a good and workmanlike manner, and in substantial accordance with the City Roadway Plans, within twenty-four (24) months after the date that the City Roadway Plans have been approved by the Army Corp of Engineers and any other applicable federal agency. Subject to any reimbursements provided herein, City will be solely responsible for all costs and expenses incurred to design and construct the City Roadway Section. City agrees that the bidding, procurement and contracting for the design of the City Roadway Plans and the construction of the City 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"). To facilitate the exercise of self-help rights, all contracts that City enters into for construction of the Initial Buildout will be freely assignable.

iii. Coordination. STL 405, City, and their respective contractors agree to coordinate the construction of their respective Roadway Sections to avoid any conflicts in

design or construction. Gibson agrees to grant to the City, at no additional cost and pursuant to a separate agreement, any reasonable temporary constructions easements, and construction staging areas (subject to Gibson's approval of location) required by the City in connection with its construction of the City Roadway Section.

iv. Force Majeure Delay. The applicable commencement and/or completion time periods for the design and construction of any Roadway Sections required pursuant to this Agreement shall be extended by a time equal to any period that progress and/or construction is delayed due to the following: (i) acts of God; (ii) floods, fires, earthquakes, explosions, or other natural disasters; (iii) wars, invasions, hostilities (whether war is declared or not), terrorist threats or acts, riots, or other civil unrest; (iv) embargoes or blockades in effect on or after the date of this Agreement; (v) epidemics, pandemics, or other national or regional states of emergency; (vi) strikes, labor stoppages or slowdowns, or other industrial disturbances; (vii) shortages of supplies, adequate power, or transportation facilities (not resulting from a Party's failure to timely order supplies, power, or facilities, (viii) injunction in connection with litigation or arbitration not resulting from the actions or inactions of a Party in violation of this Agreement, (ix) the failure of the City, or any state or federal governmental agency, to provide any required approvals, including, without limitation, the Roadway Plans (in each case excluding delays caused by a Party) or (x) other similar events beyond the reasonable control of the Parties (collectively, each, a "Force Majeure Delay"). If any Party obtains notice of any proposed or pending Force Majeure Delay, such Party shall promptly provide written notice of such Force Majeure Delay to the other Parties, which notice shall reasonably detail the reason(s) giving rise to the Force Majeure Delay and what efforts the constructing Party 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. Contribution by JP 325 for Canyon Del Rio. The City agrees that if the CDR JWP Right of Way is constructed pursuant to the separate agreement to be entered into between the City and the CDR Owners, that JP 325 and the Juniper Point Property will have satisfied all of its and the Juniper Point Property's obligations with respect to the design or construction of JWP. The Parties acknowledge that currently JP 325 and the CDR Owners intend to enter into a private agreement pursuant to which JP 325 will pay some or all of the costs to design and construct the foregoing CDR JWP Right of Way.

f. Reimbursements by Gibson.

i. While Gibson is not contributing upfront to the cost and expenses for the design and construction of the Initial Buildout of the New JWP Right of Way and the CDR JWP Right of Way (collectively, the "Overall JWP Costs"), Gibson agrees to pay to the City (for the City's distribution to the City, STL 405 and JP 325 as provided herein) for Gibson's proportionate share of the Overall JWP Costs, which proportionate share is equal to 4.57% of the Overall JWP Costs, as development of the Gibson Property occurs. Little America will have a separate obligation to pay the City for its proportionate share of the Overall JWP Costs, which is 14.25% (the "Little America JWP Share"), which will be set forth in a separate agreement between the City and Little America. Any portion of the Little America JWP Share received by the City from Little America will constitute a Reimbursement Amount hereunder and distributed between the City, STL 405 and JP 325 per Section 2(f)(iv) below.

ii. Development of the Gibson Property that requires use of the New JWP Right of Way shall be conditioned upon reimbursement to the City of its proportional share of the Overall JWP Costs (the “Reimbursement Obligation”). Payment of the Reimbursement Obligation shall be a condition of the issuance building permits, and calculated as follows (collectively, the “Reimbursement Amounts”):

- a) By-Right Development. Reimbursement for development utilizing the existing Rural Residential (RR) zoning shall be divided equally among the maximum number of residential dwelling units permitted on the Gibson Property (80 dwelling units) and assessed on a pro rata basis for each building permit. (Ex: \$1,800,000.00 total Reimbursement Obligation divided by 80 equals \$22,500.00 reimbursement assessment per building permit). The Reimbursement Amount for any individual building permit shall not exceed 1.25% of the total Reimbursement Obligation.
- b) Development Subject to Rezoning. If Gibson obtains land use entitlements that increase the maximum residential density and/or commercial floor area permitted on the Gibson Property, reimbursement to the City shall be divided equally among the total residential dwelling units and commercial floor area permitted in the development plans approved in conjunction with the land use entitlements (the “Approved Plans”). For the purposes of calculating the Reimbursement Amount, 1 residential dwelling unit is equal to 1,000 square feet of commercial floor area. The Reimbursement Amount shall be assessed on a pro rata basis for each building permit according to the total number of residential units and commercial square footage permitted by the building permit.
- c) Reimbursement Example: Development Subject to Rezoning.
  1. \$1,800,000.00 total Reimbursement Obligation and Approved Plans permitting 470 residential dwelling units and 30,000 square feet of commercial floor area. (i.e. 500 total “units”)
  2. Pro rata reimbursement rate is equal to \$3,600 per residential dwelling unit and/or 1,000 square feet of commercial floor area.
  3. Building permit approved for 200 residential dwelling units and 10,000 square feet of commercial floor area.
  4. Assessed Reimbursement Amount associated with building permit is \$756,000.00 (210 total “units” at \$3,600 per unit).

iii. Notwithstanding anything to the contrary contained herein, in no event will Gibson be liable to pay to the City, for its proportionate share of the Overall JWP Costs, an amount in excess of two million dollars (\$2,000,000.00) (the “Gibson Cap”).

iv. The City agrees to enforce the Reimbursement Obligations and to take such legal steps as are necessary to collect all Reimbursement Amounts from Gibson and Little America. The City agrees to share all Reimbursement Amounts received by it from Gibson and Little America between the City, STL 405 and JP 325 as follows: (i) the City will receive 40% of all Reimbursement Amounts, (ii) STL 405 will receive 42% of all Reimbursement Amounts, and (iii) JP 325 will receive 18% of all Reimbursement Amounts. With respect to any in lieu contributions to the New JWP Right of Way or the CDR JWP Right of Way (the “Additional Contributions”) received by the City from any other third parties (other than the Owners) whose Traffic Improvement Analysis impacts the New JWP Right of Way or CDR JWP Right of Way and who the City requires to contribute to the New JWP Right of Way or CDR JWP Right of Way, the City agrees that such Additional Contributions shall be allocated in accordance with the above percentages; provided, however, that STL 405 and JP 325 will not receive any share of the Additional Contributions once such Party has been reimbursed for all costs and expenses incurred to construct the STL 405 Roadway Section and the CDR JWP Right of Way, respectively, that exceed each Party’s Base Contribution Amount. With respect to STL 405, its Base Contribution Amount is \$8,969,845.20 and with respect to JP 325 its Base Contribution Amount is \$7,206,921.36.

v. Gibson’s Reimbursement Obligation shall terminate ten (10) years after the Effective Date of this Agreement (the “Reimbursement Termination”). Any building permits approved by the City after the Reimbursement Termination shall not include or be conditioned upon payment of any Reimbursement Amount.

g. Turn Lanes, Traffic Signals, and Intersection Improvements. If the City requires the construction of any turn lanes, traffic signals, or intersection improvements as may be set forth in any Transportation Impact Analysis submitted for, or applicable to, an Owner’s Property, then such Owner will be solely responsible to construct and pay for such improvement when it develops the portion of its Property requiring such improvements.

h. 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. Each Dedicating Owner agrees that 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 shall be as shown on the applicable cross sections.

3. No Further Obligations For JWP. In consideration for each Owner’s agreement to make its ROW Dedication at no cost and expense to the City, and to design and construct (or contribute to the costs thereof) the Initial Buildout of the New JWP Right of Way, the City agrees that this Agreement contains all obligations and liabilities of each Owner with respect to JWP, and the design, construction, and improvement thereof, and that no Owner will be obligated, now or in the future, to further design, construct, or otherwise improve JWP, except for the improvements identified above in Section 2(g) and 2(h), regardless of the ultimate development that occurs on such Owner’s Property. Any further design, construction, or improvement of JWP, or payment for the costs thereof, will be a regional improvement and the obligation of the City or other third party property owners (excluding the Owners and other future owners of the Properties). Without limiting the generality of the foregoing,

the City agrees that, except for the improvements identified above in Section 2(g) and 2(h), (1) STL 405's obligations and liabilities with respect to JWP, as may be set forth in any Traffic Improvement Analysis or Master Scoping Document submitted for, or applicable to, the STL 405 Property, or any other City requirement, will be deemed to be satisfied in full upon STL 405's design and construction of the STL 405 Roadway Section, (2) JP 325's obligations and liabilities with respect to JWP, as may be set forth in any Traffic Improvement Analysis or Master Scoping Document submitted for, or applicable to, the Juniper Point Property, or any other City requirement, will be deemed to be satisfied in full upon the design and construction of the CDR JWP Right of Way, and (3) Gibson's obligations and liabilities with respect to JWP, as may be set forth in any Traffic Improvement Analysis or Master Scoping Document submitted for, or applicable to, the Gibson Property, or any other City requirement, will be deemed to be satisfied in full upon the design and construction of the City Roadway Section, subject to the reimbursement obligation provided in Section 2(f) above. The City will issue any letters or statements reasonably requested by an Owner evidencing the foregoing and will direct City staff accordingly.

4. Modifications and Grading Permit. The cross-sections for the Initial Buildout identified on Exhibit "B", and the improvements contemplated thereby, are hereby approved by the City and the City hereby grants all modifications to the City's engineering requirements necessary to construct the Initial Buildout as contemplated by such cross-sections. Furthermore, for the New JWP Right of Way, the City hereby grants STL 405 a modification on the City engineering requirement that retaining walls may not exceed five (5) feet before terracing is required, and instead, the City agrees that retaining walls constructed in connection with the construction of the STL 405 Roadway Section may be up to ten (10) feet in height before terracing is required and need only run for five (5) feet prior to the next retaining wall being constructed, subject to the requirement that all such improvements must be in accordance with approved engineering plans. For all other modifications that may be requested by STL 405, the City will follow its standard modification process, but will not unreasonably withhold, condition, or delay the approval of a variance. Subject to the satisfaction of standard City requirements and processes, the City will agree to grant to STL 405 an at-risk rough grading permit after the execution and recording of the Dedication Documents for STL 405.

5. Secondary Access/Roadway Construction for Gibson Parcel . The City shall seek and acquire from ASLD a land patent or right-of-way easement extending from the New JWP Right of Way to the southwest corner of the Gibson Property as described and illustrated in Exhibit "C" (the "Gibson Access") providing public secondary vehicular access from the Gibson Property to the New JWP Right of Way.

a. Dimensions. The Gibson Access shall be a maximum of 120 feet in width, but in no event wider than the width required to construct a Minor Collector roadway as illustrated in City of Flagstaff Engineering Detail No. 10-09-035, as amended.

b. Gibson Road Design and Construction. The City shall construct a Minor Collector roadway in the Gibson Access consistent with City of Flagstaff Engineering Detail No. 10-09-035, as amended, connecting to the New JWP Right of Way and extending into the Gibson Property, together with necessary intersection improvements to accommodate a local roadway and a local roadway extending off of the Minor Collector and extending down into the STL 405 Property, not to exceed 75 feet from the intersection unless otherwise agreed to by both parties (all of the foregoing, collectively, the "Gibson Road"). The Gibson Road shall include public water and sewer main extensions connecting to the lines in the New NWP Right

of Way and terminating in a manhole for the sewer main and a gate valve for the water main at the terminus of the Minor Collector portion of the Gibson Road. The Gibson Road shall be deemed for all purposes under this Agreement to be incorporated into the Initial Buildout as defined in Section 2(b) and included in the City Roadway Plans as described in Section 2(c)(ii). The Gibson Road shall be constructed by the City as part of the City Roadway Section as described in Sections 2(a) and 2(d)(ii).

c. Gibson Dedication. To accommodate the Gibson Road's extension into the Gibson Property and public vehicular access to the portion of the STL 405 Property directly south of the Gibson Property, Gibson shall dedicate public right-of-way to the City as described and illustrated in Exhibit "C" (the "Gibson Dedication")

d. Condition Precedent. Gibson shall have no obligation to dedicate to the City its ROW Dedication or the Gibson Dedication unless and until the City acquires the Gibson Access as described in this Section.

6. [Reserved]

7. Arizona Trail. The Arizona Trail is currently located on the STL 405 Property. Subject to approval of the applicable Dedicating Owners whose Properties would be impacted, the City, through its specific plan process, may desire to relocate the Arizona Trail onto other portions of the Properties. The applicable Dedicating Owners will work with the City in good faith to determine any relocation of the Arizona Trail, but approval of the same will be in such Dedicating Owners sole, but reasonable discretion.

8. 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 the Owners (in accordance with their Allocable Share) 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. Owners 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 8(a) above, then each Owner shall be entitled to exercise all rights and remedies under this Agreement and those which may be available at law or in equity. Notwithstanding the foregoing, the Owners shall only be entitled to terminate this Agreement due to a default by the City if all Owners agree in writing to terminate this Agreement by written notice delivered to the City.

d. City's Remedies. In the event that an Owner is in default under this Agreement, and such Owner thereafter fails to cure any such default within the time period described in Section 8(a) above, then, the City or such other Owner affected by the other Owner's default may pursue all of its rights and remedies available to it under applicable law against such Owner; provided, however, that the City and the non-defaulting Owners may not elect to terminate this Agreement. Notwithstanding anything to the contrary contained herein, the City acknowledges and agrees that the default or breach of this Agreement by one Owner shall not constitute a default or breach by any other Owner and that no Owner is liable for the obligations or liabilities of any other Owner hereunder.

e. No Personal Liability. No current or former member, manager, officer, director, agent, representative, official, employee or other natural person of the City or an Owner 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 an Owner, 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 an Owner, as applicable, under the terms of this Agreement. The terms of this Section 8(e) shall not apply to Gibson as the current individual owners of the Gibson Property, but shall apply to Gibson if it conveys the Gibson Property to any business entity successor-in-interest to the Gibson Property. The terms of Section 8(e) shall not apply to Gibson as the current individual owners of the Gibson Property. However, if Gibson conveys the Gibson Property to any business entity, the terms of Section 8(e) shall apply to Gibson and any other members, managers, officers, directors, agents, representatives, officials, employees or other natural persons of the business entity successor-in-interest to which the Gibson Property is conveyed.

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 a Dedicating Owner to dedicate its ROW Dedication to the City as and when required by this Agreement, the Dedicating Owner 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, exemplary 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.

9. 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 terminate on date when all obligations required by this Agreement have been met by all applicable Parties as evidenced by the written agreement of the Parties, but in all events no later than thirty (30) years after the Effective Date.

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 Owner:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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. Each Owner, as to itself, 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. Each Owner, on its own behalf, and the City warrant to each other that the individuals executing this Agreement on behalf of their respective parties 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 each Property, and this provision has no effect on them.

- Exhibit “A-1” Legal Description of STL 405 Property
- Exhibit “A-2” Legal Description of Little America Property
- Exhibit “A-3” Legal Description of Gibson Property
- Exhibit “A-4” Legal Description of Juniper Point Property
- Exhibit “B” Depiction of New JWP Right of Way and Description of Initial Buildout and Cross Sections
- Exhibit “C” Access Easements for Gibson and STL 405

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 Properties, only with the mutual written consent of the Parties or by their successors in interest or assigns that own (at the time of the Amendment) the portion(s) of the Properties that are included in the Amendment. Consent is not required from owners of the Properties 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 the Owners 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 the Owners or between any Owner 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; Restriction on Assignment by Owners. Successors and Assigns; Restriction on Assignment by Owners. Each 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, each Property, it being agreed that all persons having or acquiring any right, title or interest in or to any portion of the Properties 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 a 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 a 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 any of the ROW Dedications, 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. For the avoidance of doubt, this Agreement shall not impose any obligations on any portion of the Juniper Point Property that has previously been sold to a third party, including any Public Sale Property, and 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 the Owners, 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.

p. ASLD. The Parties acknowledge that, in the event STL 405's interest in Certificate of Purchase is terminated, the terms of this Agreement shall not apply to any unpatented portions of the STL 405 Property unless consented to in writing by the ASLD Commissioner, in his/her sole discretion.

*[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:  
\_\_\_\_\_

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

**“STL 405”**

STL405, LLC, an Arizona limited liability company

By: Symmetry Management Company, Inc., an Arizona corporation, its Manager

By: \_\_\_\_\_

Name: Peter Burger

Its: President

STATE OF ARIZONA)

) ss.

County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by Peter Burger, as President of Symmetry Management Company, Inc., an Arizona corporation, the Manager of STL405, LLC, an Arizona limited liability company, on behalf of the company.

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

My Commission Expires:

\_\_\_\_\_





**Exhibit "A-1"**

**LEGAL DESCRIPTION OF STL 405 PROPERTY**

The West half and the South half of the Southeast quarter of Section 26, Township 21 North, Range 7 East, of the Gila and Salt River Base and Meridian, Coconino County, Arizona;

EXCEPTING THEREFROM all oil, gas, and other hydrocarbons substances, helium or other substances of a gaseous nature, geothermal resources, coal, metals, minerals, fossils, fertilizers of every name and description, and except all uranium, thorium, or any other minerals which may be essential to the production of fissionable materials, as reserved in Arizona Revised Statutes.

**Exhibit "A-2"**

**LEGAL DESCRIPTION OF LITTLE AMERICA PROPERTY**

PARCEL NO. 1 (106-09-002):

The East half of the Northwest quarter of the Northeast quarter of the Northwest quarter of the Southwest quarter;

The Northeast quarter of the Northeast quarter of the Northwest quarter of the Southwest quarter;

The East half of the Southeast quarter of the Northeast quarter of the Northwest quarter of the Southwest quarter;

The East half of the East half of the Southeast quarter of the Northwest quarter of the Southwest quarter;

The East half of the Northeast quarter of the Northeast quarter of the Southwest quarter of the Southwest quarter;

The South half of the Northeast quarter of the Southwest quarter of the Southwest quarter;

The Southeast quarter of the Northwest quarter of the Southwest quarter of the Southwest quarter;

The South half of the Southwest quarter of the Southwest quarter;

The East half of the Southwest quarter;

The East half of the Southeast quarter;

The Southwest quarter of the Southeast quarter;

All in Section 23, Township 21 North, Range 7 East of the Gila and Salt River Base and Meridian, Coconino County, Arizona;

EXCEPTING THEREFROM any portion lying within the right of way of Interstate Highway 40.

PARCEL NO. 2 (106-10-001B):

The South half of the South half of the Northeast quarter of Section 26, Township 21 North, Range 7 East of the Gila and Salt River Base and Meridian, Coconino County, Arizona;

EXCEPT all oil, gas, and other hydrocarbon substances, helium or other substances of a gaseous nature, coal, metals, minerals, fossils, fertilizer of every name and description and except all materials which may be essential to production of fissionable materials as reserved in Arizona Revised Statutes.

PARCEL NO. 3 (106-10-001C):

The East half of the North half of the South half of the Northeast quarter of Section 26, Township 21 North, Range 7 East of the Gila and Salt River Base and Meridian, Coconino County, Arizona;

EXCEPT all oil, gas, and other hydrocarbon substances, helium or other substances of a gaseous nature, coal, metals, minerals, fossils, fertilizer of every name and description and except all

materials which may be essential to production of fissionable materials as reserved in Arizona Revised Statutes.

PARCEL NO. 4 (106-10-002):

The North half of the Northeast quarter of Section 26, Township 21 North, Range 7 East of the Gila and Salt River Base and Meridian, Coconino County, Arizona;

EXCEPTING THEREFROM all oil, gas, other hydrocarbon substances, helium or other substances of a gaseous nature, coal, metals, minerals, fossils, fertilizer of every name and description, together with all uranium, thorium, or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in Patent recorded in Docket 559, Page 138, records of Coconino County, Arizona.

**Exhibit "A-3"**

**LEGAL DESCRIPTION OF GIBSON PROPERTY**

The North half of the Southeast quarter of Section 26, Township 21 North, Range 7 East, of the Gila and Salt River Base and Meridian, Coconino County, Arizona;

EXCEPTING THEREFROM all oil, gas, other hydrocarbons substances, helium or other substances of gaseous nature, coal, metals, minerals, fossils, fertilizers of every name and description, together with all uranium, thorium, or any other material which is or may be determined by the laws of the United States, or if this State, or decisions of the court, to be peculiarly essential to the production of fissionable materials, whether or not of commercial value.

**Exhibit "A-4"**

**LEGAL DESCRIPTION OF JUNIPER POINT PROPERTY**

**Exhibit "B"**

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

**Exhibit "C"**

**ACCESS EASEMENTS**