

When recorded, return to:

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PRE-DEVELOPMENT AGREEMENT

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The date of this Pre-Development Agreement (this “Agreement”) is as of its Effective Date. The parties to this Agreement are the Arizona Department of Transportation, a division of the State of Arizona (“ADOT”), the City of Flagstaff, an Arizona municipal corporation (“City”) and Vintage Partners, LLC, an Arizona limited liability company (“Vintage”). Each of ADOT, City and Vintage may be referred to individually as a “Party”; or collectively as the “Parties.”

Recitals.

As background to this Agreement, the Parties, recite, state and acknowledge each of the following:

A. ADOT is empowered by Arizona Revised Statutes §28-401 and §28-7703 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

B. City is empowered by Arizona Revised Statutes §9-500.05 to enter into this agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the City.

C. ADOT owns certain real property (the “ADOT Property”) located within the City and as legally described on Exhibit A attached to this Agreement.

D. The City owns certain real property (the “City Property”) located within the City and as legally described on Exhibit B attached to this Agreement.

E. Vintage has the contractual right to purchase certain real property (the “Vintage Property”) located within the City and as legally described on Exhibit C attached to this Agreement.

F. The Parties are contemplating a series of contingent transactions which, if all contingencies are met, will result in the following:

1. Vintage will purchase the Vintage Property and, in collaboration with ADOT, will design and construct new operational facilities on the Vintage Property for use by ADOT (the “New ADOT Facilities”). Approval of the building’s interior design is in sole

discretion of ADOT. All other exterior building design shall be subject to all local site plan and permit review procedures.

2. The City, through one or more intergovernmental agreements, will convey the City Property to ADOT as just compensation for the “Roadway Property” as defined in Recital (4) and in lieu of relocation benefits related to ADOT’s move from the facilities on the ADOT Property.

3. Concurrently with the conveyance described in Recital F(2) of this Agreement and subject to terms and conditions to be agreed upon, ADOT will convey the ADOT Property and the City Property to Vintage in exchange for the Vintage Property and the New ADOT Facilities that have been constructed on Vintage Property.

4. Concurrently with the conveyances described in Recital F(2) and in Recital F(3) of this Agreement, and subject to terms and conditions to be agreed upon, Vintage will convey or dedicate to the City, at no cost to the City, certain portions of the ADOT Property and the City Property (the “Roadway Property”) to be determined during the Rezoning (as defined in Agreements Section 1(C) to permit the City to design and/or construct, or to contract with Vintage to design and/or construct (pursuant to City’s procurement procedures), certain roadway improvements planned by the City. Those Roadway Improvements programmed in the City’s FY2015 FY2019 Transportation Plan at a value of \$7,375,000 as an extension of Beulah Boulevard north to University Avenue, and the realignment of a portion of University Avenue in that vicinity (collectively, the “Transportation Improvements”).

G. To accomplish the foregoing, which will be evidenced and undertaken pursuant to a series of separate written agreements yet to be negotiated by, between and among the Parties, the Parties shall meet the conditions necessary to complete rezoning for the ADOT Property and the City Property. This Agreement has been procured pursuant to A.R.S. § 28-7703 *et seq.*, which authorizes ADOT to develop public-private partnership (“P3”) projects using a variety of delivery methods, including pre-development agreements and implementation agreements; and pursuant to A.R.S. § 11-952, which authorizes inter-governmental agreements for various purposes. The related transactions contemplated by the Parties may be referred to in this Agreement as the “P3 Project”; and the series of separate written agreements referred to above to accomplish the P3 Project may be referred to collectively in this Agreement as the “P3 Project Documents.”

Agreements.

NOW THEREFORE, in consideration of the mutual promises and performance of the Parties as set forth in this Agreement, and the Recitals as set forth above, all references to zoning or rezoning(s) throughout this Agreement shall mean that the Parties agree as more fully described below to meet the conditions necessary for rezoning applications to be presented to the City Council whereupon the City Council shall consider the requests for rezoning(s).

1. Rezoning the ADOT Property.

A. Pursuant to Section 10-20.30.020(A)(2) of the Flagstaff Zoning Code (the “Code”), ADOT acknowledges that Vintage is a party under contract to acquire the ADOT Property with rights to submit an application for the rezoning of the ADOT Property (the “ADOT Property Rezoning”).

B. ADOT agrees that Vintage, as a party under contract to acquire the ADOT Property, can: (i) execute and submit to the City (in its capacity as the processing municipality for the ADOT Property Rezoning) any required applications or similar documents or instruments required in connection with the ADOT Property Rezoning; and (ii) to process the ADOT Property Rezoning applications through all relevant City processes and programs. The authority of Vintage is expressly limited to those matters described in the preceding sentence.

C. “The ADOT Property Rezoning” means the rezoning of all or portions of the ADOT Property from its current zoning classifications to the classification(s) which permits the requested land uses along with the associated Site Plan and Development Agreement.

D. The Parties acknowledge that Vintage is undertaking the ADOT Property Rezoning in order that Vintage, and its successors and assigns, shall be subject to the ADOT Property Rezoning at the time of conveyance of the ADOT Property to Vintage.

E. The City, in its capacity as the processing municipality for the ADOT Property Rezoning, agrees and acknowledges Vintage’s authorization under the Code to execute and submit any required applications, and thereupon to pursue and prosecute the ADOT Property Rezoning.

2. Rezoning the City Property.

A. Pursuant to Section 10-20.30.020(A)(2) of the Flagstaff Zoning Code (the “Code”), this Agreement constitutes the authorization by the City for Vintage to: (i) execute and submit to the City (in its capacity as the processing municipality for the City Rezoning) any required applications or similar documents or instruments required in connection with the City Rezoning; and (ii) to process the City Rezoning applications through all relevant City processes and programs. The authority of Vintage is expressly limited to those matters described in the preceding sentence.

B. “City Rezoning” means the rezoning of all or portions of the City Property from its current zoning classification or classifications to the classification which permits the desired uses along with the associated Site Plan and Development Agreement. The Parties acknowledge that they are undertaking the City Rezoning in order that Vintage, and its successors and assigns, shall be subject to the City Rezoning at the time of conveyance of the City Property to Vintage.

C. The City, in its capacity as the owner of the City Property, agrees and acknowledges Vintage’s authorization under the Code to execute and submit any required applications, and thereupon to pursue and prosecute the City Rezoning. The authority of Vintage is expressly limited to those matters described in the immediately preceding sentence.

3. General Agreements Regarding the ADOT Rezoning and City Rezoning.

A. The ADOT Property Rezoning and the City Rezoning (collectively, the “Rezonings”) will be prosecuted by Vintage at its sole cost and expense, including but not limited to the payment of all application fees and the cost of preparing all plans, plats, studies, exhibits and other materials required to be submitted with such applications.

B. Vintage shall concurrently apply for the ADOT Property Rezoning and City Rezoning promptly following execution of this Agreement by all Parties, and shall thereafter concurrently, diligently prosecute the ADOT Property Rezoning and City Rezoning applications to completion, unless and until the P3 Project as currently contemplated is abandoned by one or more of the Parties in accordance with this Agreement.

C. Subject to all applicable laws, ADOT and the City shall cooperate in good faith with Vintage to process the ADOT Rezoning and City Rezoning applications, recognizing that the Flagstaff City Council retains its full discretion to approve or deny the rezoning application.

D. The Parties agree to execute and deliver applications, documents, instruments, submittals, consents and other documents required to effectuate or evidence this Agreement and to evidence the authorization of Vintage by ADOT and the City to proceed hereunder.

E. Vintage shall apply for and prosecute its applications for Milton Road access and impacts directly with ADOT.

4. Other Pre-development Activities.

A. Schedule. The Parties shall exercise good faith and Commercially Reasonable Efforts (efforts which use a standard of reasonableness determined by what a similar person or entity would do according to the standards of the land use and development industry) to proceed with the following acts and undertakings with respect to the P3 Project on the target schedule set forth below, which schedule is not a representation of agreement binding upon any of the Parties, but simply reflects current pre-development discussions and projections as of the date of this Agreement:

1. 30 days from the Effective Date - Vintage submits to ADOT the final site plan and final office space plan for the Vintage Property;
2. 60 days from the Effective Date - Vintage submits to City a concept plan for the ADOT/City property; Vintage will subsequently submit to City for Site Plan review and approval for the new ADOT office/public service use at the Vintage property;
3. 90 days from the Effective Date - Vintage submits to the City the completed applications for the ADOT Property Rezoning and the

City Rezoning; ADOT approval (at ADOT's sole discretion) of site plan and office space plan at Vintage Property;

4. 315 days from the Effective Date - Vintage must obtain City staff completeness and substantive approval of its site plan, Direct Ordinance Zoning Map Amendments and regional plan amendment;
5. 390 days from the Effective Date - The ADOT Property Rezoning, City Rezoning, site plan and development agreement completed and decided upon by City of Flagstaff (at City's sole discretion);
6. 390 days from the Effective Date – Execution of Implementation Agreement between ADOT and Vintage, IGA between ADOT and the City, Development Agreement between the City and Vintage, and all other required agreements.

B. New ADOT Facilities. ADOT and Vintage will work collaboratively toward the approval of preliminary site plan and all pre-development plans in connection with the new ADOT Facilities, including determining applicable programming, scope and other related predevelopment schedules and activities. ADOT may approve or disapprove the preliminary site plan and all pre-development plans at its sole and absolute discretion.

C. Implementation Agreement. ADOT and Vintage will undertake the negotiation and drafting of an Implementation Agreement to be executed by them prior to any construction activity being undertaken by Vintage on the Vintage Property in connection with the construction of the New ADOT Facilities. If ADOT and Vintage fail to execute an Implementation Agreement, this agreement and the Project shall terminate and neither party shall have any claim or cause of action against another Party relating to this agreement.

5. Term. The term of this Agreement shall be through the first to occur of the following: (1) the completion (by appropriate action by the City Council of the City, acting in its sole discretion, and the passage of any applicable referral periods) of both the ADOT Property Rezoning and City Rezoning; (2) the execution by the Parties of all of the P3 Project Documents; (3) the termination or cancellation of this Agreement by a Party in accordance with, Section 6 or Section 7(c); or (4) June 30, 2016.

6. Remedies. In the event of a breach of this Agreement by a Party, the sole remedy of any other Party is to terminate this Agreement by written notice to the other Parties, in which event no Party shall have any further rights under this Agreement or any further responsibilities to any other Party arising from, under or in connection with this Agreement. No act or omission of any Party is specifically enforceable or susceptible of any other form of equitable relief, including but not limited to injunctive or special action relief. The Parties specifically disclaim and waive any right to seek or recover damages from or against any other Party arising from a breach of this Agreement or any provision hereof. Notwithstanding the foregoing, Vintage shall be required, as a condition for entering into an Implementation Agreement with ADOT, to certify

in writing that it has complied with the provisions of Sections 7(A), 7(D), 7(E), 7(F), 7(G), 7(I) and 7(J) of this Agreement.

7. Miscellaneous Provisions.

A. Indemnity and Insurance Requirements.

(1) General Indemnity: To the maximum extent allowed by law, Vintage shall indemnify, defend, and hold harmless the State of Arizona, acting by and through ADOT, and the City from any and all claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description, including any attorneys' fees and/or litigation expenses, which may be brought or made against or incurred by ADOT and the City on account of loss of or damage to any property or for injuries to or death of any person, to the extent caused by, arising out of, or contributed to, by reasons of any alleged act, omission, professional error, fault, mistake, or negligence of Vintage, its employees, agents, representatives, or subcontractors, their employees, agents, or representatives in connection with or incident to the performance of work under this Agreement, or arising out of Workmen's Compensation claims, Unemployment Compensation claims, or Unemployment Disability Compensation claims of employees of Vintage and/or its Subcontractors or claims under similar such laws or obligations in connection with the work performed under this Agreement. Vintage's obligation under this Section shall not extend to any liability to the extent caused by the gross negligence of ADOT and the City, or their employees, except the obligation does apply to any gross negligence of Vintage which may be legally imputed to ADOT and the City by virtue of their ownership or possession of land.

(2) Insurance Requirements: Vintage shall cause all of Vintage's professional employees and subcontractors to procure and maintain, until all of their obligations under the Agreement have been discharged, including any warranty periods, insurance as follows:

Professional Liability (Errors and Omissions Liability)

Each Claim: \$1,000,000

Annual Aggregate \$2,000,000

(a) In the event that the professional liability insurance required by this Agreement is written on a claims-made basis, Vintage warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time the activities undertaken under this Agreement are complete.

(b) The policy shall cover professional misconduct or negligent acts for those professionals providing services under this Agreement.

(c) The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The State of Arizona and the City in no way warrant that the minimum limits contained herein are

sufficient to protect Vintage from liabilities that might arise out of the performance of the services under this Agreement by Vintage, its agents, representatives, employees or subcontractors, and Vintage is free to purchase additional insurance. Vintage shall provide coverage with limits of liability not less than those stated above.

(d) Additional Insurance Requirements: The policies required by this Agreement shall include, or be endorsed (blanket endorsements are not acceptable) to include the following provisions:

(i) Vintage's policies shall stipulate that the insurance afforded Vintage shall be primary insurance and that any insurance carried by ADOT, and its agents, officials, employees of the State of Arizona, and the City shall be excess and not contributory insurance, as provided by A.R.S. Section 41-621(E).

(ii) Coverage provided by Vintage shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

(e) Notice of Cancellation: With the exception of the statutory ten (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this Agreement in the insurance policies above shall require thirty (30) day notice to ADOT and the City. Such notice shall be sent directly to ADOT and the City by certified mail, return receipt requested.

(f) Acceptability of Insurers: Vintage's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona and the City in no way warrant that the above-required minimum insurer rating is sufficient to protect Vintage from potential insurer insolvency.

(g) Verification of Coverage: Vintage shall furnish ADOT and the City with certificates of insurance (ACORD form or equivalent approved by the State of Arizona and the City) as required by this Agreement. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates and endorsements are to be received and approved by the State of Arizona and the City before any activity contemplated by this Agreement commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of any activity contemplated by this Agreement and remain in effect for the duration of any activity contemplated by this Agreement. Failure to maintain the insurance policies as required by this Agreement, or to provide evidence of renewal, is a material breach of this Agreement.

All certificates required by this Agreement shall be sent directly to ADOT and the City. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona and the City reserve the right to require complete copies of all insurance policies required by this Agreement at any time.

(h) Subcontractors: Vintage's certificate(s) of insurance shall include all subcontracts as insured under its policies; or Vintage, at its sole election, shall furnish or cause its subcontractors to furnish to ADOT and the City separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

(i) Approval: Any modification or variation from the insurance requirement of this Agreement shall be made by ADOT in consultation with the Department of Administration, Risk Management Division and the City's Risk Management Division. Such action will not require a formal amendment to this Agreement, but may be made by administrative action.

B. Governing Law; Choice of Forum. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles).

C. Cancellation. This Agreement may be terminated or cancelled by a Party at any time prior to execution of an implementation agreement between ADOT and Vintage upon thirty (30) day written notice to the other Parties.

D. Lobbying Activities. Vintage certifies that, to the best of Vintage's knowledge and belief, no federal, state or local appropriated funds have been paid or will be paid by or on behalf of Vintage, to any person for influencing or attempting to influence an employee of any federal, state or local agency, member of Congress, City elected officials, an officer or employee of Congress, or an employee of a Member of Congress, an employee of the State of Arizona or the City in connection with the awarding of any federal, state or local contract, the making of any federal, state or local grant, the making of any federal, state or local loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification for any federal, state or local contract, grant, loan or cooperative agreement. Vintage also certifies that it shall require all subcontractors to make the foregoing certification and disclosure in their subcontracts with Vintage, and shall include the certification and disclosure provisions set forth above in all subcontracts that exceed \$10,000.00. Notwithstanding the foregoing, it is acknowledged that Vintage has retained a consultant (who is a registered lobbyist) to advise Vintage, but Vintage acknowledges and agrees that no payment to such consultant has involved or will involve federal, state or local appropriated funds.

E. Compliance with Arizona Tax Laws. By signing this Agreement on behalf of Vintage, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Vintage and the Vintage is, to the best of the undersigned's knowledge, not in violation of any laws of the State of Arizona concerning payment of any and all taxes, fees, charges or levies imposed by any governmental entity.

F. Nondiscrimination. Vintage shall comply with State Executive Order No. 99-4 and all other applicable laws concerning nondiscrimination, including but not limited to the Americans with Disabilities Act.

G. Maintenance and Inspection of Records. Vintage shall maintain hard copies of all work product and similar records related to this Agreement in a reasonably accessible location within Flagstaff or Phoenix metropolitan area. In addition, Vintage shall maintain electronic versions of all work product and similar records to the greatest extent possible accessible from those locations. Vintage shall retain and preserve all such records for a period of 10 years from the end of this agreement or the end of the implementation agreement, whichever is longer. For the duration of this Agreement and the 10 year period of records retention, Vintage shall make all such records relating to this Agreement available during normal working hours for inspection, audit of copying by ADOT or ADOT's representatives, for any purpose related to this Agreement, including monitoring Vintage's performance and verifying Vintage's compliance with the terms and conditions of this Agreement. Vintage shall require in any subcontract that its subcontractors retain their work product and similar records relating to activities undertaken pursuant to this Agreement for the same time period and under the same conditions as those relating to the records of Vintage.

H. No Partnership. This Agreement does not establish, and shall not be construed as, a legal partnership between the Parties.

I. Certifications and Registrations. Vintage certifies that it shall require and, upon ADOT's request, will provide evidence that all principals, employees and subcontractors of Vintage performing services under this Agreement hold all required professional certifications and registrations in compliance with all applicable laws.

J. Subcontracts. All subcontracts for or relating to activities to be performed under this Agreement shall be in writing, and Vintage shall include in each such subcontract terms and conditions sufficient to require compliance by the subcontractors with all applicable requirements of this Agreement. Inclusion of the provisions in subcontracts as required in this Agreement is subject to audit by ADOT.

K. Restrictions on Assignment and Transfer. Owing to the nature of the P3 Project, including the selection of Vintage because of its unique qualifications and ownership of (or unconditional right to acquire) the Vintage Property, no assignment of the rights granted to Vintage under this Agreement shall occur without the prior written consent of ADOT and the City, which consent may be given or withheld in ADOT's and the City's reasonable discretion. Any purported assignment, transfer or conveyance in violation of this Section shall be void and shall vest no rights in the purported assignee or transferee.

L. Limited Severability. Each Party 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 ADOT or the City to do any act in violation of any Applicable Laws, constitutional provision, regulation, code or 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. For purposes of this Agreement, the term “Applicable Laws” means the federal, state, county and local laws (statutory and common law), ordinances, rules, regulations, permit requirements, and other requirements and official policies of the State of Arizona and of the City which apply or are in effect as of the Effective Date

M. Construction. The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.

N. Notices.

(1) Addresses. Except as otherwise required by law, any notice required or permitted under this Agreement shall be in writing and shall be given by (a) personal delivery, (b) by United States Postal Service certified mail, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Section, or (c) by any nationally recognized express or overnight delivery service (e.g. Federal Express or UPS), for next-day delivery, delivery charges prepaid:

If to ADOT: Arizona Department of Transportation
Attn: _____
206 South 17th Avenue, MDA _____
Phoenix, Arizona 85007

With a required copy to: Arizona Attorney General’s Office
Attn: Bryan B. Perry, Esq.
1275 West Washington Street
Phoenix, Arizona 85007-2926

If to the City: City of Flagstaff
Attn: City Manager
211 West Aspen Avenue
Flagstaff, Arizona 86001-5359

With a required copy to: City of Flagstaff
Attn: City Attorney
211 West Aspen Avenue

Flagstaff, Arizona 86001-5359

If to Vintage: Vintage Partners, LLC
Attn: David C. Scholl
2502 East Camelback Road, Suite 214
Phoenix, Arizona 85016

With a required copy to: Dickinson Wright PLLC
Attn: Gary L. Birnbaum, Esq.
1850 North Central Avenue, Suite 1400
Phoenix, Arizona 85004-4568

(2) Effective Date of Notices. Any notice sent by United States Postal Service certified mail shall be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service shall be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service shall be deemed effective upon its receipt (or refusal to accept receipt) by the addressee.

O. Time of Essence. Time is of the essence of this Agreement and each provision hereof.

P. Section Headings. The Section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

Q. Waiver. Without limiting the other terms or provisions of this Agreement, the Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver of such right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

R. No Third Party Beneficiaries. No person or entity shall be a third party beneficiary to this Agreement.

S. Exhibits. The Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes.

T. Integration. Except as expressly provided herein, this Agreement constitutes the entire agreement between the Parties with respect to the subject matters hereof

and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement.

U. Consents and Approvals. Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, use or other matter, such consent or approval shall be given or denied by such Party in its reasonable discretion, unless this Agreement expressly provides otherwise.

V. Amendment. No change or addition is to be made to this Agreement except by written amendment executed by all of the Parties. Upon amendment of this Agreement as established herein, references to “Agreement” shall mean this Agreement as amended. If, after the effective date of any amendment(s), the parties find it necessary to refer to this Agreement in its original, unamended form, they shall refer to it as the “Original Development Agreement.” When the Parties mean to refer to any specific amendment to the Agreement which amendment is unmodified by any subsequent amendments, the Parties shall refer to it by the number of the amendment as well as its effective date.

W. Good Faith of Parties. Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily or capriciously and will not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

X. Conflict of Interest Statute. This Agreement is subject to, and may be terminated by the City or the State of Arizona in accordance with the provisions of A.R.S. §38-511.

Y. Waiver. Vintage hereby waives and releases the City from any and all claims under A.R.S. § 12-1134, et seq., including any right to compensation for reduction to the fair market value of all or any part of the Vintage Property as a result of the rezoning of the Vintage property, or of the ADOT Property and the City Property following conveyance to Vintage. The terms of the foregoing waiver shall run with the Vintage Property and shall be binding upon all subsequent landowners, assignees, lessees and other successors, and shall survive the expiration or earlier termination of this Agreement.

Z. Effective Date. The effective date of this Agreement (the “Effective Date”) shall be the date of its recordation in the Official Records of Coconino County, Arizona, in accordance with the terms of A.R.S. §9-500.05.

[SIGNATURES ARE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Agreement to be effective as of its Effective Date.

“ADOT”

ARIZONA DEPARTMENT OF
TRANSPORTATION

By: _____
Name: _____
Title: Director

Date: _____

“CITY”

CITY OF FLAGSTAFF,
an Arizona municipal corporation

By: _____
Name: _____
Title: Manager

Date: _____

Attested:

City Clerk

Approved:

City Attorney

“VINTAGE”

VINTAGE PARTNERS, LLC
an Arizona limited liability company

By: _____
Name: _____
Title: Manager

Date: _____

Exhibit A

[Legal Description of ADOT Property]

Exhibit B

[Legal Description of City Property]

Exhibit C

[Legal Description of Vintage Property]