

When recorded, mail to:

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

DEVELOPMENT AGREEMENT AND WAIVER
between
City of Flagstaff
and
VP I-40 & Country Club, LLC.

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is entered into this _____ day of _____, 2014 (the “**Effective Date**”), by and between the City of Flagstaff, an Arizona municipal corporation (“**City**”) and VP I-40 & Country Club, LLC, an Arizona limited liability company (“**Owner**”). City and Owner are sometimes referred to in this Agreement collectively as the “**Parties;**” or individually as a “**Party.**”

RECITALS

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

B. Owner is the owner of approximately 93 acres of real property generally located at the intersection of Interstate 40 and Country Club Drive, within the corporate limits of Flagstaff, Arizona, more specifically described and depicted in *Exhibit “A”* and referred to in this Agreement as the “**Property.**”

C. The Property is currently zoned (the “**Zoning**”) Highway Commercial (HC), High-Density Residential (HR), and Rural Residential (RR).

D. Under the Flagstaff Regional Plan 2030 adopted in January 14, 2014, the Property is in an area appropriate for the development proposed by Owner and is designated for Suburban development in an existing Suburban Activity Center.

E. Owner received approval of a preliminary plat of the Property on March 18, 2014 (“**Preliminary Plat**”). Owner currently intends to develop the Property with a mix of uses spread over two units. The first unit (“**Unit I**”) is generally located at the southeast corner of Country Club Drive and Interstate 40. The second unit (“**Unit II**”) is generally located west of the intersection of Country Club Drive and Soliere Avenue. It is Owner’s current intent that Unit I and Unit II, combined, will be developed with approximately 250,000 square feet of commercial space including potentially a retail anchor, two 100 room hotels, and other retail tenants such as restaurants, fueling, bank, fast-food drive through, and services uses (the “**Project**”). Owner also currently intends to construct (or cause the construction of) residential units on one of the parcels within Unit II. The Project will be constructed as a phased development that is anticipated to be completed in the five to seven years following the date of

this Agreement. When the City’s Council approved the Preliminary Plat, one of the conditions was that, prior to completion and approval of a final plat, a Concept Master Plan would identify solutions for water and sewer infrastructure, circulation and drainage on that portion of the Property identified as Unit I. The Preliminary Plat approval was also conditioned upon the final platting standing alone in regards to transportation, sewer, water, stormwater and franchise utilities. This Agreement will address those issues.

F. City has an interest in ensuring that the development of the Property complies with City standards for development and engineering improvements, and City believes that development of the Property pursuant to this Agreement will result in planning, safety, and other benefits to City and its residents.

G. Owner acknowledges that development of the Property pursuant to this Agreement will be beneficial and advantageous to Owner by providing assurances to Owner that it has met the conditions described in Paragraph E, above, and will have the ability to develop the Property within the City pursuant to this Agreement, under the Zoning, and in accordance with the Preliminary Plat.

H. City and Owner acknowledge that this Agreement is a “development agreement” pursuant to the provisions 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 for 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. Other terms defined parenthetically throughout this Agreement shall have the meanings ascribed to such terms.

2.1 **“Applicable Laws”** shall mean the federal, state, county and local laws (statutory and common law) ordinances, rules, regulations, permit requirements, and other requirements and official policies of City which apply to the development of the Property as of the Effective Date.

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

2.2 **“Improvements”** shall mean and refer to all public and private infrastructure improvements 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 Owner, whether on the Property or elsewhere.

2.3 **“Owner”** shall mean and refer to VP I-40 and Country Club, LLC, an Arizona limited liability company, and its successors and permitted transferees or assignees.

2.4 **“Phase”** shall mean and refer to each separate component or portion of the Project which is or may be developed by Owner pursuant to this Agreement in Owner’s sole discretion.

2.5 **“Project”** shall mean and refer to the development of the Property as described in the Recitals to this Agreement.

2.6 **”Property”** shall mean and refer to the real property which is legally described in *Exhibit “A.”*

3. PRELIMINARY PLAT

Owner intends to obtain approval for a final plat on the Property in two phases (Unit I and Unit II) and Owner may do so provided that each phase is independent of the other with regard to transportation, sewer, water, stormwater, and franchise utilities as described in more detail in Section 9 of this Agreement. City shall process all submittals made by Owner in conformance with Section 10.1, and nothing contained in this Agreement shall preclude City from the exercise of its normal review process and requirements in connection with its approval of such submittals.

4. DEVELOPMENT STANDARDS

Development of the Property shall be governed by 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, as well as the standards for off-site and on-site public improvements in existence as of the Effective Date of this Agreement, except as modified herein; provided, however, that Owner obtain off-site construction permits for one or more components of the Project within two (2) years following the effective date of this Agreement. If Owner fails to obtain any off-site construction permits within this two (2) year period, then development of the Project shall be subject to City’s codes, ordinances, regulations, rules, guidelines and policies in effect at the time Owner applies for such construction permits. Notwithstanding the foregoing provisions of this Section 4, City reserves the right to adopt future ordinances assessing or imposing development fees under the authority of A.R.S. § 9-463.05, which shall be applicable to development of the Property. City and Owner agree and acknowledge that, upon the Effective Date of this

Agreement, all building permit and other fees then normally applicable to construction within City shall apply to the Project.

5. GUIDING PRINCIPLES

The Parties acknowledge that development activities for the Property may extend over several years and that many of the requirements and procedures provided for in this Agreement contemplate that development and use of the Property in the future may be subject to procedures, requirements, regulations and ordinances not presently in effect, as well as actions and decisions by City staff and officials which could not be provided for with particularity on the Effective Date. With respect to such matters the Parties agree that they will act reasonably and in good faith in implementing, operating under, and exercising the rights, powers, privileges and benefits conferred or reserved by this Agreement or by law; provided, however, City's denying a permit for the reason of Owner's failure to meet City's criteria for such permit shall not be deemed a breach of this Agreement by City.

6. PROJECT DESCRIPTION AND DESIGN STANDARDS

6.1 Commercial Development. The Project, as contemplated at the time of the Effective Date of this Agreement, will consist of approximately two hundred fifty thousand (250,000) square feet of leasable commercial space. The site layout of the commercial portion of the Project must conform generally to the design standards found within the Zoning Code regarding the arrangement of buildings within a commercial development. Owner, at Owner's election, may submit applications for commercial buildings individually or in groups of buildings to City for development review approval, and the approval process for such submissions will proceed for the building or buildings submitted without the requirement that other buildings proceed through the development review process simultaneously.

6.2 Design Standards. Owner will conform to City's architectural standards with regard to exterior building materials and colors, which will conform to City's Design Review standards. Owner will ensure that massing, bulk and scale of commercial buildings will also conform to these standards.

6.3 Performance of Owner Obligations. City acknowledges that Owner's Obligations included in this Agreement may be performed, in whole or in part, by Owner or by developers and contractors acting for or on Owner's behalf.

7. CITY OBLIGATIONS

7.1 Intersection Improvements at Oakmont Drive and Country Club Drive. City has programmed the improvements to the Oakmont Drive/Country Club Drive intersection (the "**Intersection**") into its Capital Improvement Plan; therefore no contribution will be required from Owner with respect to any public improvements or infrastructure at the Intersection. Attached as **Exhibit "C"** is City's Transportation Engineering Program Memorandum dated January 31, 2014.

7.2 Fanning Wash. In accordance with Section 5.2.1 of the Stormwater Management Design Manual and Section 12-01-001-0006.8.N of the City Code, Owner shall be responsible for improvements to the culvert under Soliere Avenue in order to convey the 100-year flood for the FEMA delineated watercourse known as Fanning Drive Wash (the “**Fanning Wash Improvements**”). City has programmed funds for the Fanning Wash Improvements in an amount not to exceed two hundred fifty thousand dollars (\$250,000.00), which will become payable to Owner when invoiced as construction of the Fanning Wash Improvements proceed and in accordance with City’s established procurement process. Prior to final plat approval of any parcel in Unit II, the Parties agree to work in good faith towards a design solution for the Fanning Wash Improvements. In the event the Parties cannot reasonably agree upon a design solution for the Fanning Wash improvements within five (5) years of the Effective Date and/or Owner has not undertaken substantial alteration of the Fanning Wash culvert within five (5) years of the Effective Date, City has no obligation to make a financial contribution towards the Fanning Wash Improvements unless City, through its City Manager, mutually agrees in writing to extend the obligation. Nothing contained in this Agreement shall relive the Owner of their obligation to make Fanning Wash Improvements in accordance with established City requirements.

7.3 Fourth Street Bridge Spanning Interstate 40. The City’s Council has determined that it will not require contributions or other payments for the widening of the Fourth Street Bridge Spanning Interstate 40 (“**I-40 Bridge**”), as City plans to fund and complete such construction independently of the Project.

8. OWNER OBLIGATIONS

8.1 Signal at Private Driveway and Country Club Drive. Owner acknowledges that, depending on the traffic volumes on Country Club Drive and the projected traffic volumes generated from the development of the parcels in Unit I of the Project, the installation of a traffic signal at the intersection of the Unit I private driveway and Country Club Drive (the “**Signal**”) may, at some point during the development of Unit I, be warranted. Upon reasonable determination by City’s Transportation Engineer, applying standards in effect as of the Effective Date, that a traffic signal warrant analysis (the “**Warrant Analysis**”) is required, Owner agrees to perform the required Warrant Analysis prior to site plan approval for the parcel in Unit I that triggered the need for the Warrant Analysis. Prior to and including the development of the last parcel in Unit I, City agrees that a maximum of two (2) Warrant Analysis may be requested of the Owner. Nothing contained in this Agreement shall preclude City from performing additional Warrant Analysis, at City’s sole expense, independent of a development proposal for any parcel in Unit I of the Project. If the Warrant Analysis determines that the Signal is warranted, Owner shall, at Owner’s sole expense and based on established City procedures, design the Signal prior to building permit issuance for the last undeveloped parcel in Unit I, and shall install the Signal prior to issuance of a certificate of occupancy for the last undeveloped parcel in Unit I.

8.2 Intersection Improvements at Fourth Street and Soliere Avenue. Owner will pay fifty thousand four hundred thirty five dollars (\$50,435.00) for intersection improvements at Fourth Street and Soliere Avenue. Owner’s contribution will be prorated such that ten thousand eighty five dollars (\$10,085.00) shall be due prior to the recordation of a final plat for Unit I of

the Project. The remaining forty thousand three hundred fifty dollars (\$40,350.00) shall be due prior to the recordation of a final plat for Unit II of the Project. In the event that City has not completed such intersection improvements by the termination date established in Section 12.1 of this Agreement, City shall return Owner's contribution to Owner on demand, together with interest, if any, earned on such amount while in the possession of City.

8.3 Parcel 5. At the time of the recordation of a final plat for Unit II of the Project, Owner will transfer or convey, on such terms and conditions as Owner and City may agree, Parcel 5 in Unit II (as depicted in the Preliminary Plat) to City for use as drainage and the Rio de Flag floodplain and floodway. Prior to such transfer or conveyance, Owner will provide a title report and environmental assessment to City. If the title report or environmental assessment indicates any restrictions or encumbrances on the parcel that are inconsistent with City's proposed use as reasonably determined by City's Real Estate Manager, Owner will use reasonable, good faith efforts to resolve such restrictions or encumbrances prior to transfer or conveyance to the extent practicable. Should the restrictions or encumbrances be such that they are unable to be resolved by the Parties within a timely manner, City reserves the right to refuse the transfer or conveyance of Parcel 5 in Unit II. In the event that Parcel 5 in Unit II is not transferred or conveyed to City, Owner shall be responsible for the continued maintenance of any stormwater facilities located on Parcel 5.

8.4 Stormwater Improvements. Owner acknowledges that a Drainage Impact Analysis, previously reviewed and approved by City, identifies several stormwater improvements that are necessary to accommodate development of the Project. Owner further acknowledges that the Drainage Impact Analysis contemplates complete construction of the identified stormwater improvements at the time of commencement of construction of the Project. In order to accommodate a phased approach to development of the Project, Owner agrees, prior to or concurrent with the construction of any improvements on any parcel in any Unit of the Project, to construct the proportionate share of those permanent stormwater improvements, including all necessary landscaping and appurtenances, identified in the approved Drainage Impact Analysis, to ensure that each Unit of the Project is independent of the other with regard to Low Impact Development and drainage. City's Stormwater Manager shall reasonably approve the determination of the proportionate share. Prior to installation of landscaping by Owner, a Landscape Plan for those improvements identified by the Stormwater Manager within the Project shall be reviewed and approved by City in accordance with established City standards. This required landscaping does not include any soil stabilization required as part of the review, approval, and acceptance of a grading permit.

8.5 Maintenance of Stormwater Improvements. Owner shall be responsible for the maintenance of any landscaping and stormwater improvements installed on Parcel 5 in Unit II until such time as Parcel 5 is transferred or conveyed to City in accordance with Section 8.3 of this Agreement.

8.6 Fanning Wash. Owner agrees, in conjunction with the construction of Unit II, to construct those Fanning Wash Improvements identified in Section 7.2 of this Agreement in accordance with this Agreement.

9. PHASING

The Parties acknowledge that development of the Project will be affected by numerous factors outside the control of Owner (including, but not limited to, general economic conditions, interest rates and market demand). Accordingly, Owner may submit multiple applications from time-to-time to develop and/or construct portions of the Preliminary Plat for the Project in phases as long as each phase provides for the logical extension of vehicle and pedestrian connectivity, infrastructure and utilities through the Project, as reasonably approved by City, in compliance with the terms of this Agreement and other applicable provisions of City's codes, ordinances, regulations, rules, guidelines and policies. Further, each phase of the Project must be designed and constructed to function and operate independent of the other in perpetuity, in accordance with Subdivision Regulation 11-20.130.010.B, as well as the approved water and sewer, traffic and drainage impact analyses.

10. DEVELOPMENT PROCESS.

10.1 Diligence in Responding to Approval Requests. City hereby acknowledges and agrees that development of the Property may occur over a span of a number of years and may require City's ongoing participation in the review and approval of modifications and amendments to any final plats, phasing plans, site plans, infrastructure plans, drainage plans, design plans, building plans, grading permits, building permits, archaeological and historic preservation review and disposition, and other plans, permit applications and inspections which are a part of City's current building and development requirements (hereinafter collectively called "**Approval Requests**"). City hereby agrees that, in connection with all such Approval Requests relating to the planning or development of the Property, or any portion thereof, and the construction of improvements on the Property, it shall cooperate with Owner in good faith to process, but not necessarily approve, all such Approval Requests.

10.2 Manager's Power to Consent. City hereby authorizes and empowers its City Manager to consent to any and all requests of Owner requiring the consent of City hereunder this Agreement without further action of the City's Council, except for any actions requiring City Council approval as a matter of law.

11. DEFAULT; REMEDIES

11.1 Events Constituting Default. A Party hereunder shall be deemed to be in default under this Agreement if such Party materially 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. Notwithstanding the foregoing, if the Party allegedly in default has commenced a cure of the default within the time period stated above, is diligently prosecuting such cure, and such cure reasonably requires more than thirty (30) days to complete, then the period for curing such default shall be extended to permit the completion of the cure. For purposes of determining default and termination, those Owner obligations set forth in Section 8 of this Agreement are severable, and each individual Owner Obligation shall terminate upon the successive completion of the individual Owner Obligation.

11.2 Owner's Remedies. In the event that 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 11.1 of this Agreement, then, in that event, in addition to all other legal and equitable remedies which Owner may have, Owner may terminate this Agreement by written notice delivered to City effective upon the date specified on such notice.

11.3 City's Remedies. In the event that Owner is in default under this Agreement, and Owner thereafter fails to cure any such default within the time period described in Section 11.1 of this Agreement then, in that event, in addition to all other legal and equitable remedies which City may have, City may terminate this Agreement by written notice delivered to Owner effective upon the date specified on such notice.

11.4 Development Rights in the Event of Termination. Upon the termination of this Agreement as provided herein, Owner shall have no further rights to develop the Property pursuant to this Agreement but shall have all other rights available to Owner under any other agreement or applicable law, including but not limited to the right to develop the Property consistent with the Zoning.

11.5 No Personal Liability. No current or former member, official or employee of City or Owner when acting within the scope of his or her official capacity shall be personally liable (a) in the event of any default or breach by City or Owner, as applicable; (b) for any amount which may become due to the nonbreaching party or its successor or assign; or (c) pursuant to any obligation of City or Owner, as applicable, under the terms of this Agreement.

11.6 Liability and Indemnification by Owner. Owner shall indemnify, protect, defend and hold harmless 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 Owner, or nonperformance of this Agreement by Owner.

12. GENERAL PROVISIONS

12.1 Effective Date and Term. This Agreement shall be effective 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 twenty years from such date. At the time of recordation, City and Owner are each authorized to fill in "Effective Date" on the first grammatical paragraph of this Agreement.

12.2 Notices. All notices and communications provided for herein, or given in connection herewith, shall be validly made if in writing and delivered or served personally, sent by recognized overnight courier service for next business day delivery, 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, AZ 86001

To Owner:

VP I-40 & Country Club, LLC
2502 E Camelback Road, Suite 214
Phoenix, AZ 85016

Copy to:

City Attorney
City of Flagstaff
211 West Aspen Avenue
Flagstaff, AZ 86001

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 delivered or served personally shall be deemed given upon delivery or service. Notices sent by recognized overnight courier service for next business day delivery, shall be deemed given upon delivery. Notices given by mail shall be deemed given three (3) business days following deposit with the United States Postal Service in the manner set forth above.

12.3 Waiver. No delay in exercising any right or remedy hereunder 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.

12.4 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.

12.5 Authority. The undersigned represent to each other that they have full power and authority to enter into and deliver his Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. Owner 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. Owner and City warrant to each other that the individuals executing this Agreement on behalf of the respective Parties are authorized and empowered to bind the Party on whose behalf each individual is signing. Owner represents to City that by entering into this Agreement, Owner has bound the Property and all persons and entities having any legal or equitable interest in the Property to the terms of the Agreement.

12.6 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 City may apply to the Property, and this provision has no effect on them.

Exhibit "A" Legal Description of Property

Exhibit "B" Preliminary Plat

Exhibit "C" City of Flagstaff Transportation Engineering Program Memorandum dated January 31, 2014

12.7 Recordation of Agreement and Subsequent Amendment; Cancellation. 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 City and Owner execute the Agreement, amendment, or cancellation, as required by A.R.S. § 9-500.05.

12.8 Amendment of the Agreement. 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.

12.9 Limited Severability. City and Owner each believes that the execution, delivery and performance of this Agreement are in compliance with all Applicable Laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any Applicable Laws, constitutional provision, law, regulation, City code or City charter), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

12.10 Governing Law. The substantive 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.

12.11 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 Owner and 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 (or a permitted successor, assignee or transferee), and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

12.12 Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of City shall have an 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.

12.13 Compliance with Applicable Laws. Owner will comply with all Applicable Laws.

12.14 Successors and Assigns.

(a) Upon prior written notice to City, Owner may assign its interest in this Agreement, in whole or in part, to any entity that controls, is controlled by or is under common control with Owner (including but not limited to a limited liability company of which Owner, or any member or manager of Owner, is a member), who undertakes to proceed with development of the Project or to any successor to Owner, as assignee, transferee or otherwise, with regard to the Project. Provided that the assignee has provided City with the name, address and designated representative of the assignee, and has assumed the rights, liabilities and obligations of Owner under this Agreement pursuant to a written instrument (a true and correct copy of which shall be provided to City), then the assignor shall be released from any obligations or liabilities arising under this Agreement from and after the date of assignment.

(b) In addition to the foregoing, Owner may collaterally assign or encumber its rights in this Agreement to or in favor of any Lender or Lenders providing construction or other financing to Owner in connection with the design, construction and development of the Project, or any phase of the Project.

(c) Except as provided above, neither Owner nor any permitted successor, transferee, assignee of Owner may otherwise assign its interest in this Agreement, in whole or in part, without the prior written consent of City, which consent may not be unreasonably withheld by City.

13. WAIVER OF CLAIM FOR DIMINUTION IN VALUE.

Owner hereby waives and fully releases any and all financial loss, injury, claims and causes of action that Owner 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 City’s existing land use laws 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.

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

City of Flagstaff

**VPI-40 & Country Club, LLC, an
Arizona limited liability company**

Gerald W. Nabours, Mayor

By: Vintage Partners, LLC, an Arizona
limited liability company, Manager

Attest:

By: Edward & Company, LLC, an
Arizona limited liability company,
Administrative Agent

City Clerk

By: _____

Approved as to form and authority:

Name: _____

Title: _____

City Attorney

STATE OF ARIZONA)
COUNTY OF _____)

ACKNOWLEDGMENT

On this _____ day of _____, 2014, 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 VP I-40 & Country Club, LLC an Arizona limited liability
company, for the purposes therein contained.

Notary Public
My Commission Expires: _____

Exhibit "A"

Legal Description of the Property

Exhibit "B"

Preliminary Plat

Exhibit "C"

Transportation Engineering Program Memorandum dated January 31, 2014

DRAFT