

RESOLUTION NO. 2016-18

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN CORE CAMPUS FLAGSTAFF LLC AND THE CITY OF FLAGSTAFF RELATED TO THE DEVELOPMENT OF APPROXIMATELY 2.39 ACRES OF REAL PROPERTY GENERALLY LOCATED AT 17 SOUTH MIKES PIKE AND ESTABLISHING AN EFFECTIVE DATE

RECITALS:

WHEREAS, Core Campus Flagstaff LLC (“Developer”) is the owner of approximately 2.39 acres of real property generally located at 17 South Mikes Pike (the “Property”); and

WHEREAS, Developer plans to construct on the Property, among other things, 236 student-oriented multi-family housing rental units and 14,096 square feet of commercial space; and

WHEREAS, Developer and the City wish to enter into a development agreement, in the form attached to the staff summary submitted in support of this Resolution (the “Development Agreement”), to provide for the terms and conditions under which the Property will be developed and to set forth in detail certain obligations of Developer and the City; and

WHEREAS, developing the Property under the terms and conditions of the proposed Development Agreement would be consistent with the Flagstaff Regional Plan 2030, and Developer and the City acknowledge that the Development Agreement would operate to the benefit of both parties; and

WHEREAS, Arizona Revised Statutes § 9-500.05 authorizes the City to enter into development agreements in order to facilitate the orderly and effective development of properties.

ENACTMENTS:

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. The Development Agreement provides benefit to the City of Flagstaff.

SECTION 2. The Development Agreement is consistent with the purpose, intent, goals, policies, programs and land use designations of the General Plan, any applicable specific plans, and the Zoning Code.

SECTION 3. The Development Agreement complies with the requirements of Arizona Revised Statutes § 9-500.05.

SECTION 4. That the City of Flagstaff be hereby authorized to enter into the Development Agreement in the form attached to the staff summary submitted in support of this Resolution.

SECTION 5. That the Mayor of the City of Flagstaff be hereby directed to execute the Development Agreement on behalf of the City.

SECTION 6. PASSED AND ADOPTED by the City Council of the City of Flagstaff this 22nd day of March, 2016.

SECTION 7. This Resolution shall become effective thirty (30) days following adoption by the City Council.

ATTEST:

MAYOR

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

When recorded, return to:

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

DEVELOPMENT AGREEMENT AND WAIVER
between
City of Flagstaff
and
Core Campus Flagstaff LLC

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is entered into this _____ day of _____, 2016, by and between the City of Flagstaff, an Arizona municipal corporation (“**City**”) and Core Campus Flagstaff LLC, a Delaware limited liability company (“**Developer**”). The City and Developer are sometimes referred to herein collectively as the **Parties**.

RECITALS

A. A.R.S. § 9-500.05 authorizes the City to enter into development agreements with landowners and persons having an interest in real property located in the City.

B. Developer is the owner of approximately 2.39 acres of real property generally located west and south of the intersection of Mikes Pike and Phoenix Avenue at 17 South Mikes Pike, Coconino County Assessor’s parcel numbers **100-39-001C, 100-39-010, 100-39-009, 100-39-008, 100-39-001G, 100-39-002A, and 100-39-011C**, within the corporate limits of Flagstaff, Arizona, more specifically described and depicted in *Exhibit A* (the “**Property**”).

C. Parcels 100-39-011C, 100-39-002A, and 100-39-001G of the Property currently have a transect zoning of T5 Main Street (“**T5**”). Parcels 100-39-008, 100-39-009, 100-39-010, and 100-39-001C of the Property currently have a transect zoning of T4 Neighborhood 1 – Open (“**T4N.1-O**”). The Developer is requesting a zoning map amendment for a portion of Parcels 100-39-010, 100-39-002A, 100-39-001G, and 100-39-001C to T4 Neighborhood 2 (“**T4N.2**”), with the remaining portion of Parcels 100-39-001C and 100-39-010 to T5, and Parcels 100-39-008 and 100-39-009 to T5.

D. Under the applicable comprehensive plan, the Flagstaff Regional Plan 2030 ratified May 2014, the Property has an existing land use designation of Urban, is located within two (2) Urban Activity Centers, and is identified by the “Transitions Map” as being located within a Transform Urban area. The Developer intends to redevelop the Property as a mixed-use multi-family style student housing development consisting of 236 dwelling units (664 beds) located above and behind approximately 14,096 square feet of commercial uses.

E. The City has an interest in ensuring that the development of the Property complies with City standards for development and engineering improvements and all other City standards, and the City believes that development of the Property pursuant to this Agreement will result in planning, safety, economic, and other benefits to the City and its residents, and will not be detrimental to the public health, safety or welfare, or materially injurious to the properties in the vicinity.

F. The Developer acknowledges that development of the Property pursuant to this Agreement will be beneficial and advantageous to the Developer by providing assurances to the Developer that it will have the ability to develop the Property within the City pursuant to this Agreement under the zoning described in Recital C above and in substantial accordance with the Site Plan.

G. As part of the development of the Property, Developer will provide certain Public Improvements, which are limited to those described in this Agreement, both inside and outside of the Property boundaries and at capacities that will support the Project and also benefit other surrounding properties.

H. The Parties acknowledge that the contributions for Public Improvements by the Developer are related to the Project and proportional under all the options in this Development Agreement.

I. The City and Developer are entering into this Agreement pursuant to Arizona Revised Statutes § 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 set forth above is incorporated into this Agreement as though fully set forth herein.

2. DEFINITIONS

The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

2.1 “**Agreement**” shall mean this Development Agreement between the City and Developer.

2.2 “**A.R.S.**” shall mean Arizona Revised Statutes.

- 2.3 “**Assurances Agreement**” shall mean the Assurance of Performance Agreement, using the City’s standard form between Developer and City, or any other form of assurance agreement negotiated between the City and Developer, but in any event the Assurances Agreement shall be consistent with applicable City Codes.
- 2.3 “**City**” shall mean and refer to the City of Flagstaff, an Arizona municipal corporation, and any successor public body or entity.
- 2.4 “**Construction Permits**” shall mean any permit issued by the City or other jurisdiction that is required in order to begin construction on any on-site or off-site phase or stage of the Project, including but not limited to Public Improvements, grading, electrical, gas, plumbing, or mechanical.
- 2.5 “**Developer**” shall mean and refer to Core Campus Flagstaff LLC, a Delaware limited liability company, and any permitted successor-in-interest or assignee of Core Campus Flagstaff LLC acquiring the Project.
- 2.6 “**Development Fees**” shall mean any impact fee, instituted by the City pursuant to A.R.S. § 9-463.05.
- 2.7 “**Improvements**” shall mean and refer to all the improvements, on-site and off-site, which may be constructed from time to time as part of the Project, including, without limitation, public roads, utilities, driveways, landscaping and other improvements of any type or kind to be built by Developer.
- 2.8 “**Project**” shall mean and refer to the development of the Property for the uses, intensities and densities currently shown in the approved Site Plan.
- 2.9 “**Property**” shall mean and refer to all of the real property that is legally described in *Exhibit A*.
- 2.10 “**Zoning Code**” shall mean the City’s Zoning Code (Title 10 of the Flagstaff City Code).

3. **SITE PLAN**

- 3.1 Development in Substantial Accordance with Site Plan. The City and the Developer hereby acknowledge that the City approved the Site Plan for the Project on December 11, 2015, a copy of which is attached hereto as *Exhibit B* and incorporated herein (the “**Site Plan**”). The Site Plan sets forth the basic land uses, intensity and density of such uses, relative height, bulk and size of buildings and structures proposed by the Developer and approved by the City for development within the Property. Notwithstanding anything contained in the foregoing,

however, the City acknowledges that, while the Developer intends to develop the Project in general conformance with the Site Plan, in order to make the Project economically viable and otherwise feasible, as the Project progresses through civil plan and building permit review, the Developer may request modifications to the Site Plan. The City shall process all submittals made by Developer in conformance with Section 8.1, below, and nothing contained herein shall preclude the City from the exercise of its normal review process and requirements in connection with its approval of such submittals. Unless otherwise limited by the conditions of City Ordinance No. 2016-08, modifications to the Site Plan that exceed the thresholds set forth in Flagstaff Zoning Code Section 10-20.40.090.B.2 shall require a Zoning Map Amendment to process the requested modifications to the approved Site Plan.

4. **DEVELOPMENT STANDARDS**

- 4.1 Governing Regulations. Development of the Property, including off-site and on-site public Improvements, shall be governed by the City's codes, ordinances, regulations, rules, guidelines and policies controlling permitted uses of the Property, design review standards, the density and intensity of uses, the maximum height and size of the buildings within the Property in existence as of the Effective Date of this Agreement; provided, however, that if the Developer fails to obtain any Construction Permits with respect to the Project within two (2) years following the Effective Date of this Agreement, then development of the Project shall be subject to the City's codes, ordinances, regulations, rules, guidelines and policies in effect at the time Developer applies for such Construction Permits.
- 4.2 Permits & Building Fees. Developer agrees and understands that all building permits, Development Fees, and other fees normally applicable to construction within the City at the time of application shall apply to the Project. Denial of a Developer's permit application for failure to meet the City's building code requirements for such permit shall not be deemed a breach by the City of this Agreement.

5. **DEVELOPER AND CITY OBLIGATIONS**

- 5.1 Water and Sewer Infrastructure. Due to the age and diameter of the existing potable water lines and sanitary sewer lines adjacent to the Property, the City is requiring the Developer to replace approximately 840 feet of waterline and sewer line in Mikes Pike from Phoenix Avenue to Benton Avenue and upgrade the existing eight-inch (8") diameter waterline to a ten-inch (10") waterline and the existing eight-inch (8") diameter sewer line to a new PVC eight-inch (8") diameter sewer line. All work will be performed by the Developer or its designee. Developer shall procure all design and construction of the off-site potable water line and sanitary sewer line improvements according to City of Flagstaff policies. City shall review all design and construction plans and approve of such plans before construction commences. All bids for design, construction, or any other work covered by this Section shall be approved by the City Engineer. The City

agrees to pay for the cost of replacement of approximately 340 feet of potable water line for those portions of the line not directly adjacent to the Property and for the difference in material costs between an eight inch (8") potable water line and a ten inch (10") potable water line. Upon completion and acceptance of the off-site potable water line and sanitary sewer line improvements, the City shall reimburse the Developer within 60 days of the Developer billing the City for the total costs incurred by the Developer for constructing the 340 foot portion of the potable water line and the upsizing of the waterline. The total cost of the City's participation will be determined during Civil Improvement Plan review. Prior to reimbursement, the Developer shall provide to the City legible copies of all receipts documenting the cost the potable water line design and construction. The Developer's participation in the cost for the new water and sewer lines, as described in more detail above, is in addition to the Developer's obligation to pay all fees and costs due to the City under the City Code and other laws and regulations.

6. DEVELOPER OBLIGATIONS

6.1 Management of the Project.

- 6.1.1 The Developer agrees to implement and maintain a management plan establishing management practices at the Project that are designed to facilitate the operation and maintenance of the Project as an apartment project. The management plan shall be prepared in accordance with industry standards and shall include, without limitation, the following provisions: 1) a manager who will be available twenty-four hours, seven-days a week (24/7); 2) at least one on-site staff member who will be available twenty-four hours, seven-days a week (24/7), for as long as the Project is marketed and operated as a student-housing development; 3) repair and maintenance of adjacent sidewalks, civic spaces, and open spaces; 4) regular sweeping and removing of trash and debris from access ways and common areas in and around the Project; 5) regular maintenance of any drainage and landscaped areas; and 6) maintaining and repairing all lighting fixtures located within and around the Project.
- 6.1.2 The Developer agrees to provide contact information for the Developer and the local manager on its Project web site, including a local Flagstaff telephone number or toll-free telephone number, so the City and third parties may contact the Developer and such manager regarding matters concerning the operation and maintenance of the Project.
- 6.1.3 The Developer agrees to structure its rental agreements for the Project on a per unit basis (i.e., one (1) agreement per dwelling unit), unless and until a conditional use permit for rooming and boarding is obtained or the requirement is removed from the Zoning Code.

- 6.1.4 The Developer agrees to implement and maintain rules and regulations (“**Rules and Regulations**”) that will govern the Project and be included in each lease agreement in order to regulate resident conduct, safety and security, and help maintain an optimal living environment for all residents of the Project. The Rules and Regulations shall address, without limitation, the following areas: prohibition of illegal use of alcohol, drugs, and controlled substances; prohibition of criminal and illegal activity; prohibition of firearms, weapons, and other dangerous materials; fire safety and alarm equipment; guest policies; pet and animal policies; personal safety; parking; building security and access; and standards for maintenance of leased units and keeping the Project in good, clean, and sanitary condition. The Developer further agrees to use commercially reasonable efforts to enforce the Rules and Regulations, which may include assessing fines against tenants of the Project for any violation of the Rules and Regulations, requiring payments by tenants for costs incurred to cure violations, and pursuing eviction and early lease termination remedies where appropriate.
- 6.1.5 If requested by the City, the Developer will provide a copy of the Rules and Regulations to the City’s Community Development Director to demonstrate compliance with Section 6.1.4 above.
- 6.1.6 The foregoing requirements outlined in this Section shall be applicable to the Developer and its successors and assigns, as applicable, during their ownership of the Project.
- 6.2 **Crime Free Multi-Housing Program.** The Developer agrees to participate in the City of Flagstaff Police Department’s Crime Free Multi-Housing Program (**CFMHP**). Prior to submitting an application for any Construction Permit, excluding demolition permits, grading permits on-site utility permits and foundation permits, the Developer shall schedule a meeting with the City of Flagstaff Police Department’s CFMHP representative to review the proposed building plans as they relate to compliance with CFMHP.
- 6.3 Traffic Mitigation. Prior to the issuance of any Construction Permits for the Project, the Developer shall, in accordance with the *City Traffic Impact Analysis Review Memorandum* dated December 11, 2015 (**Exhibit C**), perform the following:
- 6.3.1 Make a payment to the City in the amount of \$200,000, which represents fifty percent (50%) of the City’s estimated cost of constructing a new four-leg traffic signal at the intersection of San Francisco Street and Franklin Avenue. Any monies paid by the Developer shall be placed by the City in a designated account to be used solely for the design and construction of the future signal.

- 6.3.2 Make a payment to the City in the amount of \$100,000, which represents fifty percent (50%) of the City's estimated cost of upgrading the existing signalized pedestrian crossing generally located at the intersection of Butler Avenue and Humphreys Street. Any monies paid by the Developer shall be placed by the City in a designated account to be used solely for the design and construction of upgrading the existing pedestrian signal.
- 6.3.3 Demonstrate improved site visibility triangles and reduce pedestrian crossing distances, by designing curb extensions at the site driveway of the Mikes Pike Street and Cottage Avenue intersection and the northwest corner of the intersection of Mikes Pike Street and Phoenix Avenue. Construction of such improvements shall be completed in sequential order of normal construction sequences and, in any case, prior to the issuance of a final Certificate of Occupancy for the Project.
- 6.3.4 Design a striping plan for San Francisco Street south of Butler Avenue to accommodate a 193 foot queue length, which will provide additional stacking in the northbound left and through lanes. Construction of such improvements shall be completed by Developer in sequential order of normal construction sequences and, in any case, prior to the issuance of a final Certificate of Occupancy for the Project.
- 6.3.5 Dedicate a 10.9-foot portion of the Property for Right-of-Way along Milton Road to accommodate the future construction of a northbound right turn lane off of Milton Road onto eastbound Phoenix Avenue.
- 6.4 **Parking.** The Developer acknowledges and agrees that it shall provide not fewer than 231 onsite parking spaces (27 street parking spaces and 204 garage parking spaces) in order to satisfy the City's parking requirements with respect to the Project. In addition, within ninety (90) days of the City issuing a grading permit for the project, Developer shall remit to the City an amount equal to \$500,000.00 as a contribution toward the City's parking solutions for the Southside. **[Developer is proposing this payment as an alternative to condition number six (6) in Ordinance 2016-08.]**
- 6.5 **Construction of Public and Other Related Improvements.** Prior to the issuance of a Construction Permit for improvements in relation to the Project in any City right-of-way, the Developer shall deliver to Escrow Agent an irrevocable standby letter of credit ("Letter of Credit"), in an amount to be determined by the City based on the civil improvement plans for the improvements and in accordance with section 10-20.100.040(B) of the Zoning Code, to provide security for the construction and completion of the public and other related improvements contemplated by this Agreement and in accordance with approved plans. Developer shall, at its sole cost and expense, construct or cause to be constructed the public and other related improvements contemplated by this Agreement in material compliance with the City's codes, ordinances and this Agreement.

Following construction of the described public improvements and acceptance of the improvements by the City Engineer, the City shall assume, at its sole expense, the maintenance and repairs of all public improvements in accordance with City policies. The Developer, to the extent required by City regulation, warrants construction of such public improvements for one-year following acceptance by the City.

- 6.6 Water and Sewer. Water and sewer infrastructure shall be designed, extended, and upgraded by the Developer at the Developer's sole cost and expense, unless otherwise stated in this Agreement, in accordance with the approved *HUB on CAMPUS Water & Sewer Impact Analysis*, sealed May 5, 2015, and the 2012 City of Flagstaff Engineering and Design Standards. Construction of the water and sewer infrastructure improvements shall be completed by Developer in sequential order of normal construction sequences.
- 6.7 Stormwater. Stormwater infrastructure must be designed and extended by the Developer at the Developer's cost, in accordance with the approved *Drainage Impact Analysis for The Hub on Campus Flagstaff*, dated June 1, 2015, and the approved *Preliminary Drainage Report for The Hub on Campus Flagstaff*, dated June 1, 2015. Construction of the stormwater improvements shall be completed by Developer in sequential order of normal construction sequences. The on-site stormwater improvements will remain private and not be accepted or maintained by the City.
- 6.8 Cultural Resources. In accordance with the Cultural Resource Study prepared by the Developer and approved by the City Heritage Preservation Commission, prior to commencement of construction of the Project, the Developer will permit the relocation of the structure currently located at 17 South Mikes Pike, Coconino County Assessor Parcel Number 100-39-009, to 23 South Agassiz Street, Coconino County Assessor Parcel Number 104-01-080D. Understanding the complexities involved in relocating structures, however, the City acknowledges and agrees that in the event such structure is not relocated for any reason, Developer shall not be deemed to be in default under this Agreement.
- 6.9 Zoning. The Developer hereby agrees to be subject to all of the terms, conditions, and stipulations of City Ordinance No. 2016-08, attached hereto as ***Exhibit D*** and incorporated herein by this reference.
- 6.10 Transect Zoning Election. The Developer hereby agrees to opt into and comply with the applicable Transect Zone standards assigned to the Property through the City of Flagstaff Official Downtown Regulating Plan, as amended by City Ordinance No. 2016-08, through the execution and recordation of the Transect Form, attached hereto as ***Exhibit E***.

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 in the event that any such breach or default cannot be cured within said thirty (30) day period, then the breaching party shall not be deemed to be in default hereunder so long as the breaching party commences to cure such breach or default within said thirty (30) day period and thereafter diligently and continuously pursues such cure to completion. Party in breach is responsible for providing evidence of diligence and continuous pursuit of the cure. Failure to provide such evidence shall result in a rebuttable presumption of failure to pursue the cure. For purposes of determining default and termination, those Developer obligations set forth in the Agreement are severable, and each individual obligation shall terminate upon its completion.
- 7.2 Developer's Remedies. In the event that the City is in default under this Agreement and fails to cure any such default within the cure period described in Section 7.1 above, then, in that event, in addition to all other legal and equitable remedies that the Developer may have, the Developer may terminate this Agreement by written notice delivered to the City.
- 7.3 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 cure period described in Section 7.1 above, then, in that event, in addition to all other legal and equitable remedies that the City may have, the City may do any of the following: 1) terminate this Agreement by written notice delivered to the Developer; 2) withhold all permits or other approvals that would otherwise be required to be issued under this Agreement or by law.
- 7.4 Development Rights in the Event of Termination. With the exception of a termination that occurs under Section 7.2 above, upon the termination of this Agreement as provided herein, the Developer shall have no further rights to develop the Project pursuant to the terms of this Agreement.
- 7.5 No Personal Liability. No current or former member, official or employee 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; (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.
- 7.6 Liability and Indemnification. Developer agrees to indemnify, defend, save, and hold harmless the City, its officers, officials, agents, and employees from and against any and all claims, demands, actions, liabilities, damages, losses, or expenses, including court costs, attorney's fees, and costs of claim processing,

investigation and litigation (hereinafter collectively referred to as “Claims”) that arise out of any actual or alleged injury caused or alleged to have been caused, in whole or in part, by the acts, errors, omissions, or negligence of the Developer or any of Developer’s directors, officers, agents, employees, or volunteers in connection with or incident to the performance of this Agreement by the Developer or nonperformance of this Agreement by the Developer. This indemnity provision shall survive the termination, cancellation, or revocation, whether in whole or in part, of this Agreement.

8. GENERAL PROVISIONS

- 8.1 Effective Date. This Agreement shall be effective upon execution by the Parties hereto, recordation in accordance with A.R.S. § 9-500.05 (as amended), and upon expiration of thirty (30) days following the approval hereof by the City (the “**Effective Date**”). However, in the event that the approval is delayed in its effect by judicial challenge, or by referendum or injunction, the effective date of this Agreement shall be delayed until resolution or termination of such judicial challenge, referendum or injunction. In the event of judicial challenge, referendum or injunction by any person or entity resulting in a delay in the effect of this Agreement that extends for a period of more than ninety (90) days following its approval by the City Council, this Agreement shall be terminable by Developer upon written notice to the City in accordance with this Agreement at any time within an additional sixty (60) days. Upon termination, this Agreement shall be of no further force or effect, and neither party shall have any further obligation hereunder. Any delay relative to the effective date of this Agreement by judicial challenge, referendum or injunction filed by parties acting independently of and not under the control of the City shall not be deemed a default hereunder by the City.
- 8.2 Term. The term of this Agreement shall extend from the Effective Date of this Agreement and shall automatically terminate upon the complete build out of the Project unless previously terminated pursuant to the terms of this Agreement. However, the provisions set forth in Section 6.1 above and associated subsections shall continue in full force and effect.
- 8.3 Notices. Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly delivered upon personal delivery or as of the third business day after mailing by the United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed as follows:

To City: City of Flagstaff
Attn: City Manager
211 West Aspen Avenue
Flagstaff, AZ 86001

Copy To: City of Flagstaff

Attn: City Attorney
211 West Aspen Avenue
Flagstaff, AZ 86001

To Developer: Core Campus Flagstaff LLC
Attn: Marc Lifshin
2234 West North Avenue
Chicago, IL 60647

Copy To: Gammage and Burnham
Attn: Lindsay C. Schube
2 N. Central Ave., 15th Floor
Phoenix, AZ 85004

Notice of address may be changed by either party by giving notice to the other party in writing of change of address. 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.

- 8.4 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.
- 8.5 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.
- 8.6 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 Delaware 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 warrants and 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.
- 8.7 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** *Site Plans*
- Exhibit C** *Traffic Impact Analysis Review Memorandum dated
December 11, 2015*
- Exhibit D** *Ordinance No. 2016-08*
- Exhibit E** *Transect Zone Form*

- 8.8 Amendment of the Agreement. This Agreement may be amended at any time by written amendment executed by both Parties; all amendments shall be recorded in the official records of Coconino County, Arizona within ten (10) days following the execution thereof.
- 8.9 Severability. In the event that any phrase, clause, sentence, paragraph, section, article, or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect, to the extent that the intent of the Parties to develop the Project is still viable.
- 8.10 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.
- 8.11 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.
- 8.12 No Partnership. The Parties specifically acknowledge that the Project will be developed as private property, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties, nor shall it cause them to be considered a joint venture or members of any joint enterprise.
- 8.13 Conflict of Interest. This Agreement is subject to the cancellation provisions of A.R.S. § 38-511.
- 8.14 Compliance with All Laws. Subject to the terms and conditions of this Agreement, the Developer will comply with all applicable Federal, State, and County laws, as

well as with all applicable City ordinances, regulations and policies, in connection with its performance of this Agreement.

- 8.15 Successors and Assigns. This Agreement shall run with the land and all of the covenants and conditions set forth herein shall inure to the benefit of and shall be binding upon the successors in interest of each of the Parties hereto. Specifically, each successor owner of any portion of the Property is responsible for fulfilling all Developer responsibilities with respect to that portion. Obligations accruing after a transfer of ownership will not be deemed to be an obligation of the transferor, though no transfer will relieve a transferor of any obligation that accrued prior to the transfer.
- 8.15.1 Assignment. Developer's rights and obligations hereunder may be assigned to a person or entity that has acquired all of the Property or any portion thereof pursuant to a written instrument, recorded in the Official Records of Coconino County, Arizona, expressly assigning such rights and obligations. Developer agrees to provide the City notice of any proposed assignment at least thirty (30) days prior to the assignment being finalized. The notice must identify the assignee, the assignee's contact information, and the effective date of the assignment. City will require each successor to post adequate assurances and/or enter into the appropriate assurances agreements to ensure construction of Improvements before consenting to the assignment. Nothing in this Agreement shall operate to restrict Developer's ability to assign less than all of its right and obligations under this Agreement to those entities that acquire any portion of the Property.
- 8.16 Consistent with General Plan and Specific Plan. All development on the Property shall be consistent with the Flagstaff Regional Plan 2030, ratified May 2014, as required by A.R.S. § 9-500.05(B).
- 8.17 Construction of Agreement. This Agreement has been arrived at by negotiation and shall not be construed against either Party.
- 8.18 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which together shall constitute but one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.
- 8.19 No Third Party Beneficiaries. The City and Developer acknowledge and agree that the terms, provisions, and conditions hereof are for the sole benefit of, and may be enforceable solely by, the City and Developer; and none of these terms, provisions, conditions, and obligations are for the benefit of or may be enforced by any third party.

9. **WAIVER OF CLAIMS FOR DIMINUTION IN VALUE.**

9.1 Waiver. Upon the City's approval and recordation of the zoning applicable to the Property described in Section 6.8 above, the Developer hereby waives and fully releases the City from any and all financial or other loss, injury, claims, and causes of action that the Developer may have, now or in the future, for any compensation, "diminution in value", "just compensation", or any other amount or remedy under the Private Property Rights Protection Act, codified in A.R.S §§ 12-1131 through 12-1138, the takings clauses in Article 2 Section 17 the Arizona Constitution and the Fifth Amendment to the United States Constitution, or any other statutes, regulations, laws, or legal doctrines (referred to collectively as the "Property Value Laws") because of this Agreement or the zoning amendments requested by Developer and approved by Ordinance Number 2016-08. This waiver constitutes a complete release of any and all claims and causes of action that may arise or could have been asserted under the Property Value Laws with regard to the Property. The Developer agrees to indemnify, hold harmless, and defend the 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 Property Value Laws because of this Agreement or the zoning amendments requested by Developer and approved by Ordinance Number 2016-08.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and on its behalf by its Mayor and its seal to be hereunder duly affixed and attested by its City Clerk, and Developer has signed the same on or as of the day and year first above written.

City of Flagstaff

Core Campus Flagstaff LLC,
a Delaware limited liability company

Gerald W. Nabours, Mayor

By: _____

Attest:

Name: _____

Title: _____

City Clerk

Approved as to form and authority:

City Attorney

STATE OF DELAWARE)
COUNTY OF _____)

ACKNOWLEDGMENT

On this _____ day of _____, 2016, 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 he executed the same on behalf of The Standard at Flagstaff, LLC, a Delaware limited liability company, for the purposes therein contained.

Notary Public
My Commission Expires: _____

Exhibit "A"

Legal Description of the Property

Exhibit "B"

Site Plan

Exhibit "C"

Traffic Impact Analysis Review Memorandum dated December 11, 2015

Exhibit "D"

Ordinance No. 2016-08

Exhibit "E"

Transect Zone Form