

WHEN RECORDED RETURN TO:

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

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "**Agreement**") is made as of the ___ day of _____, 2020, by and between the CITY OF FLAGSTAFF, ARIZONA, an Arizona municipal corporation (the "**City**") and AUZA FLAGSTAFF, LLC (the "Owner") AND TRINSIC ACQUISITION COMPANY, LLC, a Delaware limited liability company (the "**Developer**"). The City and the Developer are sometimes referred to in this Agreement collectively as the "**Parties**," or individually as a "**Party**."

RECITALS

A. AUZA FLAGSTAFF, LLC (the "Owner") owns that certain real property located west of the intersection of Lake Mary Road and High Country Trail in Flagstaff, Arizona, which consists of approximately 11 acres and is more particularly described on **Exhibit A** (the "**Property**").

B. It is the desire and current intention of the Developer to develop a 160-unit multi-family residential community on the south side of the Property (the "**Project**").

C. It is the desire and current intention of the Owner that upon approval by City Council of the rezoning of the Property as described in **Section 2** below, the Developer will acquire the Property, on which the 160-unit multi-family residential community will be constructed. The Developer is under contract with the Owner to purchase the Property upon which the Project will be constructed, and is authorized to make the commitments described herein.

D. Arizona Revised Statutes Section 9-500.05 allows a municipality and a landowner or any other person having an interest in real property located in the municipality to enter into a development agreement pertaining to any matter relating to the development of such real property, including applicable land use rules, regulation and official policies, permitted land uses, density and intensity of land use, phasing of the development and duration of the development agreement, and development fees.

E. The Parties desire to enter into this Agreement in order, among other things, to facilitate development of the Property by providing for and establishing the community character of the Property, the type of land uses and the location, density, and intensity of such land uses, designating twenty (20) units for affordable rental housing, and other matters relating to the development of the Property as depicted in the preliminary site plan for the Project (the "**Site Plan**"), a copy of which is attached as **Exhibit C** and incorporated by reference in this Agreement.

F. The City believes that the development of the Property pursuant to this Agreement would provide certain benefits to the City, and the Developer believes that the development of the Property pursuant to this Agreement would be beneficial and advantageous to the Developer.

AGREEMENT

Now, therefore, in consideration of the foregoing recitals and representations and the mutual promises contained in this Agreement, the Parties agree as follows:

1. **Recitals.** The recitals above, A through F are incorporated into this Agreement.
2. **Implementation of the Concept Plan through the Rezoning.** The Developer has submitted an application for a direct to ordinance zoning map amendment to rezone the Property from Estate Residential (ER) to Medium Density Residential (MR) in accordance with the Site Plan. The Developer acknowledges that the City Council has absolute discretion to approve or disapprove the proposed zoning. The Parties acknowledge that certain conditions (the “Rezoning Conditions”) will be approved separately in connection with the rezoning. In the event a conflict exists between the language set forth in one or more of the Rezoning Conditions and the terms of this Agreement, the Rezoning Conditions shall govern.
3. **Division and Combination of Parcels.** Following the zoning map amendment approval, the Developer will acquire the Property and file a lot combination with the City to combine the parcels that are subject to the zoning map amendment into one parcel. The final configuration of the parcels within the Property is shown in **Exhibit D**. The Property must be maintained as a single parcel as depicted in Exhibit D; this parcel cannot be split for the life of the Project. This paragraph survives the termination of this Agreement.
4. **Development Standards.** Development of the Property shall be governed by the City’s ordinances, rules, guidelines, and policies controlling permitted uses of the Property, 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 as well as any Rezoning Conditions and requirements set forth in this Agreement; provided, however, that Developer shall obtain certificate of occupancy for the multi-family housing development described in **Section 5** below within five (5) years following the effective date of this Agreement. The Developer’s failure to obtain certificate of occupancy for the entirety of the multi-family housing development within five (5) years of the effective date of the rezoning ordinance shall entitle the City, in its sole discretion, to conduct a public hearing for the purpose of reverting the Medium Density Residential (MR) zoning on the Property to its former zoning classification of Estate Residential (ER), in accordance with Arizona Revised Statutes § 9-462.01. Regardless of the time of development, current City Engineering Standards, Building Code, Fire Code, and other Code provisions, regulations, rules, and guidelines will apply to the Project.
5. **Project Description.** The Project contemplated by this Agreement shall consist of a multi-family housing development consisting of one-hundred sixty (160) rental units on the 9-acre southern portion of the Property as set forth in the Site Plan attached hereto as Exhibit C,

which include one hundred and twelve (112) one-bedroom units and forty-eight (48) two-bedroom units. Twenty (20) rental units will be permanently affordable and subject to the Affordability Plan, which is described in **Section 11** below. The Developer may request subsequent amendments to the Site Plan in accordance with the Flagstaff Zoning Code. Notwithstanding the forgoing, the unit mix may be modified no more than ten percent (10%) without City Council approval.

7. **Standards.** All public works facilities and infrastructure which Developer is required to construct pursuant to the provisions of this Agreement, and which, upon completion will be dedicated to the City, shall be designed and constructed to State and City standards.

8. **Construction of Public and Private Improvements.**

8.1 Developer shall, at its own expense, construct or cause to be constructed all public and private improvements as required by the City's code or ordinances and in accordance with approved specifications. Following construction of the described public improvements, and dedication of the same to the City, the City shall assume, at its expense, and in accordance with City policies, the maintenance and repair of all public improvements to be constructed, with the exception of the FUTS trail extension on the Property as described below in **Section 9.3**.

8.2 The Developer shall meet all City of Flagstaff storm water, pre vs post retention, peak flow mitigation, Low Impact Development, and rainwater harvesting requirements per the approved drainage report and site plan, and as shown on the approved civil construction plan.

8.3 Per the Aura Flagstaff Public Water & Sewer Impact Analysis prepared by the City of Flagstaff dated June 1, 2018, no off-site infrastructure improvements are required other than to serve the Project.

8.4 Developer shall extend the FUTS trail in accordance with all applicable City standards for trail width, paving, drainage, lighting, landscaping, and all other necessary requirements, through a portion of the Property, as generally depicted on the Site Plan. FUTS access pathways shall not be gated or otherwise obstructed and shall be open to the general public at all times. Developer shall be responsible for all maintenance and snow removal operations of the portion of the FUTS trail extension on the Property.

8.5 Developer shall build a concrete FUTS trail in accordance with all applicable City standards across adjoining parcels to the east and west between Wild West Trail and Lake Mary Road, provided the City is able to obtain property rights for the FUTS on those parcels.

8.5 Per the Traffic Impact Statement (“TIS”) for the Project prepared by CivTech, Inc. dated February 3, 2020 and submitted to the City of Flagstaff, traffic from the completed Project will have a minimal effect on existing conditions in the surrounding area and no mitigation measures are warranted or recommended. The Developer will work with the City to design and implement the recommendations in the TIS and in a manner that meets City Codes and guidelines.

9. **Dedication of Public Easements.** Public utility and drainage easements must be identified on the construction plans and dedicated prior to the issuance of building permits. Dimensions for these easements must be in accordance with City requirements.

9.1 As part of the development of the Property and to facilitate the expansion of FUTS, the Developer agrees to dedicate a twenty (20) foot wide FUTS easement (the “Easement”) to the City and to construct the trail system in the configurations and dimensions depicted in the Site Plan as part of the public improvements. The Developer shall dedicate the FUTS easement to the City concurrently with the approval of the civil plan set for the Project. The Developer agrees that the construction of the trail system will coincide with the development of the Property.

9.2 In order to preserve the required forest resources, including those described below in **Section 10**, the Developer agrees to dedicate a resource protection easement for the approximate 1.93 acres of the Property on the north side of High Country Trail as identified in the Post Development Resources plan attached as **Exhibit G**.

10. **Resource Protection.** The Parties acknowledge and agree that resource protection provisions set forth in the City’s Zoning Code are applicable to the entire Property. The Developer understands that it shall maintain twenty-five percent (25%) of the existing forest resources in their natural state. See **Section 14.3** below regarding the reduction in required forest resource preservation on the Property from fifty percent (50%) to twenty-five percent (25%).

11. **Affordable Housing.** Developer agrees to provide an affordable housing contribution of twenty (20) percent of the number of units allowed before the density bonus is applied, or twenty (20) of ninety-nine (99) allowable dwelling units. Developer shall provide for the long-term management of these units for households earning up to eighty percent (80%) of the Area Median Income (AMI) as defined by the US Department of Housing and Urban Development (HUD), or its successors, for thirty (30) years after the units are placed into service. Developer will comply with the affordable housing requirements set forth in the Affordability Plan attached as **Exhibit H**, attached hereto and incorporated by reference. The Affordability Plan may be modified only with the express written consent of the City of Flagstaff Housing Director.

Developer’s property manager shall not discriminate against an applicant’s source of income, and will accept HUD Housing Choice Vouchers and Veterans Affairs Supportive Housing (“VASH”) Vouchers. No limits will be set on the number of vouchers accepted at the Project. Standards for applicant income shall be waived for voucher holders, as the rent

affordability is reviewed and determined by the Flagstaff Housing Authority. Applicants that already possess a voucher will be placed in a market rate unit. Property management shall allow a tenant to break the lease on an affordable unit without penalty if awarded a Housing Choice Voucher or VASH Voucher, at which time the tenant may sign a new 12-month lease for market rate rent.

The provisions of **Section 11** shall survive the termination of this Agreement.

12. **Sustainable Building Program Density Bonus.** In order to meet the applicable density bonus criteria in Zoning Code Section 10-30.70.030, the applicant will construct seventy-five percent (75%) of the dwelling units to meet the Home Energy Rating System (HERS) Index 50 standard. Accordingly, the development will meet the minimum sustainable building standards outlined in Section 10.30.70.040 of the Zoning Code:

- 12.1 Water Resource Protection: The landscape design for the development shall not include an oasis zone (hydrozone 1) as otherwise permitted in Section 10-50.60.050(C), Oasis Allowance, and Section 10-50.60.060, Hydrozones.
- 12.2 Transportation/Air Quality: The development site is located within at least one-quarter mile of a bus stop; and, the development is located within at least one-quarter mile of a FUTS trail or connected to it; and, residential electrical systems are designed for electric vehicle charging.
- 12.3 Waste Reduction During Construction: A plan for the recycling or reuse of all paper, cardboard, plastics, and metals; and, a plan for the recycling or reuse of all lumber scraps so that they are diverted from the landfill
- 12.4 Energy Efficiency: An applicant applying the HERS rating system to receive the density bonuses allowed under Section 10-30.70.030, Density Bonus, shall obtain independent third-party verification that the minimum HERS rating has been achieved to the satisfaction of the Director and the Building Official before the density bonus is applied.

13. **Crime Free Multi-Housing Program.** Following completion of construction of the Project, the Developer shall work with City of Flagstaff to join and participate in the City of Flagstaff Crime Free Multi-Housing Program.

14. **Incentives.** In recognition of the Developer's agreement to set aside twenty (20) units for affordable rental housing purposes and utilize the City's sustainable building bonus, the City has approved the following incentives for the Project:

- 14.1 A density bonus of forty-five (45) units has been applied in accordance with Zoning Code Section 10-30.20.040(B)(2).
- 14.2 A density bonus of twenty-five (25) units has been applied in accordance with Zoning Code Section 10-30.70.030.

- 14.3 A fifty percent (50%) reduction in the forest resource protection requirement per Zoning Code Table 10-30.20.040.B.
- 14.4 A reduction of 16 required parking spaces per Zoning Code Table 10-50.80.040.A.

15. **Notices.** Unless otherwise specifically provided in this Agreement, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly delivered upon personal delivery 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 W. Aspen Avenue
Flagstaff, Arizona 86001

Copy To:

City Attorney
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, AZ 86001

To Developer:

Todd Gosselink
Trinsic Acquisition Company
4040 E. Camelback Road Suite 222
Phoenix, AZ 85018

16. **DEFAULT; REMEDIES**

16.1 **Events Constituting Default.** A party hereunder shall be deemed to be in default under this Agreement if such party 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.

16.2. **Dispute Resolution.** In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before the commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The mediator selected shall have at least five (5) years' experience in mediating or arbitrating disputes relating to commercial property development. Each party agrees to bear its own costs in mediation. The Parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation. This section does not constitute a waiver of a Party's right to 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. The results of the mediation shall

be nonbinding on the parties and any party shall be free to initiate litigation upon the conclusion of mediation.

16.3. Developer's Remedies. In the event that the 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 8.1 above, then, in that event, in addition to all other legal and equitable remedies which the Developer may have, the Developer may terminate this Agreement by written notice delivered to the City.

16.4 City's Remedies. In the event that the Developer is in default under this Agreement, and the Developer thereafter fails to cure any such default within the time period described in Section 16.1 above, then, in that event, in addition to all other legal and equitable remedies which the City may have, the City may terminate this Agreement by written notice delivered to the Developer.

16.5 Development Rights in the Event of Termination. Upon the termination of this Agreement as provided herein, the Developer shall have no further rights to develop the Property pursuant to this Agreement.

16.6 Liability and Indemnification. Developer shall indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, and agents for, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the performance of this Agreement by City or Developer, or nonperformance of this Agreement by the Developer.

17. General Provisions

- 17.1 Amendment. This Agreement may be amended at any time by written amendment executed by all Parties, which amendment shall be recorded in the official records of Coconino County, Arizona within ten (10) days following its execution.
- 17.2 Applicable Law. This Agreement shall be construed under and in accordance with the laws of the State of Arizona.
- 17.3 Assignment. All of the provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties, pursuant to A.R.S. § 9-500.05(D). In addition, Developer's rights and obligations may only be transferred or assigned to a person or entity that has acquired the Property and only by a written instrument recorded in the official records of Coconino County, Arizona expressly assigning such rights and obligations. Any such transfer or assignment shall not be valid as to the City until written notice has been sent to the City in accordance with **Section 18** of this Agreement. All rights and obligations of the

Developer under this Agreement shall constitute covenants running with the land and shall be binding on all of the Developer's successors and assigns.

- 17.4 Attorney's Fees and Costs. If legal action by any Party is brought because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees and court costs.
- 17.5 Authority. The person executing this Agreement on behalf of Developer warrants and represents that they have the authority to execute this Agreement on behalf of Developer, and that the execution of this Agreement has been approved by all required actions on the part of such Parties, and that this Agreement is fully binding on such Parties.
- 17.6 Cancellation for Conflict of Interest. This Agreement is subject to the cancellation provisions of A.R.S. § 38-511.
- 17.7 Consistent with General Plan. This Agreement ensures that all development on the Property shall be consistent with the City's General Plan recommendation for the Property as required by A.R.S. § 9-500.05(B).
- 17.8 Construction of Agreement. This Agreement has been arrived at by negotiation and shall not be construed against any Party to it or against the Party who prepared the last draft.
- 17.9 Counterparts. This Agreement may be executed by the Parties in two (2) counterparts, which counterparts shall be construed as a single document and have the same effect as if all of the Parties had executed the same instrument.
- 17.10 Covenants Run with the Land. The covenants and agreements contained in this Agreement are mutual covenants and also constitute conditions to the subsequent or concurrent performance of the Party benefitted thereby. All covenants shall be covenants running with the land, and shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns.
- 17.11 Effective Date and Term. This Agreement shall be effective (the "**Effective Date**") upon execution by the parties hereto and recordation in accordance with A.R.S. § 9-500.05 (as amended). The term of this Agreement shall extend from the Effective Date of this Agreement and shall automatically terminate thirty years from such date. Notwithstanding the termination date of this Agreement, Developer has the obligation to provide the affordable units for a term of thirty (30) years from the date the affordable units are placed into service.
- 17.12 Entire Agreement. This Agreement constitutes the entire agreement among the Parties and shall not be changed or added to except in the manner

provided in **Section 17.1**. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, other than those specifically incorporated in this Agreement, are superseded by this Agreement. The parties acknowledge and agree that this Agreement is to be read and interpreted with the ordinance approving the zoning map amendment.

- 17.13 Exhibits. All exhibits attached are incorporated by reference as though fully set forth in this Agreement.
- 17.14 Further Acts. Each of the Parties shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.
- 17.15 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a Party for the purpose of enforcing, construing, or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Coconino, State of Arizona, and the Parties waive all provisions of law providing for the filing, removal, or change of venue to any other court. This **Section 17.15** shall survive termination of this Agreement.
- 17.16 Modification. No modification of this Agreement shall be deemed effective unless in writing and signed by the Parties, and any waiver granted shall not be deemed effective except for the instance and circumstances particularly specified in a written waiver executed by the Party against whom enforcement of the waiver is sought.
- 17.17 No Partnership; No Agency. It is specifically understood and agreed by and among the Parties that the development of the Project on the Property is a private development, that no Party 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. The Parties acknowledge and agree that this Agreement does not create a partnership, joint venture, or similar entity, and that no such partnership, joint venture, or similar entity has been created by the City and the Developer.
- 17.18 No Obligation to Develop Property. Except as specifically set forth in this Agreement, there shall be no obligation for the Developer to construct the Project.
- 17.19 No Third Party Beneficiaries. No person or entity other than a Party to this Agreement or legal representative, successor in interest, or assign of such party shall be entitled to rely on this Agreement or the performance of any Party; this Agreement is not made for the benefit of any person or entity not

a Party; and no such person or entity shall be entitled to assert any claim arising out of, or in connection with, this Agreement.

- 17.20 Proposition 207 Waiver. 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 2020-21 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 2020-21, upon the Property.
- 17.22 Recordation of Agreement. In accordance with A.R.S. § 9-500.05(D), this Agreement shall be recorded in its entirety in the official records of the Coconino County Recorder, State of Arizona no later than ten (10) days from the date of its execution.
- 17.23 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect construction or interpretation of this Agreement.
- 17.24 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.
- 17.25 Time is of the Essence. For the purposes of enforcing the provisions of this Agreement, time is of the essence.
- 17.26 Waiver. No waiver by any Party to this Agreement of a breach of any of the terms, covenants, conditions of this Agreement shall be construed or be held to be a waiver of any succeeding or proceeding breach of the same or any other term, covenant, or condition of this Agreement.

[Signatures on Following Pages]

CITY

CITY OF FLAGSTAFF, an Arizona municipal corporation

By: _____
_____, Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by _____, the Mayor of the City of Flagstaff, an Arizona municipal corporation.

Notary Public

My Commission Expires:
