

When recorded, mail to:

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

MILL TOWN DEVELOPMENT AGREEMENT

AMONG

CITY OF FLAGSTAFF

AND

VINTAGE PARTNERS, LLC

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made as of this ___ day of _____, 2018, among the City of Flagstaff, a municipal corporation organized and existing under the laws of the State of Arizona (“City”), and Vintage Partners, LLC, an Arizona limited liability company (“Vintage”). The effective date of this Agreement will be determined in accordance with Section 1 below.

RECITALS

- A. A.R.S. § 9-500.05 authorizes the City to enter into development agreements with landowners and persons having an interest in real property located in the City.
- B. The Arizona Department of Transportation, a division of the State of Arizona (“ADOT”), owns certain real property (the “ADOT Property”) located at the southwest corner of Milton and University in Flagstaff, Arizona as legally described in Exhibit A, attached hereto and incorporated herein by this reference.
- C. The City owns certain real property located adjacent to the ADOT Property (the “City Property”) as legally described on Exhibit B, attached hereto and incorporated herein by this reference.
- D. An affiliate of Vintage owns certain real property located at the southwest corner of University Avenue and Woodlands Village Boulevard (“Vintage Property”) as legally described on Exhibit C, attached hereto and incorporated herein by this reference.
- E. Vintage, the City, and ADOT previously entered into a Pre-Development Agreement recorded in the Official Records of Coconino County, Arizona on March 17, 2015 as Instrument Number 2015-023, as amended (the “PDA”).
- F. Pursuant to the PDA, Vintage has the right to seek rezoning of the City and ADOT Property. The City and ADOT Property are collectively referred to in this Agreement as the “Mill Town Property”.
- F. The City and Vintage are entering into this Agreement pursuant to the provisions of Arizona Revised Statutes (“A.R.S.”) § 9-500.05 (pertaining to development agreements) in order to facilitate development of the Mill Town Property and related transportation improvements, which include the “City Transportation Improvements” and the “Milton Underpass Improvements” identified in Exhibit D.

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. Effective Date/Sequence of Approvals. The Parties agree that this Agreement will not become effective, and no party will have any obligation under this Agreement unless each of the following occurs: (1) this Agreement is executed by all parties, (2) the City has entered into an Intergovernmental Agreement with ADOT, pursuant to which the City will convey the City Property to ADOT (the “IGA”), (3) Vintage has entered into an Implementation Agreement with ADOT, pursuant to which Vintage will design and construct new operational facilities for ADOT on the Vintage Property (“New ADOT Facilities”) and, immediately following the completion of the New ADOT Facilities, ADOT will transfer its property to Vintage and, concurrently, the City will convey the City Property to ADOT pursuant to the IGA, ADOT will transfer the Mill Town Property to Vintage, and the City-approved final plat dedicating all right-of-way required for the City Transportation Improvements will be recorded (the “Implementation Agreement”), (4) Vintage’s application to rezone the Mill Town Property to Highway Commercial (“HC”) and Resource Protection Overlay (“RPO”) is approved by the City Council and the rezoning becomes final and effective (the “~~Direct to Ordinance Zoning Map Amendment Rezoning~~ Ordinance”), ~~(5) the conditional use permits to allow the Rooming and Boarding use on the Mill Town Property and additional building height (“CUP”) are approved by the Planning and Zoning Commission and become final and effective,~~ and ~~(6)~~ this Agreement is recorded as required by A.R.S. § 9-500.05(D). The City, Vintage, and ADOT will use an escrow process to ensure that all transfers of property and recordation of right-of-way and public easement dedications occur simultaneously. The date on which all of the foregoing items have been completed is the “Effective Date” of this Agreement. If a challenge is properly made to the Agreement ~~or~~, the Rezoning Ordinance, ~~or the CUP,~~ this Agreement will become effective after resolution of any such challenges in favor of the City. If requested by either party, the parties shall execute an amendment to this Agreement confirming the Effective Date.

1.1 No Default. 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 will not be deemed a default by the City.

1.2 Duration. If the Effective Date has not occurred within five (5) years from the date of this Agreement, then this Agreement shall automatically terminate. In addition, this Agreement will automatically terminate on the tenth (10th) anniversary of the Effective Date, unless this Agreement is rescinded or terminated earlier as provided for herein. Notwithstanding any automatic termination, if requested by either party, the parties shall execute an instrument confirming the termination of this Agreement.

2. Entitlements. Vintage hereby agrees to be subject to all the terms, conditions, and stipulations of the ~~Rezoning Direct to Ordinance Zoning Map Amendment~~ Ordinance for PZ-16-00239-02 (City Ordinance No. 2018-13), ~~the CUP (PZ-16-00239-04),~~ Site Plan (PZ-16-00239-01), and preliminary plat (PZ-16-00239-03) (collectively, the “Entitlements”). The City acknowledges and agrees that the development rights granted by the ~~Rezoning Ordinance Direct to Ordinance Zoning Map Amendment Ordinance and CUP~~ are vested for a term of five (5) years from the Effective Date of this Agreement (the “Vested Rights”) and that Vintage shall have a right to develop the Mill Town Property consistent with the Vested Rights, subject to the

Applicable Rules (as defined in Section 3, below) and any changes to the Rules as permitted by this Agreement. Further, the City acknowledges that the recordation of the final plat for the Mill Town Property (“Final Plat”) will occur only after (i) the New ADOT Facilities have been constructed on the Vintage Property pursuant to the Implementation Agreement, (ii) the City has conveyed the City Property to ADOT pursuant to the IGA, and (iii) the Mill Town Property has been conveyed to Vintage by ADOT in exchange for the conveyance by Vintage to ADOT of the Vintage Property with the New ADOT Facilities constructed thereon pursuant to the Implementation Agreement. As a result, the parties agree that the preliminary plat approval will remain valid for three (3) years from the Effective Date to allow sufficient time for the transactions contemplated by clauses (i) through (iii) to be completed.

3. Development Standards. The development of the Mill Town Property, as well as the standards for off-site and on-site public improvements, will be governed by the City’s codes, ordinances, regulations, rules, guidelines, and policies controlling permitted uses of the Mill Town Property, design review guidelines, the density and intensity of uses, the maximum height and size of the buildings within the Mill Town Property in existence as of the Effective Date of this Agreement (for purposes of the Zoning Code [Title 10 of the Flagstaff City Code], the version in place as of May 5, 2017 will apply), except as modified herein or otherwise agreed to, in writing, by Vintage and the City (collectively, the “Applicable Rules” or “Rules”); provided, however, that if Vintage fails to apply for any Construction Permits for development of the Mill Town Property within five (5) years following the Effective Date of this Agreement, and thereafter diligently proceeds with construction pursuant to those Construction Permits, then development of the Mill Town Property will be subject to the City’s codes, ordinances, regulations, rules, guidelines, and policies in effect at the time Vintage applies for such Construction Permits. “Construction Permits” shall mean any permit issued by the City or other jurisdiction that is required in order to begin construction of any on-site or off-site improvements related to development of the Mill Town Property, including but not limited to public improvements, grading, electrical, gas, plumbing, mechanical, or structural.

4. Permits and Fees. Vintage agrees and understands that all building permit fees, Development Fees enacted under A.R.S. § 9-463.05, and other fees normally applicable to construction within the City at the time of application shall apply to construction of all on-site and off-site improvements related to the development of the Mill Town Property (collectively, “User Fees”), and that User Fees are subject to change at the discretion of the City Council. From and after the date of this Agreement until the expiration of the fifth (5th) year following the Effective Date, the City agrees that no User Fee payable to the City in connection with the development of the Mill Town Property will be increased by more than 7% per calendar year. For example, if the City does not change the User Fees during the first three (3) years following the date of this Agreement, but during the fourth (4th) year the City four-years following the Effective Date the City increases a User Fee by 30%, then the User Fee applicable to Vintage will be limited to a 28% increase. From and after the expiration of such five (5) year period, all User Fees will be charged at the then-current rate, regardless of the percentage increase(s) from the prior year(s), if any.

5. Project Description, Site Layout, and Design Considerations. The Mill Town Property will be developed according to the approved Site Plan including the conditions of approval, which is

attached as Exhibit E and incorporated into this Agreement by reference. Development according to the approved Site Plan is a condition to the approved Rezoning Ordinance.

5.1 Development Allocations. As depicted on the Site Plan ~~and approved in the CUP~~, the overall maximum number of residential units to be developed on the Mill Town Property is ~~3480~~ units and ~~1186224~~ beds.

~~5.2 Safety Plan. Owner agrees to participate in the City of Flagstaff Crime Free Multi-Housing Program and agrees that a final safety plan that addresses events, parties, general safety requirements, staffing and operations shall be approved by the Planning Director prior to final Certificate of Occupancy for the residential portion of the development.~~

~~5.1.1 Parking Calculations. Consistent with the Parking Demand Analysis submitted with the Site Plan, the City agrees that the parking calculation governing the Rooming and Boarding uses permitted under the CUP will be calculated at .77 parking spaces per bed.~~

6. Resource Protection Plan. The Rezoning Ordinance provides that the Mill Town Property will be included within the City's Resource Protection Overlay. In connection with the Preliminary Plat and Site Plan, a Natural Resource Protection Plan (the "NRPP") was prepared by Shepard Westnitzer ("Engineer") dated February 5, 2018, that contains the approved resource protection strategy for the Mill Town Property. The City acknowledges that the NRPP exempts disturbance related to the City's Transportation Improvements and governs future plat submittals for the individual development parcels.

7. Combined Roadway Project. Vintage, through the Public Private Partnership ("P3 Partnership"), has been selected to manage the design and construction of the City Transportation Improvements. Vintage will manage the procurement process for the design and construction of the City Transportation Improvements and the upsized 12" sewer line in University Drive described in Section 7.5 below ("University Sewer"), utilizing a public procurement process in compliance with Title 34 of the Arizona Revised Statutes pertaining to construction of public infrastructure. The City will assign a Construction Manager to coordinate with Vintage's Project Manager and to determine the method of project delivery and serve as the project liaison through the construction phase. Vintage has previously engaged Engineer to prepare the thirty percent (30%) plans (the "30% Plans") for the City Transportation Improvements, University Sewer, and the Milton Underpass Improvements (collectively, the "Combined Roadway Project"). The parties have determined which improvements within the Combined Roadway Project will be categorized as City Transportation Improvements or Milton Underpass Improvements, and that summary is provided as Exhibit D. Milton Underpass Improvements are generally limited to those that would not otherwise have been required to be completed as a part of the City Transportation Improvements. The City will be responsible for City Transportation Improvement costs and Vintage will be responsible for Milton Underpass Improvement costs, except as otherwise expressly provided herein.

7.1 Design Phase. Vintage intends to utilize Engineer as the primary professional consultant to complete the final design for the Combined Roadway Project. Within ninety (90)

days following the Effective Date of this Agreement, Vintage's Project Manager, in coordination with the City's Construction Manager, will complete the final design budget for the Combined Roadway Project ("Design Budget"). The Design Budget will include the cost of the 30% Plans, and identify, by line item, each major component of the Combined Roadway Project and assign allocations to the City Transportation Improvements, the University Sewer, and the Milton Underpass Improvements. ~~In assigning the allocations,~~ Vintage will be entitled to reimbursements receive a credit for the amount paid to the Engineer for the 30% Plans related to City Transportation Improvements and the University Sewer. If the actual cost of any line item is more or less than the estimate shown on the Design Budget, then the party responsible for such line item shall be responsible for any excess costs and entitled to the benefit of any cost savings for that line item, subject to the other limitations set forth in this Agreement.

7.1.1 Final Design and Right-of-Way Adjustments. The parties acknowledge that the right-of-way required for the final design for the Combined Roadway Project ("Roadway ROW"), including related transit facilities, may require modifications to the design of the roadway, and that some of these changes may require minor adjustments to the right-of-way lines between preliminary and final plat. Both parties acknowledge that if the final Roadway ROW lines must adjust beyond what is shown on the preliminary plat, the City will facilitate the administrative approval of Site Plan modifications. Any such adjustment will not impact the approvals granted through the ~~Entitlements Site Plan, Zoning Map Amendment, and Preliminary Plat approvals.~~

7.1.2 High Frequency Bus Lanes and Bus Stop Locations. The parties agree to design and construct the City Transportation Improvements in a manner that supports the future addition of High Frequency Bus Lanes, if adequate funding for High Frequency Bus Lanes and construction by a third party are provided to the satisfaction of the City and the City determines that the addition of High Frequency Bus Lanes is in the best interest of the community, in the City's sole discretion. If adequate funding is provided prior to the completion of the Final Design for the Combined Roadway Project, and the City determines that the addition of High Frequency Bus Lanes is in the best interest of the community, the City will eliminate the requirement for bus pull-outs within the Combined Roadway Project. The City further agrees to work with ADOT to coordinate High Frequency Bus Routes on their jurisdictional roadways to be consistent with the adopted results of the Milton Road Corridor Master Plan.

7.2 Land Transfers.

7.2.1 ROW Dedications. At the time of approval of the 100% Plans, the City will consider the Final Plat. Upon approval of the Final Plat and transfer of the Mill Town Property to Vintage, Vintage and the City shall take all action necessary to record the Final Plat which will provide for the dedication by Vintage to the City and the City's acceptance of the Roadway ROW, including public easements.

7.2.2 University Remnant. The City acknowledges and agrees that the realignment of University will cause a portion of the prior alignment to become remnant right-of-way as depicted in Exhibit G hereto (the "University Property"). Concurrently with the recordation of the Final Plat, the City agrees to take all action necessary to transfer the University Property to Vintage in exchange for the Roadway ROW, which process is

provided for and permitted under A.R.S. § 28-7203. Upon such transfer, the University Property shall become part of the Mill Town Property for purposes of this Agreement.

7.2.3 Additional Public Easements and Rights-of-Way. Vintage will use good faith, best efforts to obtain agreements with relevant property owners for any and all public easements, public right-of-way, rights of entry, and/or other use rights required for construction of the City Transportation Improvements and University Sewer. Vintage shall use good faith, best efforts to negotiate commercially reasonable terms for the acquisitions of the easements ~~by on behalf of~~ the City; provided, however, if despite the exercise of such efforts, Vintage is unable to secure agreements for any necessary easements, the City shall take steps to obtain such easements, which may include use of the City's power of eminent domain and the obtaining of immediate possession, all in accordance with applicable law. Such costs of obtaining the easements necessary for the City Transportation Improvements or University Sewer (including, without limitation, the costs of eminent domain, including legal fees and court costs) shall be paid by the City and included in the cost of the City Transportation Improvements. Costs of obtaining easements for the Milton Underpass Improvements will be borne by Vintage, and if Vintage is unable to obtain any easements required for the Milton Underpass Improvements, the City shall take steps to obtain such easements at Vintage's expense, which may include use of the City's power of eminent domain and the obtaining of immediate possession, all in accordance with applicable law.

7.3 Construction Phase. The City has budgeted \$7,375,000 for the City Transportation Improvements and an additional \$300,000 for related sewer upsizing detailed in Section 7.5 below. Engineer has prepared an Estimate of Probable Costs based on the Roadway ROW design drawings as of the date of this Agreement, and based on that Estimate the City intends to program an additional \$400,000, subject to City Council approval, for the City Transportation Improvements, which is expected to be available no later than July 1, 2018.

7.3.1 Construction Budget. Following the completion of the Combined Roadway Project design, Vintage's Project Manager shall initiate the procurement of a contractor properly licensed by the State of Arizona Registrar of Contractors in coordination with the City's Construction Manager to construct the Combined Roadway Project (the "Work"). After contractor selection and prior to contract approval by the City Engineer, Vintage's Project Manager will prepare a final budget in coordination with the City's Construction Manager which will identify, by line item, each major component of the Combined Roadway Project and shall allocate each component to the City Transportation Improvements, the University Sewer, or the Milton Underpass Improvements ("Construction Budget"). Pursuant to Section 7.4.2 and 7.5 below, the City will be responsible for the costs of the line items for the City Transportation Improvements and Vintage will be responsible for the cost of the line items for the Milton Underpass Improvements, subject to the contributions to be made by the City to the Milton Underpass Improvements as provided in Section 7.4.2 below. If the actual costs of any line item at the completion of the Work is more or less than the estimate shown on the Construction Budget, then the party responsible for such line item shall be responsible for any excess costs and entitled to the benefit of any cost savings for that line item, subject to the other

limitations set forth in this Agreement. The Construction Budget will account for all costs related to the construction of the Combined Roadway Project pursuant to the final design. Such costs include without limitation surveying, testing, permits, bonding, construction management fees, overhead, taxes, as well as a contingency.

7.3.2 Construction. Vintage, through the selected contractor, shall diligently complete the construction of the Work in accordance with the Applicable Rules and secure all necessary Construction Permits for the Work. The City shall provide inspection services for the Work that is within the City's jurisdiction to ensure construction in accordance with the final design, and will accept the Work completed with the City's jurisdiction when the project has been completed subject to the requirements of this Agreement.

7.4 Project Payments.

7.4.1 Design Costs. Following the Effective Date of this Agreement and within ten (10) working days of the completion of the Design Budget, the parties will deposit their respective allocations into an escrow account, pursuant to separate escrow instructions to be prepared by Vintage's Project Manager with approval of the City's Construction Manager.

7.4.2 Construction Costs. Within ten (10) ~~business working~~ days of the completion of the Construction Budget, the parties will deposit their respective allocations in an escrow account pursuant to separate escrow instructions to be prepared by Vintage's Project Manager with approval of the City's Construction Manager and which will ensure payments are made in accordance with the prompt pay requirements under A.R.S. § 34-221 for the Work. The City will also contribute \$~~250400~~,000 toward the costs of the Milton Underpass Improvements as the City's share of the regional transportation improvement. Further, at final acceptance of the City Transportation Improvements, the total cost for the City Transportation Improvements, University Sewer, and Milton Underpass Improvements will be established, and if the actual cost of the City Transportation Improvements is less than \$7,775,000, then such cost savings will be contributed to the costs of the Milton Underpass Improvement; provided that, the City's total contribution to the Milton Underpass Improvements must not exceed 50% of the total cost of the Milton Underpass Improvements.

7.4.3 Alternate Funding Sources. The City agrees to support Vintage's efforts to secure other non-City funding sources for the Milton Underpass Improvements, but only to the extent that such funding sources do not trigger Federal procurement processes or construction related processes. Vintage agrees that it will not pursue funding sources that "Federalize" the City Transportation Improvements.

7.5 University Sewer. The Combined Roadway Project includes a section of sewer upsizing from 8" to 12" in University Avenue, and a new 12" sewer extension in University Drive to be funded separately by the City Water Services Division with a budget of \$300,000. The funds for the oversizing and extension of the 12" sewer lines will be deposited and dispersed as part of

the City Transportation Improvement funds as provided in Section 7.4.2 above. The Design and Construction Budgets will separate the University Sewer cost so that they can be allocated to the correct City Division.

7.6 No Further Financial Assurance. The parties agree that the escrow requirement for the estimated cost of the Milton Underpass Improvements, as set forth in Section 7.4.2 above, will satisfy any requirement for financial assurances in connection with the Final Plat for the Mill Town Property and that no additional assurance beyond the escrow account will be required by the City for the Milton Underpass Improvements.

~~7.7 Auto Mall Lot Assessment Payment. The City intends to deposit, subject to Council Approval, \$150,000 in the escrow account for the Milton Underpass Improvements in consideration for the Auto Mall lot assessment paid by Vintage associated with the relocation of the Harkins Theater from the Vintage Property. The \$150,000 is from the Transportation Fund and must be used to pay for the Milton Underpass Improvements.~~

8. Vintage Project Infrastructure.

8.1 Impact Analyses. The City and Vintage acknowledge that the following impact analyses are approved in connection with the Entitlements and applicable to the Mill Town Property:

- Water and Sewer Impact Analysis, dated March 23, 2017 (“WSIA”)
- Traffic Impact Analysis, dated October 30, 2017 (“Traffic Study”)
- Preliminary Drainage Report and Drainage Impact Analysis, dated October 5, 2017 (collectively the “DIA”)

8.2 Offsite Infrastructure. Provided that Vintage proceeds with the development of the Mill Town Property in accordance with the Entitlements, the City agrees no offsite infrastructure improvements are required by the Mill Town ~~Project development~~ beyond the City’s Transportation Improvements, except for the Milton Underpass Improvements and Milton Turn Lane described below. As part of the overall P3 Partnership, the Combined Roadway Project mitigates the offsite development impacts of the Mill Town Project. Vintage agrees to mitigate the identified onsite drainage impacts arising from the development of the Mill Town Property in accordance with the DIA. Further, the parties acknowledge that the DIA goes beyond the analysis of the Mill Town Property by providing for the necessary improvements related to the City Transportation Improvements. The City agrees that any offsite drainage improvement requirements that are a component of DIA are City Transportation Improvements and as a result will be included in the completion of the Plans and treated as a City Transportation Improvement cost under Section 7 of this Agreement. As a result, no financial assurances for offsite drainage improvements are required.

8.2.1 Milton Turn Lane. The Traffic Study identifies that a right-turn lane into the Mill Town Property from Milton will be required, and that such improvement is not a component of City Transportation Improvements and will be completed as a separate project by Vintage, at Vintage’s sole cost and expense.

8.2.2 Milton Underpass. As provided for in the Rezoning Direct to Ordinance Zoning Map Amendment Ordinance, the Milton Underpass Improvements must be completed before any certificate of occupancy is issued for development on the Mill Town Property. Following completion of the Milton Underpass Improvements and acceptance by the City, Vintage will make a one-time payment not to exceed \$~~6100~~,000 (~~currently being evaluated by the parties~~) to the City to contribute to the operation and maintenance costs of the Underpass. In addition to the \$~~6100~~,000 one-time payment, Vintage will be responsible for all warranty work related to the Milton Underpass for one year after acceptance by the City or ADOT.

8.3 Onsite Construction. The parties hereto acknowledge and agree that to the extent Vintage develops the Mill Town Property, including the frontage improvements along Milton Road, it shall have the right and the obligation, at any time after the Effective Date of this Agreement, to construct or cause to be constructed and installed, in accordance with the Applicable Rules, regulations, construction standards, and governmental review processes, all portions of the onsite improvements that relate to the phase or portion of the Mill Town Property to be developed by Vintage subject to approved civil plans, and the construction of the project will be concurrent with the Work provided that adequate fire flow is available to the Mill Town Property. However, no certificate of occupancy will be issued for any portion of the Mill Town Property until the Combined Roadway Project is completed and accepted by the City and/or ADOT.

8.3.1 Vintage shall restore such City easements and rights-of-way, used pursuant to the encroachment permit, to their condition prior to Vintage's entry upon completion of such construction, repairs, or maintenance. Vintage, its agent, and employees, also shall have the right, upon receipt from the City of an appropriate encroachment permit, to enter and remain upon and cross over any City easements or rights-of-way to the extent reasonably necessary to install and maintain landscaping material within the portion of the City right-of-way not used for vehicular travel.

8.4 Eco-Pass. Vintage has committed to providing each residential lessee within the Mill Town Project a NAIPTA Eco-Pass till such time that NAIPTA implements a higher education bulk rate pass program (U-Pass) which will provide students of both NAU and CCC with fare-free access to the entire Mountain Line network.

9. Notices. Any notice or other communication required or permitted to be given under this Agreement will be in writing and will be deemed to have been given if (1) delivered to the party at the address set forth below during normal business hours, (2) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, with sufficient postage, or (3) given to a recognized and reputable overnight delivery service, to the address set forth below, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section.

To City:

To Vintage:

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

Mark Ortman
VP Flagstaff P3, LLC
2502 E. Camelback Road, Suite 214
Phoenix, AZ 85016

Notices will be deemed received (1) when delivered to the party, (2) three business days after being sent by U.S. mail, certified and return receipt requested, properly addressed, with sufficient postage, or (3) the following business day after being given to a recognized and reputable overnight delivery service.

10. General Provisions.

10.1 Further Assurances. Each party, promptly upon the request of the other, will take such further actions and will execute, acknowledge, and deliver to the other any and all further instruments as may be necessary or proper to carry out the purpose and intent of this Agreement.

10.2 Successors and Assigns. All of the provisions hereof will inure to the benefit of and be binding upon the successors and assigns of the parties hereto pursuant to A.R.S. § 9-500.05(D), except as provided below. Vintage's rights and obligations hereunder may only be assigned to (i) a person or entity that has acquired the Vintage Property or the Mill Town Property or a portion thereof and only by a written instrument, recorded in the official records of Coconino County, Arizona, expressly assigning such rights and obligations, or (2) a related entity including any subsidiary, business, corporation, partnership, limited liability company, or other entity in which Vintage (or its principals) holds a substantial interest, directly or indirectly. All rights and obligations of Vintage under this Agreement will constitute covenants that run with the land and will be binding on all of Vintage's respective successors and assigns.

10.2.1 Notwithstanding the foregoing, the City agrees that Vintage's ownership, operation, and maintenance obligations provided by this Agreement may be assigned to one or multiple property owners' association(s) ("POA(s)") to be established by Vintage. Vintage agrees to provide the City with written notice of any assignment of Vintage's rights or obligations within a reasonable period of time following such assignment.

10.2.2 Notwithstanding any other provisions of this Agreement, Vintage may assign all or part of its rights and duties under this Agreement to any financial institution from which Vintage has borrowed funds for developing the Mill Town Property or a portion thereof.

10.3 Entire Agreement. This Agreement contains the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes any prior written or oral understandings or agreements between the parties.

10.4 Modification of Agreement. This Agreement may be amended at any time by written amendment executed by and between the City and Vintage. All amendments to this

Agreement must be recorded in the official records of Coconino County, Arizona, within ten (10) days following execution, as required by A.R.S. § 9-500.05(D).

10.5 Default. Failure of a party to perform a material obligation of this Agreement shall constitute a breach by that party of this Agreement and, if the breach is not cured within thirty (30) days after written notice thereof from the other party (the “Cure Period”), shall constitute a default under this Agreement; provided, however, that if the failure is such that more than thirty (30) days would be reasonably required to perform such action or comply with any term or provision thereof, then the breaching party shall have such additional time as may be necessary to perform or comply so long as the party commences performance or compliance within said thirty (30) day period and diligently proceeds to complete such performance or fulfill such obligation. In the event a breach is not cured within the Cure Period, the non-defaulting party shall have all the rights and remedies that may be available under law or equity, including the right to institute an action for damages.

10.6 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 any other provision of this Agreement. Nothing in this Agreement shall constitute or be deemed to be a waiver by Vintage of its right to request future rezonings or changes in development standards for all or any portion(s) of the Property pursuant to City procedures and requirements existing at the time of the request. Nothing in this Agreement shall be deemed to be a waiver by the City of the right to act, by approval or denial, on such rezoning or change. Further, nothing in this Agreement shall constitute or be deemed to be a waiver or relinquishment by Vintage of its rights to continue nonconforming uses of all or any portion(s) of the Mill Town Property which may exist, or have existed, as of the date of this Agreement, subject to legal principles applicable to such non-conforming uses.

10.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which will constitute an original, but all of which will constitute one and the same agreement.

10.8 Terms. Common nouns and pronouns will be deemed to refer to the masculine, feminine, neuter, singular, and plural, as the identity of the person may in the context require; and the word “person” or “party” will include a corporation, limited liability company, firm, partnership, proprietorship, or other form of association.

10.9 Descriptive Headings. The descriptive headings throughout this Agreement are for convenience and reference only, and the words contained therein will in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

10.10 Construction of Agreement. This Agreement has been arrived at by negotiation and will not be construed against either party or against the party who prepared the last draft.

10.11 Recordation and Effect. This Agreement will be recorded by the City in its entirety, inclusive of all exhibits, in the official records of Coconino County, Arizona, as required by A.R.S. § 9-500.05(D).

10.12 Governing Law. This Agreement and the rights of the parties shall be governed by and construed in accordance with the laws of the State of Arizona.

10.13 Cancellation for Conflict of Interest. This Agreement is subject to the cancellation provisions of A.R.S. § 38-511.

10.14 Time of the Essence. Time is of the essence in implementing the terms of this Agreement.

10.15 Authorization. The execution and performance of this Agreement has been duly authorized by all necessary laws, resolutions, or corporate actions of the respective parties. The parties to this Agreement represent and warrant that the persons executing this Agreement have full authority to bind the respective parties.

10.16 Severability. If any provision or provisions of this Agreement, or the application thereof to any person or circumstance, is determined to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is so determined invalid or unenforceable, will not be affected thereby, and each provision hereof will be valid and will be enforced to the fullest extent permitted by law unless the enforcement of the remaining provisions would defeat the benefit of the bargain for either party in any material respect.

10.17 Exhibits. All exhibits attached hereto are incorporated herein by reference as though fully set forth herein.

10.18 Dispute Resolution. If a dispute arises out of or relates to this Agreement and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to litigation or some other dispute resolution procedure.

10.18.1 Mediation Procedure. Mediation will take place in Flagstaff, Arizona, be self-administered and be conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, New York 10017, (212) 949-6490, www.cpradr.org, with the exception of the mediator selection provisions, unless other procedures are agreed upon by the parties.

10.18.1.1 Commencement of Mediation. Either party may refer the dispute to mediation by sending by U.S. mail, certified and return receipt requested, to the other party or parties a written notice (the "Mediation Notice") calling on the other party or parties to proceed to mediation. The party or parties who have received a Mediation Notice will contact the party calling for mediation seven (7) days from receipt of the Mediation Notice to confirm receipt of the Mediation Notice and to begin the mediator selection process.

10.18.1.2 Mediator Selection. Unless the parties agree otherwise, the parties will select the mediator(s) from the roster of attorney mediators trained

under the Alternative Dispute Resolution Program of the Coconino County Superior Court. If the parties are unable to agree upon a mediator within ten (10) business days of the confirmation of receipt of Mediation Notice, each party will independently inform the Director of the Alternative Dispute Resolution Program of the Coconino County Superior Court (the “Director”) of three attorney mediators from that roster that are acceptable to the party, and further, inform the Director of any preference as to matters such as whether co-mediation is preferable, mediation style, subject matter expertise, or other factors pertinent to the case. The Director will then select one or more attorney mediators from the parties’ lists or such other attorney mediator(s) from the above noted roster as the Director may deem, in the Director’s sole discretion, appropriate under the circumstances.

10.18.1.3 Fees and Costs. Each party agrees to bear its own fees and costs in mediation. The parties will enter into a written agreement with the mediator(s) regarding the mediator(s)’ fees and expenses before the first mediation session. The parties will share equally the mediators’ fees and mediation expenses.

10.18.1.4 Subsequent or Contemporaneous Contracts. The parties will include this provision in all subsequent or contemporaneous contracts relative to this matter, absent specific written agreement of the parties otherwise.

10.18.1.5 Participation in Mediation. The parties agree to encourage participation in mediation by all relevant parties. The parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation.

10.18.1.6 Waiver. This section does not constitute a waiver of the parties’ rights to arbitrate or initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if provisional relief is required under the Arizona Rules of Civil Procedure.

10.19 Venue and Attorneys’ Fees. Except as otherwise agreed by the parties, any litigation brought by either party against the other to enforce the provisions of this Agreement must be filed in the Coconino County Superior Court or in the United States District Court for the District of Arizona, if appropriate under 28 U.S.C. § 1331. In the event any action at law or in equity is instituted between the parties in connection with this Agreement, the prevailing party in the action will be entitled to its costs including reasonable attorneys’ fees and court costs from the non-prevailing party, as well as expenses incurred in connection with the prosecution or defense of such action. For purposes of this Agreement, the term “attorneys’ fees” or “attorneys’ fees and costs” will mean the reasonable fees and expenses of in-house and outside counsel to the parties hereto, which may include reasonable printing, photocopying, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, and other persons performing services under the supervision of an attorney, and the reasonable costs and fees incurred in connection with the enforcement or collection of any judgment obtained in any such proceeding. The provisions of this Section will survive the entry of any judgment, and will not merge, or be deemed to have merged, into any judgment.

10.20 Negation of Partnership. The parties specifically acknowledge that the Project will be developed as private property, that no party is acting as the agent of any other party in any respect, and that each party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. None of the terms or provisions of this Agreement are intended to create a partnership or other joint enterprise between the parties.

10.21 No Obligation to Develop Property. Except as expressly set forth in this Agreement, neither the City nor Vintage will be required to complete any part or all of the development of the Mill Town Property. City reserves the right to design and construct the City Transportation Improvements if Vintage has not commenced development of the Mill Town Property (i.e., construction of related on-site or off-site improvements) within three (3) years of the effective date of this Agreement.

10.22 No Third Party Beneficiaries. The City and Vintage acknowledge and agree that the terms, provisions, and conditions of this Agreement are for the sole benefit of, and may be enforced solely by, the City and Vintage, and none of the terms, provisions, conditions, and obligations are for the benefit of or may be enforced by any third party.

10.23 Compliance with All Laws. Vintage will comply with all applicable Federal, State, County, and City laws, regulations, and policies.

10.24 Recitals. The Recitals set forth above are incorporated in this Agreement by reference as though fully restated.

11. Estoppel Certificate. Vintage may request of the City Manager, and the City Manager shall, within thirty (30) calendar days, respond and certify by written instrument to the requesting party that (a) the Rezoning Ordinance ~~and Conditional Use Permit are~~ is unmodified and in full force and effect, or if there have been modifications, that the Site Plan is in full force and effect as modified, stating the nature and date of such modification; (b) there is or is not a default under the Rezoning Ordinance or this Agreement and the scope and nature of the default; and (c) the City has or does not have any existing or pending legal or equitable claims against any party with an ownership interest in the Mill Town Property. In the event Vintage has not received an estoppel certificate within thirty (30) days from the date of the request, then in such event, Vintage shall be entitled to prepare an estoppel certificate and deliver the certificate to the City Manager, and such estoppel certificate shall be binding upon City.

12. Performance Under Agreements. The City shall perform its obligations under and pursuant to the IGA, subject to all provisions of the IGA, including provisions related to termination, and subject to and conditioned upon ADOT's performance under and pursuant to the IGA. Termination of the IGA by the City or ADOT pursuant to any provision in the IGA related to termination will not result in a default by the City of any obligations under this Section. In the event of a default by the City of its obligations under this Section, Vintage's sole and exclusive remedy shall be limited to specific performance (i.e., transfer of the City Property to ADOT), thereby waiving any right to seek damages of any kind from the City. However, in no event will Vintage have any rights to specific performance or enforcement of this Section if either Vintage

or ADOT is in default of its obligations under the Implementation Agreement, separately entered into by those parties.

[Signature page follows.]

IN WITNESS WHEREOF, the City has caused this Agreement to be executed by its duly authorized representatives, and Vintage has signed the same on or as of the day and year first above written.

“City”

City of Flagstaff, an Arizona municipal corporation

Coral Evans, Mayor

Attest:

City Clerk

Approved as to form:

City Attorney

“Vintage”

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

Mark E. Ortman, Jr., Its Manager

STATE OF ARIZONA)
COUNTY OF COCONINO)

ACKNOWLEDGMENT

On this _____ day of _____, 2018, before me, a Notary Public, personally appeared Coral Evans, Mayor of the City Flagstaff, known to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that she executed the same on behalf of the City of Flagstaff, for the purposes therein contained.

Notary Public
My Commission Expires: _____

STATE OF ARIZONA)
COUNTY OF MARICOPA)

ACKNOWLEDGMENT

On this _____ day of _____, 2018, 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/she executed the same on behalf of Vintage Partners LLC, an Arizona limited liability company, for the purposes therein contained.

Notary Public
My Commission Expires: _____

LIST OF EXHIBITS

- Exhibit A Legal Description of ADOT Property
- Exhibit B Legal Description of City Property
- Exhibit C Legal Description of Vintage Property
- Exhibit D Identification of City Transportation Improvements and Milton Underpass Improvements
- Exhibit E Site Plan for Mill Town Property
- Exhibit F [RESERVED]
- Exhibit G Depiction of University Property