

When recorded, mail to:

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

**ASPEN HEIGHTS MIXED-USE DEVELOPMENT
ANNEXATION AND
DEVELOPMENT AGREEMENT
BY
AND BETWEEN
CITY OF FLAGSTAFF
AND
YORK BRECKENRIDGE GP, LLC**

ANNEXATION AND DEVELOPMENT AGREEMENT

THIS ANNEXATION AND DEVELOPMENT AGREEMENT (“Agreement”) is made as of this 4th day of November, 2014, between the City of Flagstaff, a municipal corporation organized and existing under the laws of the State of Arizona (“City”) and York Breckenridge GP, LLC, a Texas limited liability company authorized to do business in the State of Arizona (“Developer”). City and Developer may be referred to in this Agreement as “Party” in the singular, and collectively as the “Parties.”

RECITALS

A. The Developer has entered into a purchase and sale agreement to acquire approximately 36.94 acres of real property situated within Coconino County, Arizona, currently located partially within the incorporated boundaries of the City of Flagstaff, and partially outside the incorporated boundaries of the City, as depicted and legally described in **Exhibit A**, (“Property”), attached to and incorporated into this Agreement.

B. The zoning of the approximately 33.26 acre portion of the Property within the City’s boundaries is RR, Rural Residential Zone; and, for the approximately 3.14 acre portion outside the City’s boundaries, the zoning is General (G) Zone (“Annexation Parcel”). Upon annexation, the Annexation Parcel will be designated RR, Rural Residential Zone, the zoning classification most compatible with the current County zoning for this parcel.

C. The Developer desires to rezone an approximately 33.33 acre portion of the Property within the City’s boundaries to MR, Medium Density Residential Zone, and an approximately .53 acre portion of the Property within the City’s boundaries to HC, Highway Commercial Zone. The Developer also desires to rezone the Annexation Parcel from RR, Rural Residential, to HC, Highway Commercial Zone, as further set forth in this Agreement.

D. The City and the Developer are entering into this Agreement pursuant to the provisions of Arizona Revised Statutes (“A.R.S”) § 9-471 (pertaining to annexation) and A.R.S. § 9-500.05 (pertaining to development agreements) in order to facilitate the annexation, proper municipal zoning designation, and development of the Property by providing for, among other things: (1) conditions, terms, restrictions, and requirements for annexation of the Annexation Parcel into the City; (2) the type of land uses and the location, density and intensity of such uses; and (3) other matters related to development of the Property as depicted in the Aspen Heights Concept Plan.

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

F. The Developer acknowledges that annexation of the Annexation Parcel 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 accordance with the Aspen Heights Concept Plan.

G. The Developer has previously submitted to the City an Annexation Application for the Annexation Parcel (“Annexation”), and the City has filed a blank annexation petition (“Annexation Petition”) with the Coconino County Recorder for the Annexation Parcel. The City has held public hearings and meetings in connection with the Annexation pursuant to A.R.S. § 9-471(A); the City has received the completed Annexation Petition bearing the signatures of those property owners desiring annexation of their properties; and the City has conducted a first reading of Ordinance No. 2014-30 (“Annexation Ordinance”).

H. Developer has also previously submitted to the City an application for a rezoning of the Property to the zoning designations set forth in Recital C, above (“Zoning Amendment”), and, concurrent with the Annexation Ordinance, the City is processing that application as an ordinance amending the City of Flagstaff’s Zoning Map, Ordinance No. 2014-31 (“Zoning Ordinance”). The City has held a public hearing and received public comment on the Developer’s rezoning application, and has conducted a first reading of the Zoning Ordinance.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Incorporation of Documents and Recitals. All documents and exhibits referred to in this Agreement and the Recitals stated above are hereby incorporated by reference into this Agreement.
2. General Plan Conformance. The Parties expressly acknowledge and agree that the annexation and development contemplated pursuant to this Agreement is consistent with those portions of the 2001 Flagstaff Area Regional Land Use and Transportation Plan (“Regional Plan”) in effect on the date Developer’s application was filed, and that there are no features of the development as described in the Concept Plan defined in Section 6 herein, including, without limitation, the intensity of development and range of land uses proposed herein, that cannot be accommodated within the scope of the Regional Plan.
3. Effective Date and Term.
 - 3.1 This Agreement shall not become effective, and neither party shall have any obligation under this Agreement, unless each of the following occurs:
 - 3.1.1 This Agreement is executed by both parties;
 - 3.1.2 The City adopts the Annexation Ordinance following a second reading;

- 3.1.3 The City adopts the Zoning Ordinance following a second reading;
 - 3.1.4 This Agreement is recorded in accordance with Section 15.9, as required by A.R.S. § 9-500.05(D);
 - 3.1.5 The Annexation Ordinance has become final following expiration of the thirty-day time period in which it may be challenged pursuant to A.R.S. § 9-471(C) or referred to the qualified electors of the City, or if such statutory challenge is properly made or such a referendum is certified for the ballot, then after resolution of such challenge in favor of the City or after the election upholding the Annexation Ordinance;
 - 3.1.6 The Zoning Ordinance has become final following expiration of the time period in which it may be challenged or referred to the qualified electors of the City, or if such statutory challenge is properly made or such a referendum is certified for the ballot, then after resolution of such challenge in favor of the City or after the election upholding the Zoning Ordinance.
- 3.2 In the event the finality of the Annexation Ordinance under A.R.S. § 9-471(D) or the Zoning Ordinance is delayed by judicial challenge, a referendum, or an injunction following their respective second readings and approvals by the City Council, the Developer, at its option, may terminate this Agreement at any time during the ensuing sixty (60) days by serving written notice upon the City in accordance with this Agreement. Should the Developer elect to terminate this Agreement as provided herein, this Agreement shall be of no further force or effect, and neither party shall have any further obligations under this Agreement. In such event, the City agrees that it shall take all appropriate action necessary to rescind and repeal the Annexation Ordinance and the Zoning Ordinance. However, nothing in this Section 3.2 is intended to limit the absolute discretion of the City in reviewing, adopting, or declining to adopt the Annexation Ordinance and the Zoning Ordinance.
- 3.3 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 by the City.
- 3.4 This Agreement shall automatically terminate on the tenth (10th) anniversary of the Effective Date, unless this Agreement is rescinded or terminated earlier as provided for in this Agreement.
4. Annexation. The City's Planning and Zoning Commission and Council have previously held public meetings on the Annexation under A.R.S. § 9-471(A), and the City Council has received from the Developer and filed with the Coconino County Recorder the completed Annexation Petition duly executed by all necessary owners of the Annexation Parcel and has approved first readings of the Annexation Ordinance and the Zoning Ordinance. The City, concurrently with its approval of this Agreement, has duly considered and approved the second readings of the Annexation Ordinance and the Zoning Ordinance, pursuant to A.R.S. § 9-471(D). The City acknowledges and agrees that the Developer has executed and delivered this

Agreement and the Annexation Petition to the City contingent on the City's adoption of the Annexation Ordinance and the Zoning Ordinance. Nothing in this Section 4 is intended to limit the absolute discretion of the City in reviewing, adopting, or declining to adopt the Annexation Ordinance and the Zoning Ordinance.

5. Zoning Upon Annexation. The current Coconino County zoning for the Annexation Parcel is General (G) Zone. The City has previously held public meetings on the Zoning Amendment and has fully complied with all those requirements of the Arizona Revised Statutes and the Flagstaff Zoning Code necessary to adopt municipal zoning for the Annexation Parcel, upon annexation, as provided in the Annexation Ordinance and the Zoning Ordinance. The Parties acknowledge that A.R.S. § 9-471(L) requires that the City initially adopt zoning classifications which permit densities and land uses no greater than the previously existing county zoning for such lands, and the City has determined that the zoning designation under the Zoning Code most comparable to the General (G) Zone designation is RR, Rural Residential. After the Annexation Ordinance has become final under A.R.S. § 9-471(D), the Annexation Parcel shall be designated RR, Rural Residential and then to HC, Highway Commercial Zone, as further set forth in this Agreement.

6. Concept Plan. The Parties hereby acknowledge that the City accepted the Concept Plan for the Project on August 26, 2014, attached hereto as **Exhibit B** and incorporated herein by this reference (the "Concept Plan"). The Concept Plan sets forth the basic land uses, intensity and density of such uses, relative height, bulk and size of buildings and structures proposed by 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 Concept Plan, in order to make the Project economically viable and otherwise feasible, as the Project progresses through formal site plan review, Developer may request modifications to the Concept Plan and shall incorporate modifications as set forth in this Agreement. The City shall process all submittals made by Developer in conformance with Section 13.1, below, and nothing contained in this Agreement shall preclude the City from the exercise of its normal review process and requirements in connection with its approval of such submittals.

7. Development Standards. Development of the Property shall be governed by the City's codes, ordinances, regulations, rules, guidelines and policies controlling permitted uses of the Property, design review guidelines, 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; provided, however, that Developer obtain grading permits for the Project within two (2) years following the Effective Date of this Agreement. If Developer fails to obtain any grading permits within this two (2) year period, 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. Further, if Developer fails to obtain a grading construction permit within this two (2) year period, the City, at its sole judgment and discretion, may require the Developer to submit a new Traffic Impact Analysis and a new Sewer Impact Analysis for the Project and to amend Sections 10.2 and 10.6 this Agreement to reflect new requirements arising from those analyses for public and other related improvements. Notwithstanding the above, the

Parties expressly acknowledge and agree that the 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. Developer agrees and understands that upon the Effective Date of this Agreement all building permits and other fees normally applicable to construction within the City shall apply to the Project.

8. 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 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 cannot be provided for with particularity at the time the Agreement was executed. With respect to such, the parties agree that they will act in good faith and with reasonableness in implementing, operating under, and exercising the rights, powers, privileges and benefits conferred or reserved by this Agreement or by law. However, denying a permit for the Developer's failure to meet the City's criteria for such permit shall not be deemed a breach by the City of this Agreement.

9. Project Description. The Project as contemplated by this Agreement, and as illustrated in the Concept Plan, shall consist of: (i) two hundred twenty-four (224) cottage units with seven hundred fourteen (714) rooms on approximately 33.33 acres of the Property ("Residential Development"); and (ii) a commercial retail complex consisting of approximately twenty thousand (20,000) square feet of commercial/retail, general service and/or mixed-use development, as well as site improvements, including access, parking, circulation and landscaping, on 3.67 acres of the Property ("Commercial Development"). The Residential Development and Commercial Development collectively constitute the "Project." Pursuant to the relevant provisions of the Flagstaff Zoning Code, the Residential Development qualifies as a "Rooming and Boarding Facility" use. Pursuant to Division 10-40.30.030, Residential Zones, of the Flagstaff City Code, the Developer acknowledges that a conditional use permit is necessary, and must be obtained, for the establishment of a "Rooming and Boarding Facility" use within the proposed MR, Medium Density Residential Zone.

10. Construction of Public and Other Related Improvements. Prior to the issuance of a grading permit for the Project, Developer shall provide security, in a form satisfactory to the City as set forth in the City's Zoning Code, that public and other related improvements will be constructed in accordance with approved plans. Developer shall, at its sole expense, construct or cause to be constructed all public and other related improvements as required by the City's codes, ordinances and this Agreement, and in accordance with approved specifications, as well as those public and related improvements required by the Arizona Department of Transportation ("ADOT") as a condition of approval. Following the construction of the described public improvements, dedication of same to the City, and acceptance by the City of the improvements, unless otherwise provided, the City shall assume, at its expense, the maintenance and repairs of all public improvements in accordance with City policies. Specifically, the scope and nature of the on-site and off-site improvements to be constructed in connection with the Project are as follows:

10.1. On-Site Water and Sewer Modifications. Developer agrees to provide a looped water and

sewer system for the Project consisting of eight (8) inch diameter water and sewer lines. Developer agrees to provide waterline “stub-outs” for future connectivity to those parcels adjoining the Property to the west. All required improvements must be completed and accepted by the City prior to the issuance of any certificates of occupancy for the Project. All on-site water and sewer infrastructure shall be designed and built in accordance with the City of Flagstaff Engineering Standards and Arizona Department of Environmental Quality requirements.

10.2 Off-Site Sewer Modifications and Reimbursement.

10.2.1 Developer is responsible for all off-site sewer improvements as outlined in the accepted Water and Sewer Impact Analysis, dated December 20, 2013 (“WSIA”). Developer agrees to “oversize” approximately five thousand five hundred (5,500) feet of existing sewer line, from manhole 2A-446 to manhole 2A-203, from ten (10) inch diameter to eighteen (18), twenty-one (21) and twenty-four (24) inch diameter pipe, as set forth in the WSIA.

10.2.2 The Parties acknowledge that, pursuant to Section 10.2.1, above, the Developer is required to install off-site improvements to the City’s sewer collector system in a size and/or capacity greater than that which is required to serve only the residents of the Project. Pursuant to the City’s Engineering Standards, the Developer agrees to “oversize” these off-site improvements in order to accommodate not only the needs of the Project, but also the projected required capacity for those properties within the Project’s drainage basin at “full build-out.” Pursuant to Flagstaff City Code Chapter 7-08, Extension and Reimbursement Agreements for the Construction of Water and Sewer Lines, the Developer may enter into a reimbursement agreement with the City for such oversizing from other benefited properties.

10.3 Presidio Drive South Extension. Developer shall construct an extension of the Presidio Drive South roadway from the intersection of Presidio Drive South and South Woody Mountain Road (“Presidio Drive South Extension”). The Presidio Drive South Extension shall be constructed in accordance with City design, engineering and construction standards and shall terminate in a cul-de-sac, as generally depicted on the Concept Plan.

10.4 Roadway Lighting. Roadway lighting on the Presidio Drive South Extension and that portion of South Woody Mountain Road abutting the Property shall be designed, constructed and placed in accordance with City street light standards. Roadway lighting on that portion of Route 66 abutting the Property shall be designed, constructed and placed in accordance with ADOT standards.

10.5 Flagstaff Urban Trail System. As a condition of developing the Property, and to facilitate the expansion of the Flagstaff Urban Trail System (“FUTS”), the Developer agrees to construct, at no cost to the City, a meandering ten (10) foot wide FUTS trail along that portion of the Property abutting Woody Mountain Road (“FUTS Trail”). The eastern edge of the FUTS trail shall be, at all points, at a five (5) feet offset from the back curb

line located along the western edge of Woody Mountain Road. The Parties acknowledge that the FUTS trail may encroach onto adjacent private property. Prior to the issuance of any certificates of occupancy for the Project, Developer shall, at no cost to the City, dedicate a non-motorized pedestrian easement for the FUTS Trail, including those portions, if any, on adjacent private property, to the City.

10.6 West Route 66 and Woody Mountain Road Intersection. In addition to those obligations set forth in Section 10, above, Developer agrees to contribute one hundred two thousand eight hundred five (\$102,805.00) dollars towards a future signalized intersection at West Route 66 and Woody Mountain Road (“Woody Mountain Road Intersection”). Such sum constitutes the Developer’s pro-rata “fair share” contribution towards mitigating the Project’s traffic impact on the Woody Mountain Intersection, in accordance with the City’s Transportation Engineering Memorandum dated August 22, 2014 (“Contribution”). In addition, Developer agrees to dedicate, at no cost to the City, right-of-way across the Property necessary for the Woody Mountain Road Intersection (“Dedication”). Following the Contribution and Dedication, Developer shall have no further obligation or liability with respect to the Woody Mountain Road Intersection. The Contribution shall be paid in full to the City prior to the issuance of public improvement permits for the Project.

10.7 Dedication of Public Rights-of-Way and Easements. Public rights-of-way for all streets and utility and drainage easements with respect to the Project must be identified on the construction plans and dedicated prior to issuance of any grading permits. Dimensions for these easements must be in accordance with City and, where applicable, ADOT requirements.

11. Management.

11.1 Management Agent. Developer agrees that an experienced property management staff shall at all times manage the Residential Development during the term of this Agreement (“Management Agent”). Developer, or an affiliated entity, shall serve as the Management Agent for the Residential Development upon recordation of this Agreement. The Management Agent shall cause the Residential Development to at all times be operated in a manner that will provide secure, safe and sanitary living conditions for its tenants, as required by this Agreement, and any applicable laws, ordinances, regulations or other requirements imposed by law. Further, the Management Agent shall ensure that the tenants of the Residential Development use the Property in a manner that conforms to the character of the surrounding neighborhoods. The Management Agent shall live on-site or, in the alternative, the Management Agent shall provide for an on-site staff member on a twenty-four hour, seven days a week (24/7) basis.

11.2 Crime Free Multi-Housing. In order to achieve the objectives of Section 11.1, above, the Developer, or the Management Agent, shall draft operating rules, policies and regulations for the Residential Development (“Operating Rules”),

and include covenants in tenant leases that require the lawful and proper use of the Residential Development and the Property (“Lease Covenants”), substantially in the form attached hereto as **Exhibit C**, at all times. The Management Agent shall be responsible for enforcing such Operating Rules and Lease Covenants. The Management Agent and any relevant employees of such Agent, shall, during the term of this Agreement, attend, complete, and remain current on any training required by the Flagstaff Police Department in connection with their Crime Free Multi-Housing Program. Management practices, tenant qualifications, Crime Prevention Through Environmental Design Standards (“CPTED”), and background checks shall conform, as closely as possible, to the principles set forth in the City of Flagstaff Police Department’s “Crime Free Multi-Family Housing Program.” Developer agrees that it will ensure that its Management Agent, or relevant employees of such Agent, receives training through the Flagstaff Police Department in the Crime Free Multi-Housing Program.

- 11.3 On-Site Security. In order to ensure the lawful use of the Residential Development during those times of increased resident activity, from 6:00 p.m. every Thursday through to 6:00 a.m. the following Sunday, Developer agrees to provide a sufficient number of security guards to maintain order and to ensure compliance with all applicable state and City laws. For purposes of this Section, “security guard” shall mean licensed and duly bonded security personnel registered pursuant to Arizona Revised Statutes Section 32-2601, *et seq.* In addition, the Management Agent shall consult with the Flagstaff Police Department on a monthly basis for recommendations regarding security personnel levels, as well as any additional security measures that may be required for the protection and well-being of residents and the surrounding neighborhood.

12. Public Transportation System Service. Developer is in negotiations with the Northern Arizona Intergovernmental Public Transportation Authority (“NAIPTA”) regarding the extension of service to the Project in order to facilitate and incentivize the use of public transportation by residents of the project, and other presently underserved areas identified by NAIPTA, to access the campus at Northern Arizona University (“NAU”), based upon a financial commitment from the Developer yet to be determined and structured. Because this issue requires action of a public body with regard to service levels, cost, and other matters, and negotiations with the Developer, both NAIPTA and the Developer anticipate that discussions and negotiations will continue over time, with the goal of providing service by the start of classes at NAU in August 2016. Developer agrees that it will continue to negotiate with NAIPTA in good faith in order to bring to the Project effective public transportation to NAU for student residents of the Project.

13. Exterior Lighting Plan. Developer shall provide exterior lighting for the Residential Development in conformity with the Exterior Lighting Plan, attached as **Exhibit D**. The Parties acknowledge that the Developer has voluntarily limited the Total Outdoor Light Output for the Residential Development to a lumen level that does not exceed that currently permitted for Single-family Residential development in Lighting Zone One.

14. Development Process.

14.1 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 construction plans, site plans, infrastructure plans, drainage plans, design plans, building plans, grading permits, building permits, 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 Developer in good faith to process, but not necessarily approve, all such Approval Requests.

15. Default; Remedies.

15.1 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 Developer obligations set forth in Section 10 of this Agreement are severable, and each individual Developer obligation shall terminate upon the successive completion of the individual Developer Obligation.

15.2 Developer'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 14.1 of this Agreement, then, in that event, in addition to all other legal and equitable remedies which Developer may have, Developer may terminate this Agreement by written notice delivered to City effective upon the date specified on such notice.

15.3 City's Remedies. In the event that Developer is in default under this Agreement, and Developer thereafter fails to cure any such default within the time period described in Section 14.1 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 Developer effective upon the date specified on such notice.

15.4 Development Rights in the Event of Termination. Upon the termination of this Agreement as provided herein, Developer shall have no further rights to develop the Property pursuant to this Agreement but shall have all other rights available to Developer under any other agreement or applicable law, including but not limited to the right to develop the Property consistent with the Zoning so long as the project is developed consistently or less intensively than the accepted Concept Plan.

16. General Provisions.

16.1 Notices. All notices and communications shall be in writing and delivered personally or as of the third business day after mailing by United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed as follows:

To City:

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

To Developer:

Aspen Heights
Attn: David Mills
1301 S. Capital of Texas Highway, Suite
B201
Austin, TX 78746

With copy to:

Richard Stasica, General Counsel

16.2 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.

16.3 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.

16.4 Authority. The undersigned represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. The Developer represents and warrants that it is duly formed and validly existing under the laws of the State of Arizona and that it is duly qualified to do business in the State of Arizona and is in good standing under applicable state laws. The Developer and the City warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing. The Developer represents to the City that by entering into this Agreement, the Developer has bound the Property and all persons and entities having any legal or equitable interest therein to the terms of

the Agreement.

- 16.5 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: Property Description

Exhibit B: Concept Plan

Exhibit C: Lease Covenants

Exhibit D: Exterior Lighting Plan

- 16.6 Amendment. This Agreement may be amended, in whole or in part and with respect to all or any portion of the Property, only with the mutual written consent of the parties to this Agreement or by their successors in interest or assigns.
- 16.7 Severability. If any other provision of the Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.
- 16.8 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.
- 16.9 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.
- 16.10 No Partnership; Third-Party. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Developer and the City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.
- 16.11 Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the 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.

- 16.12 Compliance with All Laws. Developer will comply with all applicable Federal, State, and County laws, as well as with all applicable City ordinances, regulations and policies.
- 16.13 Successors and Assigns. Upon prior written notice to City, Developer 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 Developer (including but not limited to a limited liability company of which the original Developer is a member), who undertakes to proceed with development of 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 Developer 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. Neither Developer nor any permitted assignee of Developer may otherwise assign its interest in this Agreement, in whole or in part, without the prior written consent of the City, which consent may be reasonably withheld by City. This Agreement shall be personal to Developer and its permitted successors and assigns, and shall not run with the land.

17. WAIVER OF CLAIM FOR DIMINUTION IN VALUE.

Developer hereby waives and fully releases any and all financial loss, injury, claims and causes of action that the Developer may have, now or in the future, for any “diminution in value” and for any “just compensation” under the Private Property Rights Protection Act, codified in A.R.S §§ 12-1131 through 12-1138, (the “Act”) in connection with the application of the City’s existing land use laws and including Ordinance Number 2011-01 regarding the Property. This waiver constitutes a complete release of any and all claims and causes of action that may arise or may be asserted under the Act with regard to the subject Property. Developer agrees to indemnify, hold harmless and defend City, its officers, employees and agents, from any and all claims, causes of actions, demands, losses and expenses, including attorney’s fees and litigation costs, that may be asserted by or may result from any of the present or future owners of any interest in the Property seeking potential compensation, damages, attorney’s fees or costs under the Act that they may have, as a result of the application of the City’s existing land use laws, including Ordinance Number 2014-31, upon the Property

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

CITY OF FLAGSTAFF,
an Arizona municipal corporation

Gerald W. Nabours, Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

