

When recorded, mail to:
City Clerk
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

**DEVELOPMENT AGREEMENT
BETWEEN
CITY OF FLAGSTAFF
AND
RODG DT PINE HAVEN HORIZONTAL LLC
FOR PINEHAVEN**

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into this _____ day of _____, 2025, by and between the City of Flagstaff, an Arizona municipal corporation (“City”), and RODG DT PINE HAVEN HORIZONTAL LLC, authorized to do business in the State of Arizona (“Developer”). City and Developer may be referred to in this Agreement as “Party” in the singular, and collectively as the “Parties.”

RECITALS

- I. A.R.S. § 9-500.05 authorizes the City to enter into development agreements with landowners and persons having an interest in real property in order to facilitate development of property.
- II. Developer owns an approximately 13.44 gross acre parcel of land generally located at the southwest corner of E Zuni Drive and S Lone Tree Road, depicted and legally described in Exhibit “A” attached hereto (collectively the “Property”).
- III. Developer intends to develop the Property for use as a medium-density multi-family residential community (the “Project”). The Property is currently dual zoned Rural Residential (RR) and Suburban Commercial (SC) with Resource Protection Overlay (RPO) zone. The Developer is requesting to rezone to Medium Density Residential; Resource Protection Overlay (MR RPO) zone in Direct to Ordinance Zoning Map Amendment No. PZ-22-00109-04.
- IV. The Parties desire to enter into this Agreement in order, among other things, to facilitate development of the Property as depicted in the preliminary plan for the Project (the “Site Plan”), a copy of which is attached as Exhibit “B”, and as set forth in this Agreement and in the Project Narrative, a copy of which is attached as Exhibit “C”, and as conditioned by Ordinance 202X-XX.
- V. This Agreement and the Project, described and conditioned as set forth in this Agreement, are consistent with the Flagstaff Regional Plan 2030 in effect on the Effective Date of this Agreement, as set forth below.

- VI. The Developer desires to comply with the strategies and goals of the City of Flagstaff Carbon Neutrality Plan.
- VII. The Developer intends to assist the City's "Housing Crisis Emergency Declaration" (Resolution No. 2020-66) by contribution to the City's Affordable Housing Fund.
- VIII. The City has an interest in ensuring that the development of the Property complies with City standards for development and engineering improvements, and the City believes that development of the Property pursuant to this Agreement will result in planning, safety, and other benefits to the City and its residents.
- IX. The Developer acknowledges that development of the Property pursuant to this Agreement will be beneficial and advantageous to the Developer because it provides assurances to the Developer that it will have the ability to develop the Property in accordance with the Concept Plan as set forth herein.
- X. The City and Developer acknowledge that this Agreement is a development agreement pursuant to the provision of A.R.S. § 9-500.05.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and agreements set forth herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and in order to fulfill the foregoing objectives, the Parties agree as follows:

1. INCORPORATION OF RECITALS

Each of the recitals, including the attached Exhibits, set forth above, is incorporated into this Agreement as fully set forth herein.

2. DEFINITIONS

"Certificate of Occupancy" shall mean a document issued by an authorized City official setting forth that a building or structure legally complies with the City's building codes, the Flagstaff Zoning Code, and other pertinent state and local requirements, and that the same may be used for the purpose(s) therein.

"City" shall mean and refer to the City of Flagstaff, an Arizona municipal corporation, and any successor public body or entity.

"Developer" shall mean and refer to RODG DT Pine Haven Horizontal LLC, a Limited Liability Company (LLC), and any successor-in-interest or assignee of RODG DT Pine Haven Horizontal LLC, as contemplated pursuant to Section 8.14.

“**Project**” shall mean and refer to the development of the Property for the uses, intensities, and densities currently shown and described in Site Plan Application No. PZ-22-00109-02 and the Site Plan attached hereto as Exhibit “B” and further described in the Project Narrative attached hereto as Exhibit “C”, this Agreement, and Ordinance 202X-XX.

3. ENTITLEMENTS

3.1. Zoning Map Amendment

Developer hereby agrees to be subject to all the terms, conditions, and stipulations of the rezoning ordinance for PZ-22-00109-04 (City Ordinance No. 202X-XX) and Site Plan (PZ-22-00109-02), including any approved development standard, engineering, or other modification(s) (collectively, the “Entitlements”). In addition to the provisions for reversion set forth in Ordinance No. 202X-XX and the Flagstaff City Code, the Developer’s failure to obtain Certificate of Occupancy for the entirety of the Project within five (5) years of the effective date of the rezoning ordinance shall entitle the City, in its sole discretion, to conduct a public hearing for the purpose of reverting the Medium Density Residential zoning on the Property to its former zoning classification of Rural Residential (RR) and Suburban Commercial (SC) with the Resource Protection Overlay (RPO), in accordance with Arizona Revised Statutes § 9-462.01.

3.2. Zoning

Developer intends to develop the Property for use as a medium-density multi-family residential community. The Property is currently dual zoned Rural Residential (RR) and Suburban Commercial (SC) with Resource Protection Overlay (RPO) zone. The Developer is requesting a Rezone to Medium Density Residential, Resource Protection Overlay (MR RPO) zone in Direct to Ordinance Zoning Map Amendment Application No. PZ-22-00109-04.

3.3. Development Standards

For a period of five (5) years from the Effective Date, development of the Property, as well as the requirements for Improvements, will be governed by the Flagstaff Zoning Code, ordinances, regulations, rules, guidelines, and standards in effect on the Effective Date. For any development application(s) made after five (5) years from the Effective Date, the codes, ordinances, regulations, rules, guidelines, and standards in effect at the time of application shall apply. Regardless of the time of development, the current City Engineering Standards, Building Code, Fire Code, and other Code provisions, regulations, rules, and guidelines shall apply to the Project.

4. DEVELOPMENT PLAN

4.1. Scope of Development

The City and the Developer hereby acknowledge that the City of Flagstaff Development Review Staff approved, subject to conditions, the Site Plan for the Project, attached hereto as Exhibit “B”. The Project is further conditioned by rezoning Ordinance, the Project Narrative, attached hereto as Exhibit “C”, and this Agreement. The Project consists of 83 townhome style condominium residential dwelling units.

The unit mix may change by ten percent (10%) based on Site Plan approval. Maximum building height is 35’. An additional 20% of allowable build height is allowed for unoccupied architectural features.

4.2. Open Space/Common Area

The Project shall provide approximately 5.7% (0.76 acres) civic open space and 15% (2.01 acres) common open space, consisting of walking trails throughout the site, and a clubhouse/amenity center.

4.3. Public-Civic Space

The Project shall provide approximately 0.76 acres of public-civic space designed as walking trails.

5. DEVELOPER OBLIGATIONS

5.1. Off-Site and On-Site Improvements

Developer will make all off-site and on-site improvements as shown in this development agreement and as required by the Developer’s impact analyses. Developer will construct on-site and off-site improvements to the specifications outlined in City code and as shown on the approved civil plans. (Developer has submitted civil plans for review, but these plans will require corrections to conform to the City of Flagstaff Engineering Design Standards and Specifications and Details.) The specific requirements included below are not exhaustive.

5.2. Construction of General Off-Site Roadway Improvements

Developer shall be responsible for the following Off-Site Roadway Improvements as shown on the approved civil plans, including:

5.2.1. Improvements along E Zuni Drive will include the following:

5.2.1.1 Widening of the eastbound side of E Zuni Drive to provide a bicycle lane along the full frontage;

5.2.1.2 Construction of curb and gutter along the full frontage;

- 5.2.1.3 Construction of parkway along the full frontage, with the exception of approximately 150 feet to the east of Driveway A and between S Masonic Lane and S Lone Tree Road to protect existing slope resources;
 - 5.2.1.4 Construction of a five (5) foot wide concrete sidewalk along the full frontage;
 - 5.2.1.5 Adjustments of roadway striping between S Masonic Lane and S Lone Tree Road. Restriping shall reduce queuing length of the westbound left-turn onto S Masonic Lane and increase the queuing of eastbound left-turn onto S Lone Tree Road in accordance with City staff direction;
 - 5.2.1.6 Widening and restriping between S Masonic Lane and S Lone Tree Road will be set an additional 1.5 feet south to accommodate future plans for the intersection of E Zuni Drive and S Lone Tree Road;
 - 5.2.1.7 Construction of a physical barrier prohibiting left-turn movements out of Driveway A.
- 5.2.2. Improvements along S Lone Tree Road will include the following:
- 5.2.2.1 Project will construct a right-turn lane into the project site at the appropriate location to become the future southbound through lane;
 - 5.2.2.2 Construction of a five (5) foot wide parkway to abut the curb along the newly constructed right-turn lane;
 - 5.2.2.3 Construction of a six (6) foot wide concrete sidewalk to abut the parkway along the newly constructed right-turn lane;
 - 5.2.2.4 Provide one (1) additional foot of right-of-way for the ultimate half street right-of-way of 51 feet from the centerline;
 - 5.2.2.5 Construction of a physical barrier prohibiting left-turn movements into and out of Driveway B;
 - 5.2.2.6 Provide restriping of the roadway along the proposed improvements to provide appropriate lane transitions to existing roadway lane dimensions.

5.3. Project Construction Phasing

The Project will be developed as a single project; however, the Project will be grouped into “Phases” so as to efficiently develop the site, minimize disturbances, and provide for an efficient construction process. To that end, the Phases will be established as follows:

- 5.3.1. Phase 1 will consist of the onsite project area west of S Masonic Lane and bounded by E Zuni Drive. This Phase will construct 40 condominium townhomes and a Clubhouse facility with associated utility infrastructure within the bound limits. Further, this Phase will construct Road ‘A’ and ‘A1’; construct a

stormwater management basin with associated storm sewers tributary to the basin; and construct associated public water and sewer facilities shown therein between the connection in E Zuni Drive and the connection within S Masonic Lane. Finally, Phase 1 will construct Public Improvements along the frontage of E Zuni Drive only.

5.3.2. Phase 2 shall refer to the onsite project area east of S Masonic Lane and bounded by S Lone Tree Road as well as the proposed roadway improvements along S Lone Tree Road. This Phase will construct the remaining 43 condominium townhomes. In addition, this Phase will construct the infrastructure to support the buildings to include construction of Road 'B' and 'B1'; construct storm sewers; and construct associated public water and sewer facilities shown therein between the connection in S Masonic Lane and the connection within S Lone Tree Road. Finally, Phase 2 will construct the public improvements within S Lone Tree Road as indicated on the plans.

5.3.3. Project Permitting and approval process for the project phasing.

The project will proceed with permitting and approvals following zoning approval in accordance with the following general process. The information that follows provides for the segmentation/grouping of the project work should the developer decide to proceed with the project in two phases; however, Developer has the discretion to develop the project in a single phase. The Developer acknowledges the necessary permits and approvals have expiration dates and performance agreements have requirements for continuous progress on construction and defined performance period.

5.3.3.1 Preliminary Plat: The Developer shall provide the information for all phases of development for the Preliminary Plat submission. Information shall be provided and/or annotated in a fashion sufficient to clearly indicate the elements being provided within each phase. In addition, the Developer has agreed to provide the following within the Phase 1 designation: 1) all improvements required along East Zuni Drive and South Masonic Lane as depicted on approved civil plans; and 2) R.O.W. dedications required for both East Zuni Drive and Lone Tree Road.

5.3.3.2 Phase 1 Civil Plan Review: Developer will submit the civil plan review application and documentation for the phase 1 area only. Phase 2 information may be provided for reference, but City Staff will not formally review any components not related to phase 1 infrastructure. In conjunction with the Phase 1 Civil Plan Review, the Developer will submit ADEQ water and sewer permit applications for the Phase 1 development area.

5.3.3.3 Phase 1 Final Plat: The Developer will prepare the Phase 1 final plat. Included within the plat will be the necessary easements and

dedications related to the improvements approved on the phase 1 Civil review plans, the right-of-way on Lone Tree Road for Phase 2, as well as the platting information relevant to the airspace of the Phase 1 condominium units.

Phase 1 Permits & Assurances: The Developer will provide a form of assurance and a performance agreement for all public improvements indicated on the Phase 1 Civil Plans prior to recordation of the plat.

5.3.3.4 The developer may consider utilizing a third-party trust for on-site public improvements, but no condo sales (excluding pre-sales) can happen until all public improvements have been completed and accepted by the City or an acceptable substitute assurance is accepted by the City. Certificate of Occupancy for any unit may not occur prior to the completion and acceptance of all public improvements, with a one-year warranty assurance in place as required by the City Code.

5.3.3.5 Phase 2 Civil Plan Review: Developer will submit the civil plan review application and documentation for the phase 2 area only. Phase 1 information will be provided for reference as required by City of Flagstaff Engineering Standards. In conjunction with the Phase 2 Civil Plan Review, the Developer will submit ADEQ water and sewer permit applications for the Phase 2 development area.

5.3.3.6 Phase 2 Final Plat: The Developer will prepare the Phase 2 Final Plat to Include any new easements and dedications not previously provided in the Phase 1 Final plat. Additionally, the Phase 2 Final Plat will include platting information relevant to the airspace of the Phase 2 condominium units.

5.3.3.7 Phase 2 Permits & Assurances: The Developer will provide a form of assurance and a performance agreement for all public improvements indicated on the Phase 2 Civil Plans prior to recordation of the plat.

The developer may consider utilizing a third-party trust for on-site public improvements, but no condo sales (excluding pre-sales) can happen until all public improvements have been completed and accepted by the City or an acceptable substitute assurance accepted by the City. Certificate of Occupancy for any unit may not occur prior to the completion and acceptance of all public improvements, with a one-year warranty assurance in place as required by City Code.

- 5.3.3.8 Phase 2 is dependent on the completion of Phase 1 infrastructure. All Phase 1 infrastructure must be completed and accepted by the City prior to the acceptance of the Phase 2 infrastructure.

5.4. Sustainability

Developer agrees to incorporate sustainable practices as set forth in this section to help implement the strategies and goals of the City of Flagstaff Carbon Neutrality Plan, including helping to reduce greenhouse gas emissions and contributing to the City's neighborhoods and resources being more resilient to climate change impacts.

5.4.1. Materials Management

Developer agrees to incorporate infrastructure to support recycling activities on-site in order to help divert waste materials from landfills.

- 5.4.1.1 Developer shall provide recycling receptacles within each dwelling unit and shall furnish each unit with materials provided by the City's Sustainability Division on best practices for waste diversion and reduction. Developer shall provide, as part of the certificate of occupancy request for each unit, photo documentation confirming placement of recycling receptacles and waste reduction and diversion materials in each unit.

- 5.4.1.2 Developer shall provide recycling dumpsters immediately next to those dedicated for trash and recycling/trash valet pick-up service. All recycling and trash dumpsters shall be properly signed with waste reduction and diversion information provided by the City's Sustainability Division. Developer shall provide photo documentation confirming proper signage on all trash and recycling dumpsters with the first certificate of occupancy request for a residential unit on the development site.

5.5. Mobility

Developer is committed to multi-modal transportation in efforts to meet the City's goals. The Developer will provide the following in support of this goal.

5.5.1. Public Transportation

- 5.5.1.1 Developer has coordinated with Mountain Line for future needs. Developer will construct one bus pad (24'4" x 5'9") behind sidewalk on E Zuni Drive in the eastbound direction, just east of S Masonic Lane. The Developer will construct one bus pad (24'4" x 5'9") along with approximately 150 feet of sidewalk, curb, and gutter with an ADA accessible ramp on E Zuni Drive in the westbound direction, just west of S Masonic Lane.

- 5.5.1.2 Bus Pass Program: The community will offer homeowners reimbursement for the purchase of two adult bus passes for the first

year of ownership. Homeowners will submit proof of purchase to the HOA for reimbursement in perpetuity.

5.5.1.3 EcoPASS for Educators: The community will offer and facilitate participation of residents in the EcoPASS for Educators program for non-student staff at Northern Arizona University. The HOA will work with NAU to facilitate direct enrollment or reimburse educators who apply independently.

5.5.2. Bicycle Transportation

5.5.2.1 Parking: The Developer shall provide no less than 12 total bicycle parking spots. Nine spaces are required for the development.

5.5.2.2 Resident Bike Share Program: Community residents will have access to a free bike share program managed through the community office. This initiative will provide scheduled bike rentals at no cost. The HOA will maintain and oversee the scheduling system, ensuring availability and fair usage for all participants. The HOA will provide the City's Sustainability Division with information needed to monitor compliance on an annual basis, including how many bikes are included in the program and whether they are e-bikes.

5.6. Smart Home Automation

Developer shall include smart home climate control (thermostat) automation features within all dwelling units. Conformance with the smart home climate control units shall be stated on the building permit application.

5.7. Electrified Units

All units within the development shall be constructed and equipped for electricity. No natural gas lines will be installed within the development and no natural gas appliances will be incorporated into the units.

5.8. Electric Vehicle Support

5.8.1. For units without garages, weather resistant hookups will be provided at the driveway space.

5.8.2. Additional Site Charging: The project will install two (2) additional public access charging stations on-site. Both stations will be outdoor weather resistant connections. One will be located in the lower parking area adjacent to the clubhouse. The second will be located in the central parking area within the phase 2 area.

5.9. Department of Energy/Environmental Protection Agency Standards

All appliances, HVAC systems, climate control devices, and related features subject to DOE EnergyStar standards shall be EnergyStar certified. All water fixtures shall be WaterSense certified, and the units shall meet EPA Indoor AirPlus requirements.

Conformance with DOE and EPA Standards shall be confirmed with building permit review and final inspection for certificate of occupancy for each unit.

5.10. Air Heating and Cooling

The primary air heating and cooling source for each unit shall be a high-performance cold climate air source heat pump (CCASHP) per the standards of the Northeast Energy Efficiency Partnerships. This means the heat pump shall be rated to operate down to -22 degrees Fahrenheit and shall meet the CCASHP efficiency and performance standards for ducted and/or ductless systems, depending on which is installed. Standards shall be confirmed with building permit review and final inspection for certificate of occupancy for each unit.

5.11. Establishment of Homeowners Association

Developer will establish a Homeowners Association (HOA) for the management and upkeep of the Property. The HOA will be empowered to manage and enforce policies as determined in documents of incorporation. These documents shall include but not be limited to the following:

5.11.1. Length of Stay: no lease or rental agreement shall be permitted for a period of less than 30 days.

5.11.2. Longer Term Rentals

Long-term rentals are defined as lease agreements with a duration of one year or longer. All prospective tenants must submit a clean background check to the HOA for approval prior to finalizing a rental agreement.

5.11.2.1 No unit shall have more than one lease. "Renting by the room" shall be prohibited.

5.11.2.2 Any direct or indirect sublease, assignment, transfer, or other obligation of a tenant shall be prohibited.

5.11.2.3 All lease or rental agreements shall include an eviction addendum. In the event a tenant violates the lease or rental agreement or eviction addendum, or if any violation of the lease or rental agreement or eviction addendum occurs within the tenant's area of control or if the tenant's family, guest, or agent violates the lease or rental agreement, such violation shall constitute a violation of the lease or rental agreement, and the lease or rental agreement may be immediately terminated by the Developer.

5.11.2.4 Developer shall provide annual training to property management for the purposes of managing, operating, and/or maintaining Project.

5.12. Multi-Housing Safety Plan

Developer agrees to consult with the City Police Department and create a safety plan to be approved by the City Police Department prior to a Certificate of Occupancy.

5.13. Permits and Building Fees

Developer agrees and understands that upon the submittal date of any application or permit, the current fees in effect at the time of submittal shall apply.

6. AFFORDABLE HOUSING

6.1. Incentives for Affordable Housing

Developer intends to use affordable housing incentives but is unable to construct the affordable units. Pursuant to Flagstaff Zoning Code Section 10-30.20.030(D), Developer agrees to provide a financial contribution in the amount of the cost of land and the cost of development for the creation of ten (10) Category 1 affordable units, as set forth in Section 6.2 below. In return, the City agrees to allow Developer to use up to three affordable housing incentives. Developer intends to use one affordable housing incentives for this development: a 35% reduction in the preservation of forest resources pursuant to Table 10-30.20.040.B. Developer remains eligible to use two additional incentive.

6.2. Calculation of Affordable Housing Contribution

Using the “Construction Cost Method”, developer has identified, and the City has agreed, to the in-lieu fee set forth as follows:

Contribution Calculation - Construction Cost Method	
LAND COSTS	
Land Area (1 ac.) [1]	0.83
Avg Land Price \$/ac [2]	\$153,351.00 / AC
Estimated Land Cost per unit	\$127,741.38
CONSTRUCTION COSTS	
Typical Home Size (SF)	1,500 SF
Avg Construction Cost per SF [3]	\$179.00 / SF
Estimated Construction cost per unit	\$268,500.00
CONTRIBUTION CALCULATION	
Calculated cost per unit	\$396,241.38
Sale Price for Affordable Home [4]	\$216,000.00
PRICE DIFFERENTIAL	\$180,241.38
Proposed No. Lot/Unit Credit	10
TOTAL CONTRIBUTION	\$1,802,413.83

1) Assumes a density of 14 units/ac per allowable maximum density specified for MR use on Table 10-40.30.030.C located in the Flagstaff Zoning Code.

2) Reference for AZ <https://www.landsearch.com/properties/flagstaff-az>

3) Reference to AZ <https://www.homeblue.com/home-building/flagstaff-az-cost-to-build-a-house.htm#:~:text=The%20cost%20to%20build%20a%20house%20in%20Flagstaff%2C,co st%20to%20build%20a%20house%20in%20Flagstaff%2C%20AZ> and information

provided by City staff.

4) Maximum Home Prices Affordable to 80% Annual Mean Income

2025 AMI for household of 4 people = \$79,900

Monthly Payment @ 30% Household Ratio = \$1,998 ($\$79,900 * 30\% / 12$)

Maximum Affordable Home Price = \$216,000

ref: <https://www.nerdwallet.com/mortgages/mortgage-calculator/arizona>

6.3. Contribution Payment Structure

The City and Developer agree that the payment of the affordable housing contribution will occur as follows:

6.3.1. Developer shall provide an initial contribution in the amount of four hundred thousand dollars (\$400,000) divided across each of the first forty (40) units constructed, or ten thousand dollars (\$10,000) per unit and a subsequent fee of one million four hundred two thousand four hundred thirteen dollars and eighty-three cents (\$1,402,413.83), divided across each of the remaining 43 units constructed or thirty-two thousand six hundred fourteen dollars and twenty-eight cents (\$32,614.28) per unit.

6.3.1.1 The per unit contribution set forth above must be paid by check(s) at the City's front counter, unless Developer is advised otherwise by the City. When Developer determines that substantial completion has been reached on a unit, Developer will contact the building inspector to initiate the Certificate of Occupancy router. Immediately following Developer's initiation of the Certificate of Occupancy router, Developer must contact the City's Housing Planning Manager to pay the contribution for the unit(s). Although the Certificate of Occupancy router typically takes 14 calendar days, the City is agreeing to accept this payment outside of a standard City process at Developer's request and, therefore, Developer is urged to communicate early with the City's Housing Planning Manager to prevent delay in the processing of the Certificate of Occupancy router for the unit(s). No temporary or final Certificate of Occupancy will be issued until the unit contribution has been paid for all units subject to the router, regardless of the status of final inspections for those units.

6.3.1.2 Nothing within this section alters any City requirement for certificate of occupancy.

7. **DEFAULT; REMEDIES**

7.1. 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 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 sixty (60) days.

7.2. 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 divided equally between the City and the Developer 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.

7.3. Developer'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 7.1 above, then, in that event, in addition to all other legal and equitable remedies which the Developer may have, the Developer may terminate this Agreement by written notice delivered to the City.

7.4. City's Remedies

In the event that the Developer is in default under this Agreement, and the Developer thereafter fails to cure any such default within the time period described in Section 7.1 above, then, in that event, in addition to all other legal and equitable remedies which the City may have, the City may terminate this Agreement by written notice delivered to the Developer.

7.5. Development Rights in the Event of Termination

Upon the termination of this Agreement as provided herein, the Developer shall have no rights to develop the Property pursuant to this Agreement.

7.6. No Personal Liability

No current or former member, manager, officer, director, agent, representative, official, employee, or other natural person of the City or Developer 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 Developer, as applicable; or
- 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 Developer, as applicable, under the terms of this Agreement.

7.7. Liability and Indemnification

Developer shall indemnify, protect, defend, and hold harmless the City, its Council members, officers, employees, and agents for, from, and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the performance of this Agreement by City or Developer, or nonperformance of this Agreement by the Developer.

8. GENERAL PROVISIONS

8.1. Effective Date and Term

This Agreement shall be effective (the "Effective Date") upon execution by the Parties hereto and recordation in accordance with A.R.S. § 9-500.05 (as amended). The term of this Agreement shall extend from the Effective Date of this Agreement and shall automatically terminate thirty (30) years from such date.

8.2. 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 86001

To Developer:
RODG DT PINE HAVEN
HORIZONTAL, LLC
2121 E 6th Street, Suite 203
Austin, TX 78702

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.

8.3. 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.

8.4. 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.

8.5. Authority

The undersigned 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. The Developer represents and warrants that it is duly formed and validly existing under the laws of the State of Arizona and that it is duly qualified to do business in the State of Arizona and is in good standing under applicable state laws. The Developer 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. The Developer represents to the City that by entering into this Agreement, the Developer has bound the Property and all persons and entities having any legal or equitable interest therein to the terms of the Agreement.

8.6. 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 Property, and this provision has no effect on them.

Exhibit "A" Legal Description of Property

Exhibit "B" Approved Site Plan

Exhibit "C" Project Narrative

***Exhibit "D" Water and Sewer Impact Analysis for Pinehaven dated March 10, 2023
(the "WSIA")***

8.7. Amendment

This Agreement may be amended, in whole or in part and with respect to all or any portion of the Property, only with the mutual written consent of the Parties to this Agreement or by their successors in interest or assigns. The City shall record the amendment or cancellation in the official records of the Coconino County Recorder.

8.8. 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.

8.9. 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.

8.10. 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 Developer execute the Agreement, amendment, or cancellation, as required by A.R.S. § 9-500.05.

8.11. 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 Developer 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.

8.12. 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.

8.13. Compliance with All Laws

Developer will comply with all applicable federal, state, and county laws, as well as with all applicable City ordinances, regulations, and policies.

8.14. Successors and Assigns; Restriction on Assignment by Developer

The provisions of this Agreement shall inure to the benefit and be binding upon any successors and assigns of the Parties hereto. Notwithstanding anything contained in the foregoing to the contrary, until completion of construction of the Project, the right of Developer to assign its rights, duties, and obligations under this Agreement shall be limited to the following:

- 8.14.1. Assignment made by the Developer in connection with obtaining financing and the exercise of lender remedies with respect thereto;
- 8.14.2. An assignment of all rights and obligations of Developer under this Agreement to a real estate developer reasonably acceptable to and approved by the City; however, if Developer or a current principal of Developer retains an ownership interest and management control in such real estate developer, then, in that event, the City's prior approval shall not be required; or
- 8.14.3. An assignment by Developer of its rights under this Agreement to a corporation, partnership, joint venture, limited liability company, trust, or other legal entity, which is controlled by, under common control with, or which controls Developer, or which is owned or controlled by a principal of Developer.
- 8.14.4. With the exception of those instances set forth in Section 8.14.1 and 8.14.3, or if the Developer retains an ownership and management interest as set forth in Section 8.14.2 above, the Developer shall not transfer or assign any part of its rights and/or obligations arising under this Agreement without the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned, or delayed. After the completion of construction of the Project, Developer may assign this Agreement to any purchaser without the City's consent (provided that the City is timely notified of such assignment). Notwithstanding anything contained in the foregoing to the contrary, no assignment of this Agreement or any specific rights, obligation, or duties of Developer under this Agreement shall release Developer, its successors, or assigns, from its obligations hereunder, unless specifically agreed to by the City.

8.15. 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 Developer, which consent may not be unreasonably withheld, conditioned, or delayed.

8.16. Time of the Essence

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

9. WAIVER OF CLAIM FOR DIMINUTION IN VALUE

Developer hereby waives and fully releases any and all financial loss, injury, claims, and causes of action that the Developer may have, now or in the future, for any "diminution in value" and for any "just compensation" under the Private Property Rights Protection Act,

codified in A.R.S §§ 12-1131 through 12-1138 (the “Act”), in connection with the application of the City’s existing land use laws and including Ordinance Number 20XX-XX regarding the Property. This waiver constitutes a complete release of any and all claims and causes of action that may arise or may be asserted under the Act with regard to the subject Property. Developer agrees to indemnify, hold harmless, and defend City, its officers, employees, and agents, from any and all claims, causes of actions, demands, losses, and expenses, including attorney’s fees and litigation costs, that may be asserted by or may result from any of the present or future owners of any interest in the Property seeking potential compensation, damages, attorney’s fees, or costs under the Act that they may have, as a result of the application of the City’s existing land use laws, including Ordinance Number 20XX-XX, upon the Property.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first written above.

City of Flagstaff

RODG DT Pine Haven Horizontal LLC,
a(n) Arizona Limited Liability Company.

Becky Daggett, Mayor

By: _____

Attest:

Name: _____

City Clerk

Title: _____

Approved as to form and authority:

City Attorney

STATE OF ARIZONA)
COUNTY OF _____)

On this ____ day of _____, 20____, before me a Notary Public, personally appeared _____, known to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that they executed the same on behalf of **RODG DT PINE HAVEN HORIZONTAL LLC**, an Arizona limited liability company, for the purposes therein contained.

Notary Public

My Commission Expires: _____