

When Recorded Return To:

City Clerk  
City of Flagstaff  
211 W. Aspen Avenue  
Flagstaff, Arizona 86001

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THIRD AMENDMENT TO  
DEVELOPMENT INCENTIVE AGREEMENT  
(Aspen Place at the Sawmill)

THIS THIRD AMENDMENT TO DEVELOPMENT INCENTIVE AGREEMENT ("Third Amendment") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2013 (the "Amendment Date"), to be effective as and when set forth in **Section 9** of this Third Amendment (the "Effective Date") by and among FLAGSTAFF ASPEN PLACE, L.L.C., a Delaware limited liability company ("Aspen Place"), as successor in interest to ASPEN PLACE NORTH, L.L.C., an Arizona limited liability company ("Aspen North") as to the parcels legally described in Exhibit "A" to this Third Amendment (the "Aspen Commercial Parcels"), in their entirety, ALLIANCE BANK OF ARIZONA, A DIVISION OF WESTERN ALLIANCE BANK, an Arizona corporation ("Alliance"), as to the parcel legally described in Exhibit "B" to this Third Amendment (the "Alliance Commercial Parcel") (the "Aspen Commercial Parcels" and the "Alliance Commercial Parcel" being collectively referred to herein as the "Commercial Parcels"), and the CITY OF FLAGSTAFF, an Arizona municipal corporation ("City").

RECITALS

A. The City and Aspen North's predecessor-in-interest, Butler & Lone Tree, L.L.C., an Arizona limited liability company, entered into that Development Incentive Agreement (Aspen Place at the Sawmill) dated as of June 1, 2007, and recorded on June 20, 2007 as Instrument No. 3444059, Official Records of Coconino County, Arizona (the "Development Incentive Agreement") and that certain Improvement District Development and Waiver Agreement dated as of June 1, 2007, and recorded on June 21, 2007 as Instrument No. 3444565, Official Records of Coconino County, Arizona (the "Waiver Agreement").

B. The City, Aspen North, and Aspen Place South, L.L.C., an Arizona limited liability company ("Aspen South"), subsequently entered into that certain First Amendment to Development Incentive Agreement (Aspen Place at the Sawmill) dated as of February 22, 2010, and recorded on February 25, 2010 as Instrument No. 3554385, Official Records of Coconino County, Arizona (the "First Amendment").

C. The City, Sawmill NF, L.L.C., an Arizona limited liability company ("Sawmill NF") and Aspen North subsequently entered into that certain Second Amendment to Development Incentive Agreement (Aspen Place at the Sawmill) dated as of August 11, 2010, and recorded on August 11, 2010, as Instrument No. 3570206, Official Records of Coconino County, Arizona (the "Second Amendment").

D. The Second Amendment provided that the City would take all reasonable steps to divide Assessment Parcel 2.01 into the New Northern Assessment Parcels. The City subsequently approved the Petition for Modification which was recorded in the Official Records of Coconino County on October 25, 2010 as Instrument No. 3577783 which divided Assessment Parcel 2.01 into the New Northern Assessment Parcels.

E. Section 31 of the Development Incentive Agreement provides that any subsequent amendments to the Development Incentive Agreement need only be executed by the City and the Landowner or Landowners who are affected or impacted, or whose parcels are affected or impacted, by such amendment.

F. On October 22, 2013, Aspen Place sold and conveyed fee simple title of the Alliance Commercial Parcel to Alliance, and the ID Bonds associated with the Alliance Commercial Parcel were paid in full.

G. The parties desire to enter into this Third Amendment to provide for the efficient future development of the Commercial Parcels and to clarify the rights and obligations of the parties as to the Commercial Parcels only.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby further modify and amend the Development Incentive Agreement, the First Amendment, and the Second Amendment as follows:

#### AGREEMENT

1. Definitions. All initial capitalized terms used in this Third Amendment shall have the meanings ascribed thereto in the Development Incentive Agreement, the First Amendment, and the Second Amendment, unless otherwise specifically defined herein. All references in the Development Incentive Agreement to "this Agreement" shall, from and after the date hereof, be deemed to mean and refer to the Development Incentive Agreement as modified and amended by the First Amendment, the Second Amendment, and this Third Amendment.

2. Release of Cross-Default; Cross-Collateralization Upon Payoff. For the avoidance of doubt, the parties acknowledge and agree that once the ID Bond Assessments are paid in full for a New Northern Assessment Parcel, said parcel shall automatically be released from the requirements of Section 3 of the Second Amendment and the City hereby authorizes the City Manager to execute and record such reasonable documentation to evidence that said parcel is no longer subject to the ID Bond Assessments, including without limitation a termination of that certain Improvement District Development and Waiver Agreement dated June 1, 2007. The ID Bond Assessments for the Alliance Commercial Parcel have been paid in full and as such the Alliance Commercial Parcel is released from the cross-default and cross-collateralization requirements imposed by Section 3 of the Second Amendment.

3. Release of Cross-Default; Cross-Collateralization of Financed Parcel. The parties acknowledge and agree that Lots 121, 122 and 123 of the New Northern Assessment Parcels, (i) have received development and construction financing from an unrelated third-party lender, such financing having been secured by first-lien deeds of trust on such Lots, and have been issued building permits with respect to the construction of vertical or tenant improvements. The owner of each Lot has also deposited with the City ID Bond Assurances sufficient in amount to pay the ID Bond Assessments allocable to each Lot. As such, the owner or owners of Lots 121, 122 and 123 are released from the cross-default

and cross-collateralization requirements imposed by Section 3 of the Second Amendment by virtue of their qualification under Section 3(b) of said Amendment.

4. Covenant Regarding Common Ownership of Lots 122, 123, 125 and 126. Section 4 of the Second Amendment is hereby deleted in its entirety.

5. Sales Tax Rebate. Section 4(b) of the Development Incentive Agreement requires that 80% of the retail improvements within the Project be substantially complete as of the tenth (10<sup>th</sup>) anniversary of the date of the Agreement. As of the date of this Amendment, a certificate of completion has been issued for twenty four thousand eighty nine (24,089) sq. ft. of retail improvements within Lot 124, which is a part of the Project but not a part of the Commercial Parcels. Certificates of completion have also been issued for forty three thousand eight hundred (43,800) sq. ft. of retail improvements within Lots 122 and 123, which are a part of the Project and also part of the Commercial Parcels. Based on the foregoing and to provide clarity to the Landowner of the Commercial Parcels as to the amount of additional retail improvements required to be constructed on the Commercial Parcels in order to be deemed “substantially complete” under Section 4(b) of the Agreement, the parties agree upon issuance of a certificate of completion for a total of thirty six thousand two hundred (36,200) square feet of additional retail improvements within the Commercial Parcels, the Project will be deemed “substantially complete”.

6. Modifications to Section 4(ii) of Development Incentive Agreement. As to the Commercial Parcels, Section 4(ii) of the Development Incentive Agreement is hereby amended and restated in its entirety to read as follows:

“The Sales Tax Rebate provided by the City to the Landowner pursuant to this Agreement may be assigned by the Landowner to any other party, including any successor owner of the Property or any portion thereof, without the City’s approval.”

7. No Further Modifications; Ratification. Except as specifically modified or amended pursuant to the terms of this Third Amendment, the terms and conditions of the Development Incentive Agreement, the First Amendment and the Second Amendment are hereby ratified and affirmed by the parties hereto and shall remain in full force and effect. In addition, the terms and conditions of the Waiver Agreement are hereby ratified and affirmed by the parties hereto and shall remain in full force and effect, unaffected by this Third Amendment.

8. Counterparts. This Third Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

9. Effective Date. This Third Amendment shall become effective upon the mutual execution of this Third Amendment by the parties hereto and the recordation of this Third Amendment in the Official Records of Coconino County, Arizona.

IN WITNESS WHEREOF, this Third Amendment to Development Incentive Agreement (Aspen Place at the Sawmill) has been executed as of the day and year first above written.

**Attest:**

**"City"**

CITY OF FLAGSTAFF, an Arizona municipal corporation

\_\_\_\_\_  
Printed Name \_\_\_\_\_  
Title: City Clerk

By \_\_\_\_\_  
Printed Name \_\_\_\_\_  
Title \_\_\_\_\_

**Approved as to form:**

\_\_\_\_\_  
Printed Name \_\_\_\_\_  
Title: City Attorney

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF COCONINO    )

On this \_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged her/himself to be \_\_\_\_\_ of the CITY OF FLAGSTAFF, an Arizona municipal corporation:

\_\_\_\_\_ whom I know personally;  
\_\_\_\_\_ whose identity was proven to me on the oath of \_\_\_\_\_, a credible witness by me duly sworn;  
\_\_\_\_\_ whose identity I verified on the basis of her/his \_\_\_\_\_,

and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

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

**"Aspen Place"**

FLAGSTAFF ASPEN PLACE, L.L.C., a Delaware limited liability company

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

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

On this \_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_ of \_\_\_\_\_, the Manager of FLAGSTAFF ASPEN PLACE, L.L.C., a Delaware limited liability company:

\_\_\_\_\_ whom I know personally;  
\_\_\_\_\_ whose identity was proven to me on the oath of \_\_\_\_\_, a credible witness by me duly sworn;  
\_\_\_\_\_ whose identity I verified on the basis of his \_\_\_\_\_,

and he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL: \_\_\_\_\_  
Notary Public



## **EXHIBIT "A"**

### Aspen Commercial Parcels

Lots 119, 120, 121, 122, 123, 125, 126, 127, 128, 129, 130 and 131 of Aspen Place at the Sawmill, according to plat recorded May 14, 2007 at Instrument Number 3438431, and Amendment recorded December 21, 2010 at Instrument No. 3583171, records of Coconino County, Arizona;

Except all oil, gas and other minerals as granted in Deed recorded in Docket 164, page 405, records of Coconino County, Arizona.

**EXHIBIT "B"**

Alliance Commercial Parcel

Lot 118, Aspen Place at the Sawmill, according to plat recorded May 14, 2007 at Instrument Number 3438431, and Amendment recorded December 21, 2010 at Instrument No. 3583171, records of Coconino County, Arizona;

EXCEPT all oil, gas and other minerals, as granted in Deed recorded in Docket 164, Page 405, records of Coconino County, Arizona; and

EXCEPT that portion of the Northwest Quarter of Section 22, Township 21 North, Range 7 East, Gila and Salt River Base and Meridian, Coconino County, Arizona:

That portion of Lot 118, Amended Final Subdivision Plat for Aspen Place at the Sawmill, Instrument 3583171, dated December 21, 2010, Coconino County Records, lying northerly of the following described line:

Commencing at the northernmost northeast corner of said Lot 118, from whence the southernmost northeast corner of said Lot 118 lies South 46°27'22" East a distance of 35.17 feet along the northeasterly line of said Lot 118, per said Instrument 3583171;

Thence along said northeasterly line, and the westerly Right of Way line of Windsor Lane, South 46°27'22" East a distance of 4.22 feet to a line parallel with and 3.00 feet southerly of the northerly line of said Lot 118, and the Point of Beginning of the line;

Thence leaving said northeasterly line along said parallel line the following courses:

South 88°14'47" West a distance of 60.81 feet; and

South 88°57'22" West a distance of 68.72 feet;

Thence leaving said parallel line, North 66°01'02" West a distance of 7.09 feet to said northerly line, and the Terminus of the line.