

ORDINANCE NO. 2015-18

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, AUTHORIZING THE CITY OF FLAGSTAFF TO ENTER INTO A SECOND AMENDMENT TO DEVELOPMENT AGREEMENT AMENDING THE DEVELOPMENT AGREEMENT WITH NESTLE PURINA PETCARE COMPANY TO ALLOW TEMPORARY EXTENSION OF AGREEMENT AND UNDERLYING LEASE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE

RECITALS:

WHEREAS, the City of Flagstaff desires to enter into a Second Amendment to Development Agreement with Nestle Purina Petcare Company and to temporarily extend the underlying lease of property for the reasons set forth therein.

ENACTMENTS:

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

SECTION 1. In General.

The Second Amendment to the Development Agreement between the City of Flagstaff and Nestle Purina Petcare Company attached hereto is hereby approved. The Mayor of the City of Flagstaff is hereby authorized to execute the Second Amendment of the Development Agreement on behalf of the City and all other associated documents.

SECTION 2. Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this ordinance or any part of the code adopted herein by reference are hereby repealed.

SECTION 3. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 4. Effective Date.

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

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 15th day of September, 2015.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

Attachment: Second Amendment to Development Agreement, with attached Exhibit 1 Second Amendment to Lease and related legal descriptions (Exhibits A, B, C, D)

WHEN RECORDED, RETURN TO:
Elizabeth Burke, City Clerk
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

DRAFT

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

The City of Flagstaff, a political subdivision of the state of Arizona (“City”) and Nestle Purina Petcare Company, a Missouri corporation (“Purina”) enter into this Second Amendment to the Development Agreement effective this 15th day of September, 2015.

RECITALS:

- A. In 2003 the City of Flagstaff (“City”) and Nestle Purina Petcare Company (“Purina”) entered into a Development Agreement recorded on June 25, 2003 as Instrument No. 3207666, Official Records of Coconino County, Arizona (“Development Agreement”) in connection with Purina’s expansion of its pet food manufacturing and warehousing facility located in the City of Flagstaff on that real property legally described in Exhibit A (“Original Property”).
- B. Pursuant to the Development Agreement, title to the Original Property and Purina’s manufacturing facility located thereon (the “Facility”) were conveyed to the City and leased back by the City to Purina under the terms and conditions of a Government Property Lease entered into pursuant the provisions of A.R.S. § 42-6201, *et seq.* (the “Lease”). The form of Lease was recorded along with the original Development Agreement in Instrument No. 3207666, Official Records of the Coconino County, Arizona (“Lease”).
- C. In 2008 as approved in Ordinance No. 2008-16 the City and Purina entered into a First Amendment to Development Agreement recorded on June 26, 2008 as Instrument No. 3491226, Official Records of the Coconino County, Arizona (“First Amendment”) in connection with approximately 34.28 net acres of additional real property legally described in Exhibit B attached hereto (“Additional Property”) for the purpose constructing a 94,000 square foot warehouse space addition, and parking facilities for employees and trailers, all as part of a further expansion of the Facility.
- D. Pursuant to the First Amendment, title to the Additional Property and the expanded Facility (“Expanded Facility”) were conveyed to the City and leased back by the City to Purina under the terms and conditions of the Lease (which was also amended). The First Amendment to the Lease was recorded on January 16, 2009, Instrument No.

3510882, Official Records of the Coconino County, Arizona (“First Amendment to Lease”).

- E. In 2009 pursuant to the First Amendment, the City purchased approximately two (2) acres of the Additional Property from Purina as legally described in Exhibit C attached to this Ordinance (“Fire Station Parcel”), and as conveyed by Special Warranty Deed recorded on June 16, 2009 as Instrument No. 351083 in the Official Records of the Coconino County, Arizona.
- F. In 2015 pursuant to the Development Agreement, Purina conveyed real property to the City for Industrial Drive by Quit Claim deed as recorded on January 1, 2015 as Instrument No. 3711317, Official Records of the Coconino County, Arizona, and as legally described in Exhibit D attached hereto (“Industrial Drive Parcel”).
- G. The original purposes of the Development Agreement as amended by the First Amendment were to help fund expansions of the Purina facilities (“Expansions”) so as to provide new stable, good-paying employment opportunities for Flagstaff residents; provide for purchase of the Fire Station Parcel, and conveyance of the Industrial Drive Parcel; and provide certain other benefits (collectively “Benefits”) via Purina’s projected total tax savings of \$3,929,608.00.
- H. The Development Agreement (as amended) and underlying Lease (as amended) are scheduled to expire on or about October 14, 2015.
- I. Although the parties have been performing the terms and conditions of the Development Agreement (as amended) and underlying Lease (as amended), Purina’s actual tax savings have been far less than projected.
- J. The Purina Expansions have enabled a substantial increase in production of pet food at the Facility, and there are associated emissions to the atmosphere and odor.
- K. Purina has a Clean Air Act permit from the Arizona Department of Environmental Quality and currently is in compliance with applicable laws, rules and regulations regarding emissions to the atmosphere and odor.
- L. Pursuant to A.R.S. § 42-6203.A.4 the City and Purina desire to temporarily extend the Agreement and underlying Lease for a period commencing on October 14, 2015 and continuing for up to six (6) months to further the original purposes of the Development Agreement and to explore the feasibility of voluntary installation of equipment at the Purina Facility to achieve measurable odor mitigation.

AGREEMENT

NOW THEREFORE, IN CONSIDERATION FOR THE MUTUAL PROMISES CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. Extension Period. The Development Agreement (as amended) is hereby extended from October 14, 2015 to April 15, 2016, unless sooner terminated ("Extension Period.") Either party may terminate this Second Amendment upon giving at least five (5) days written notice to the other party.

2. Second Amendment to Lease. The term of the Lease (as amended) shall be extended to be coterminous with the Development Agreement Extension Period. To accomplish this, the parties shall execute a Second Amendment to Lease in the form attached hereto as Exhibit 1. The City of Flagstaff will record the Second Amendment to Lease within ten (10) days from execution.

3. Research. During the Extension Period, at its own expense, Purina will explore whether it is financially and technically feasible to purchase and install equipment at the Purina facility in Flagstaff to minimize odor from the Purina Facility ("Research"). Upon completion of the Research, the parties will explore whether it is appropriate to extend the Development Agreement for a longer period of time.

4. Contingency. If the parties do not reach a longer term agreement beyond the Extension Period, it is the intention of the parties that the Development Agreement (as amended) and Lease (as amended) shall be deemed to have expired as of October 14, 2015 and that title to property currently leased by the City to Purina shall have automatically reverted to Purina as of October 15, 2015 and/or that Purina will be placed in same the financial position for purposes of property tax and the government property lease excise tax as if such transfer had occurred. The parties will make good faith efforts to achieve that financial equilibrium.

5. Effect. All other terms and conditions of the Development Agreement (as amended) shall remain in effect.

NESTLE PURINA PETCARE COMPANY

By: _____
Its: _____

CITY OF FLAGSTAFF

By: Mayor Nabours

Attest:

By: Elizabeth Burke, City Clerk

Approved as to form:

By: _____
City Attorney's Office

Attachments: Exhibit 1, with attached Exhibits A, B, C, D

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WHEN RECORDED, RETURN TO:
Elizabeth Burke, City Clerk
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

DRAFT

SECOND AMENDMENT TO LEASE

The City of Flagstaff, a political subdivision of the state of Arizona (“City” or “Landlord”) and Nestle Purina Petcare Company, a Missouri corporation (“Purina” or “Tenant”) enter into this Second Amendment to Lease effective 15Th day of September, 2015.

RECITALS:

- M. Landlord and Tenant entered into a Lease in 2003, and First Amendment to Lease in 2008. The form of Lease is set forth in the recorded Development Agreement referenced below, and the First Amendment to Lease is recorded in Instrument No. 3491226, Official Records of the Coconino County, Arizona (collectively “Lease”).
- N. The Leased Property consists of the land legally described in Exhibit A (“Original Property”), and Exhibit B (“Additional Property”) and Purina facilities located on such land, but excludes certain parcels subsequently conveyed to the City and legally described as Exhibit C (“Fire Station Parcel”) and Exhibit D (“Industrial Drive Parcel”). The Fire Station Parcel was conveyed to the City by Special Warranty Deed and recorded on January 16, 2009 in Instrument No. 3510883 in the Official Records of the Coconino County, Arizona. The Industrial Drive Parcel was conveyed to the City by Quit Claim Deed and recorded on January 12, 2015 Instrument No. 3711317 in the Official Records of the Coconino County, Arizona.
- O. City/Landlord and Purina/Tenant entered into a Development Agreement in 2003, and First Amendment to Lease in 2008. Those documents are recorded in Instrument Nos. 3207666 and 3491226, Official Records of the Coconino County, Arizona (“Development Agreement”).
- P. Pursuant to A.R.S. § 42-6203.A.4 the City and Purina have approved a Second Amendment to Development Agreement to temporarily extend the Development Agreement and underlying Lease for a period commencing October 14, 2015 and continuing for up to six (6) months to further the original purposes of the Development Agreement and to explore the feasibility of voluntary installation of equipment at the Purina Facility to achieve measurable odor mitigation.

AGREEMENT

NOW THEREFORE, IN CONSIDERATION FOR THE MUTUAL PROMISES CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

- 6. Extension Period. The Lease is hereby extended from October 14, 2015 to April 15, 2016, unless sooner terminated ("Extension Period.") Either party may terminate the Second Amendment upon giving at least five (5) days written notice to the other party. The Development Agreement and Lease term shall be coterminous.

- 7. Effect. All other terms and conditions of the Lease shall remain in effect.

TENANT: NESTLE PURINA PETCARE COMPANY

 By: _____
 Its: _____

LANDLORD: CITY OF FLAGSTAFF

 By: Mayor Nabours
 Attest:

 By: Elizabeth Burke, City Clerk
 Approved as to form:

 By: _____
 City Attorney's Office

Attachments: Exhibits A, B, C, D