TOWN OF PRESCOTT VALLEY
REQUEST FOR COUNCIL ACTION
Date: July 25, 2013

SUBJECT: Proposed 3rd Amendment to Development Agreement - Crossroads

SUBMITTING DEPARTMENT: Management

PREPARED BY: Greg Fister, Economic Development Manager

AGENDA LOCATION: Comments/Communications ☐, Consent ☐, Work/Study ☒, New Business ☐, Public Hearing ☐, Second Reading ☐

ATTACHMENTS: a) Resolution No. 1844 , b) 3rd Amendment to Development Agreement (shown in Restated & Amended Development Agreement), c) Exhibits to Restated & Amended Development Agreement (including Exhibit H…property descriptions), d) Letter Murley to Tarkowski (ARS §9-500.11), and e) Spreadsheet, Applied Economics (Gift Clause Analysis)

SUMMARY/BACKGROUND: The Town Council is asked to consider adopting Resolution No. 1844 approving a 3rd Amendment to Development Agreement related to the Crossroads development. In order to better understand the context for this 3rd Amendment, it is shown as part of a Restated & Amended Development Agreement that incorporates the original development agreement and all amendments. This 3rd Amendment proposes to extend the agreement term by 38 months to October 31, 2028. In return for this additional period of reimbursing 1% of the 2.33% transaction privilege taxes collected at Crossroads as an economic incentive, the developer has agreed to accelerate conveyance to the Town of approximately 181 acres for open space and recreation use (the two largest being a 156 acre parcel on Glassford Hill and a 20 acre parcel near Lynx Creek). This 3rd Amendment also clarifies the Town's commitment to provide domestic water to this commercial development.

Background: On July 8, 1999, the Town Council adopted Resolution No. 902 approving a development agreement with Yavapai Hills, Inc. to develop approximately four hundred sixty-three (463) acres at the west entrance of Prescott Valley (on and around Glassford Hill, north and south of SR 69). A Preliminary Plat showed initial residential and commercial development, including considerable open space on and around Glassford Hill. On March 9, 2000, the Council approved a Final Plat on approximately thirty-nine (39) acres north of SR 69 initially planned for commercial development. Later, Yavapai Hills, Inc. approached the Town with plans to sell a three (3) acre portion south of SR 69 as a "Commercial Corner". Therefore, on July 31, 2003 the Council adopted Resolution No. 1204 approving a 1st amendment to the development agreement to accommodate that project.

In 2004, Yavapai Hills began working with Kitchell to develop a much larger commercial project on parcels north and south of SR 69 (later known as "Crossroads"). After considerable negotiation, on August 11, 2005 the Town Council adopted Resolution No. 1375 approving a 2nd amendment to the development agreement to provide for reimbursements of public improvement costs and other incentives involving reimbursement of a portion of the transaction privilege tax collections from businesses that would locate in Crossroads.

Based on a plan included in the amended development agreement, Town staff subsequently approved building permits for construction of Home Depot and a nearby spec building north of SR 69 and construction of Sam's Club and Cracker Barrel south of SR 69. Later, on November 29, 2007, the

Council adopted Ordinance No. 702 adding a PAD overlay district to the existing zoning. This allowed approval of new businesses based on Final Development Plans. Thus, on April 9, 2009 the Council adopted Resolution No. 1639 approving FDP 09-002 to develop the remaining approximately fourteen (14) acres in Parcel A north of SR 69 (including Hobby Lobby, Dollar Tree, and certain spec buildings). On July 9, 2009, the Council adopted Resolution No. 1656 approving FDP 09-003 to develop a Chase Bank south of SR 69. On December 8, 2011, the Council adopted Resolution No. 1773 approving FDP 11-005 to develop a Carl's Jr. south of SR 69. On April 11, 2013, the Council adopted Resolution No. 1830 approving FDP 13-005 to develop a Dick's Sporting Goods south of SR 69. And, on June 27, 2013, the Council adopted Resolution No. 1841 approving FDP 13-008 to prepare for development of the balance of Parcel C located south of SR 69.

On February 9, 2012, the Town Council approved an assignment of the Crossroads development from Yavapai Hills to Kitchell. This was part of an effort by Yavapai Hills to liquidate its commercial and residential development interests in both Prescott Valley and Prescott. This effort was undoubtedly driven in large part by the challenges related to the worldwide economic recession which had begun in earnest in 2007. As a result of that recession, the build out of Crossroads had been slower than expected. Only in late 2012 and 2013 has commercial development appeared to recover its momentum.

Under the current amended agreement, quarterly tpt tax reimbursements began with the period ending September 30, 2008 and will continue through the period ending August 11, 2025. Up to the recent period ending March 31, 2013, the Town has collected $6,282,407.49 in tptaxes from Crossroads and has reimbursed $2,696,312.22 (general incentives) and $1,027,204.04 (SR 69 improvement costs). The Town has also made a one-time lump-sum payment towards the SR 69 improvement costs in the amount of $4,307,431.96. As the amended agreement term continues (and, particularly in light of the commercial recovery) it is expected that total Town revenue collections will ultimately be significantly greater than required outlays.

With this background, Kitchell has recently approached the Town with a request to extend the amended development agreement an additional 38 months to help it recover incentive payments it did not receive during the recession. To help ensure this is a revenue neutral proposal for the Town, Kitchell has offered to accelerate conveyance to the Town under the agreement certain real property for open space/recreation purposes. It was initially anticipated that this property would now have been dedicated until several years from now when the residential component is developed. Kitchell has also identified other small parcels in and near the commercial area which may have value to the Town for open space/recreation purposes. After considering this proposal, staff has noted that the conveyance would involve approximately one hundred eighty-one (181) acres on Glassford Hill and near Lynx Creek that, indeed, have real value for open space and/or recreation purposes. And, the attached analysis by Applied Economics (a third-party consultant) suggests that the present value of any additional payments to Kitchell between 2025 and 2028 is roughly equivalent to the current value of those acres.

At the Work-Study session held on July 18, 2013, the Town Council, Planning and Zoning Commission and Parks and Recreation Commission took a field trip to see the parcels being proposed for conveyance to the Town. Now, it is proposed that the Council consider adopting Resolution No. 1844_ approving the 3rd Amendment to Development Agreement as shown in the Restated & Amended Development Agreement (including new Exhibit H describing the property to be conveyed to the Town by Special Warranty Deed). [Note: the original development agreement and the first two amendments were adopted prior to amendments to ARS §9-500.11 which became effective in late 2005 and which require (among other things) a separate analysis by a 3rd party confirming that such "retail development tax incentive agreements" will likely raise more revenue than the amount of the incentive during the term, and also confirming that, in the absence of such an agreement, the retail business facility would not locate in the

town in the same time, place or manner. Arguably, these requirements would continue not to apply to this agreement as amended by the 3rd Amendment. However, in an abundance of caution the Town has arranged for such a third party review by Ms. Murley of Applied Economics and attached it hereto. Additionally, the Town has asked Applied Economics to provide a brief analysis (for AZ Constitution Gift Clause purposes) of the estimated present value of the additional tptax reimbursement stream in the future, and the estimated present value of the parcels to be conveyed. Their analysis indicates that the values are roughly equivalent.]

OPTIONS ANALYSIS: Council may adopt Resolution No. 1844 approving this 3rd Amendment to Development Agreement, propose revisions to the 3rd Amendment prior to approval, OR decline to adopt the Resolution approving the 3rd Amendment to Development Agreement.

ACTION OPTION: Motion to authorize the Mayor (or, in his absence, the Vice Mayor) to sign Resolution No. 1844 approving a 3rd Amendment to Development Agreement as shown in the Restated & Amended Development Agreement with YK Commercial Realty, LLC and PVL, LLC, **OR** Motion not to approve this 3rd Amendment to Development Agreement. **VOTE**.

RECOMMENDATION: Staff believes the Kitchell proposal is a win-win for it and the community and recommends authorizing signature of Resolution No. 1844 approving the 3rd Amendment to Development Agreement as shown in the Restated & Amended Development Agreement.

FISCAL ANALYSIS: The attached letter from Ms. Murley of Applied Economics confirms that this 3rd Amendment to Development Agreement complies with the requirements of ARS §9-500.11 for "retail development tax incentive agreements" in that it will produce more revenue for the Town than the Town will expend thereunder. Ms. Murley has also supplied a spreadsheet which is attached that estimates the current value of the land proposed for immediate conveyance with the present value of the potential tptax reimbursements that will occur as a result of the 38-month extension between 2025 and 2028. These are estimates by a 3rd party consultant. In making these estimates, Ms. Murley made the following observation by e-mail to Greg Fister: *"I am also sending you my spreadsheets. I put together a detailed schedule of future taxable sales. I followed your schedule to a large extent although I have the project building out in 2027. Obviously this is just a projection and it could happen slower or faster. On the second sheet, I compared the NPV of sales taxes reimbursements during the 38 month extension to the value of the land that will be conveyed. While the land value is slightly lower, it is not a lot lower. If the absorption period was a little bit longer, it would probably be about equal. Also, I looked at the average value per acre for all of the parcels in the conveyance. They are all within the $30,000 to $50,000 range except the 156 acre parcel which is only valued at $4400 per acre. While I do not know how the slope and elevation of that parcel compares to the other parcels, the difference in land value seems unreasonable. If this parcel were valued at a level more similar to surrounding parcels, the total value of the 185 acres would be much greater than the amount of sales tax reimbursements during the extension period."*

REVIEWED BY:

Management Services Director _____

Town Clerk _____

Town Attorney _____

Town Manager _____

COUNCIL ACTION:

☐ Approved ☐ Denied ☐ Tabled/Deferred ☐ Assigned to _____