

RESTATED & AMENDED DEVELOPMENT AGREEMENT
TOWN OF PRESCOTT VALLEY, ARIZONA
AND
YK COMMERCIAL REALTY, LLC and PVL, LLC

July 25, 2013

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RESTATED & AMENDED DEVELOPMENT AGREEMENT

THIS RESTATED & AMENDED DEVELOPMENT AGREEMENT, dated this ____ day of _____, 2013, by and between the TOWN OF PRESCOTT VALLEY, a municipal corporation of Arizona (“Town”) and YK COMMERCIAL REALTY, LLC, a limited liability company of Arizona (“YK”) and PVL, LLC, a limited liability company of Arizona (“PVL”) (YK and PVL jointly “Developer”);

WITNESSETH:

WHEREAS, after public meetings held on October 25, 1979, November 8, 1979, and November 27, 1979, the Town Council adopted Ordinance No. 15 (recorded in Book 1262, Pages 156-158 of the Records of Yavapai County, Arizona) annexing certain areas which defined the then-planned extent of Prescott Valley (including a ten-foot-wide strip along the south edge of Section 21 and along the east edge of Section 20, Township 14 North, Range 1 West, Gila and Salt River Meridian); and

WHEREAS, after a public hearing at a special meeting held July 11, 1990, the Town Council adopted Ordinance No. 244 on November 8, 1990 (recorded in Book 2304, Page 822 of the Records of Yavapai County, Arizona) annexing certain areas that included all of Section 21, T14N, R1W, G&SRM (“Annexation Area”); and

WHEREAS, the Annexation Area was considered a prime area for future residential and commercial development and was assigned a Town zoning designation of RCU-70, R1L-70, R1L-35, R1MH-10, R2-3 and C2-3 respectively by Ordinance No. 265 (dated October 11, 1991); and

WHEREAS, the Subdivision Chapter of the Town Code generally makes all needed public improvements the responsibility of developers (and their successors-in-interest) [Town Code §14-04-010(B); see, ARS §9-463.01(C)(6-8)], including (but not limited to) paved highways [Town Code §§14-04-040(A); 14-04-060(B)(2)(d)], curbs, gutters and sidewalks [Town Code §§14-04-040(B) & (C); 14-04-060(B)(2)(d)], proper storm drainage [Town Code §§14-04-040(F); 14-04-060(B)(2)(c)], installation of sewage disposal facilities [Town Code §§14-04-040(G); 14-04-060(B)(2)(a); see, Town Code §9-05-050], and adequate water supply [Town Code §§14-04-040(H); 14-04-060(B)(2)(b)]; and

WHEREAS, the Subdivision Chapter and the PAD provisions require the Town and developers to mutually arrange for land needed to construct the public facilities necessitated by developments, including public schools [Town Code §§13-19-060(B)(3); 13-19-060(G)(5); 14-02-020(D)(1)(b); 14-02-030(C)(3); 14-02-030(D)(2)(e); 14-02-040(D)(3); and 14-03-010(B); see, ARS §9-463.01(D-F)]; and

WHEREAS, over the years the Town has been guided by the standards of the National Recreation and Parks Association (NRPA) with regard to parks and open space; and

WHEREAS, the Town has consulted from time to time with officers of the Humboldt

Unified School District to determine the plans and needs of that agency in providing public schools for the area's school-age children; and

WHEREAS, with these considerations in mind (and, after holding public hearings on July 13, 1998 and August 10, 1998) the Prescott Valley Planning and Zoning Commission approved a Preliminary Plat (attached hereto as Exhibit "B" and expressly made a part hereof) for portions of the Annexation Area; and

WHEREAS, ARS §9-500.05 authorizes Arizona municipalities to enter into development agreements with landowners or any other persons having an interest in real property located in the municipalities, consistent with general plans, to consider (among other things) reservation or dedication of land for public purposes, phasing or timing of development, financing of public infrastructure and subsequent reimbursements over time, and any other matters relating to development of the property; and

WHEREAS, on July 8, 1999 the Town Council adopted Resolution No. 902 approving a development agreement with Yavapai Hills, Inc., a Delaware corporation ("Initial Developer"), recorded in Book 3679, Page 601 of the Records of Yavapai County, Arizona ("Development Agreement"), to provide, among other things, for public improvements and services needed to develop approximately four hundred sixty-three (463) acres of real property within the Annexation Area, more particularly described in Exhibit "A" attached hereto and expressly made a part hereof ("Described Property"); and

WHEREAS, the Council found that said Development Agreement was consistent with the purpose and intent of the Prescott Valley zoning, development, subdivision, technical building, wastewater treatment, flood protection, and engineering codes; and

WHEREAS, the Council further found that said Development Agreement was consistent with the purpose and intent of Arizona statutes relating to such agreements, inasmuch as it a) benefitted the Town by -

- * providing for orderly development of what would eventually become a large and significant neighborhood within the Town;
- * assuring that said real property would be developed in general conformance with Town procedures and standards, and generally according to a Preliminary Plat (and providing needed property interests for public facilities in the development area); and

b) benefitted the Initial Developer by -

- * providing the option for PAD zoning designations for all of the Described Property (including property that might not be developed for several years into the future), thereby permitting considerable flexibility as to future development in

order to respond to market conditions (including flexibility as to distribution of development densities);

- * providing a framework within which the Described Property might be developed in phases over the years; and
- * providing that certain municipal services would be available to the development, including (but not limited to) public streets, public parks, and a publicly operated sanitary sewer system; and

WHEREAS, the Town Council found that the Preliminary Plat attached to the Development Agreement did not need to first be considered by the Planning and Zoning Commission prior to consideration of the Development Agreement inasmuch as the Commission had already considered the same Preliminary Plat application for the Described Property and had therefore considered the development issues related to the property [see, Town Code §§14-01-030(A); 14-02-020(D)(2); 14-05-010(A)]; and

WHEREAS, on March 9, 2000, the Town Council approved a Final Plat on approximately thirty-nine (39) acres of the Described Property which further configured a portion of the commercial component of the Described Property; and

WHEREAS, the Initial Developer had previously obtained a commitment in an agreement with the City of Prescott (“Prescott”) dated May 8, 1974, for Prescott to supply domestic water service to property that included the Described Property in return for the Initial Developer constructing a planned water line. However, it had not been economically feasible for the Initial Developer to construct said water line. Therefore, the Development Agreement provided that the Town would supply temporary, interim domestic water service to the commercial component of the Described Property (through the Prescott Valley Water District by intergovernmental agreement dated July 26, 2001) until such time as the Initial Developer constructed a water line to connect the Described Property to Prescott’s water system or until five (5) years after the date of the Development Agreement (whichever was sooner); and

WHEREAS, as of 2003 it had not yet been economically feasible for the Initial Developer to construct the water line needed to connect the Described Property to Prescott’s water supply system; and

WHEREAS, the Initial Developer approached the Town with plans to sell a three (3) acre portion of the Described Property to a new commercial use (“Commercial Corner”, shown in Exhibit “E” attached hereto and expressly made a part hereof) for which long-term certainty about domestic water service was necessary, and asked the Town to (a) extend the period of time during which the Town would provide (through the Prescott Valley Water District) temporary, interim domestic water service to said Commercial Corner until such time as the Initial Developer constructed a water line to Prescott’s water system, and (b) extend the end of the term from December 31, 2009 to and including December 31, 2015; and

WHEREAS, despite limitations placed on new uses of groundwater by the declaration of the Arizona Department of Water Resources (dated January 12, 1999) that the Prescott Active Management Area was no longer in a state of safe-yield, the Prescott Valley Water District was allowed to continue to make groundwater available for commercial uses under the District's total "Gallons Per Capita per Day" program; and

WHEREAS, Policy ED-A4.1 within Goal ED-A4 of the Town's General Plan 2020 encouraged the Town to "promote business, economic growth, formation of capital and the creation and retention of jobs in designated commercial...areas", and Policy ED-A4.4 encouraged the Town to "promote retail and other support activities that provide a broader selection of high-quality goods and services for residents, workers, tourists and neighboring communities"; and

WHEREAS, on July 31, 2003, the Town Council adopted Resolution No. 1204 approving a 1st Amendment to Development Agreement which was subsequently recorded in Book 4068, Page 323 of the Records of Yavapai County, Arizona that extended the domestic water service period and the overall term as requested; and

WHEREAS, on August 4, 2004, the Town received notice in accordance with Section 16 of the amended Development Agreement that the Initial Developer had conveyed the Described Property to Yavapai Hills Commercial, Inc., a Delaware corporation ("Prior Developer") by Quit Claim Deed dated July 23, 2004 (recorded in Book 4171, Page 317 of the Records of Yavapai County, Arizona), and had assigned the Development Agreement and 1st Amendment to Development Agreement to the Prior Developer by document dated July 20, 2004 (recorded in Book 4171, Page 318 of the Records of Yavapai County, Arizona); and

WHEREAS, the Prior Developer subsequently approached the Town about potential economic development incentives to develop the commercial component of the Described Property (said commercial component being more fully described in Exhibit "F" attached hereto and expressly made a part hereof) as a retail center in a manner generally consistent with Exhibit "G" attached hereto and expressly made a part hereof ("Project"); and

WHEREAS, ARS §9-500.11 authorizes the Town to appropriate and spend public monies for and in conjunction with such economic development activities; and

WHEREAS, the Town Council determined that the activities related to the Project were appropriate economic development activities within the meaning of applicable Arizona Revised Statutes (including, but not necessarily limited to, ARS §9-500.11), and that the proposed expenditures by the Town under the amended Development Agreement would constitute appropriation and expenditure of public monies for and in connection with economic development activities; and

WHEREAS, the Prior Developer proposed to use any economic development incentives

offered by the Town to assist in the development of the Project and the associated public improvements; and

WHEREAS, the Town Council therefore determined to enter into a 2nd Amendment to Development Agreement with the Prior Developer to provide reimbursements of public improvement costs incurred by said Prior Developer and to reimburse to the Prior Developer a portion of the transaction privilege tax collections from businesses that located within the Project as an economic development incentive for filling the Project with new businesses; and

WHEREAS, the Project (a) qualified as a business expansion economic development project, (b) would assist in the generation of transaction privilege tax revenues for the Town and the creation of jobs for Town residents, and (c) would otherwise improve and enhance the economic welfare of Town residents by expanding commercial and retail uses in the Town, increasing access to goods and services, increasing the Town's assessed property valuation, stimulating further economic development in the Town, and constructing public infrastructure improvements; and

WHEREAS, the Council found that (a) the business development and expansion incentives included in the 2nd Amendment to Development Agreement would, in fact, serve legitimate economic development purposes as anticipated by ARS §9-500.11, (b) any proposed reimbursements related to transaction privilege tax collections from within the commercial component of the Described Property were anticipated to raise more revenue than the amount of said incentives within the duration of the amended Development Agreement, (c) in the absence of such incentives, the retail businesses expected to be located in the Town as a result of the Project would not locate in the Town in the same time, place or manner, and (d) the 2nd Amendment to Development Agreement would generally enhance the economic welfare of Town residents; and

WHEREAS, on August 11, 2005 the Town Council adopted Resolution No. 1375 approving a 2nd Amendment to Development Agreement as described (subsequently recorded at Book 4297, Page 746 of the Records of Yavapai County, Arizona); and

WHEREAS, the parties acknowledged that ultimate development of the Project was an undertaking of such magnitude and importance that assurances were required from the Town that the Prior Developer (or its successors and assigns) would have the right to complete development of the Project pursuant to said amended Development Agreement before the Prior Developer would expend substantial efforts and costs in development of the Project; and

WHEREAS, in accordance with Exhibit "G", Town staff subsequently approved building permits for construction of Home Depot and a nearby spec building on Pad D (both being within Parcel A of the Project), and construction of Sam's Club and Cracker Barrel (both being within Parcel C of the Project); and

WHEREAS, the original Development Agreement had anticipated that the Described

Property might benefit from the greater flexibility for both the Town and Initial Developer that would come from eventually applying the Planned Area Development overlay zone (“PAD”) to some or all of the property within the Project to (among other things) a) permit design flexibility to allow the public a choice of environments, living units, and commercial facilities, b) provide efficient and aesthetic use of open space, and c) provide stable environments in harmony with surrounding areas and developments [Town Code §13 19 020]; and

WHEREAS, on November 29, 2007, the Town Council adopted Ordinance No. 702 approving a zoning map change to add the PAD overlay district to existing C2 (Commercial; General Sales and Services), PM (Performance Manufacturing) and M1 (Industrial; General Limited) zoning districts in Parcels A and C of the Project; and

WHEREAS, in a letter dated February 5, 2008, the Town Manager noted that costs for the improvements to SR 69 required by the Arizona Department of Transportation (“ADOT”) for the Project would likely be in excess of \$5,000,000.00, and that Section 6 of the amended Development Agreement required good faith negotiations for an additional Town payment if such costs were greater than \$3,500,000.00. The amended Development Agreement already provided for twelve Periodic Payments to the Prior Developer of revenues related to 1.50% of the Town’s 2.33% transaction privilege tax applied to the Project (with 0.50% being applied towards the SR 69 improvement costs). After the twelfth Periodic Payment, a lump sum payment for the balance up to \$3,500,000.00 would be made (if needed). In the letter, the Manager agreed to monitor the amounts of the Periodic Payments until at least the eighth Payment and then determine whether the Town would make an additional lump sum, extend the 1.50% Periodic Payments for a period (before the Payments reduced to 1.00% as Section 6 otherwise provided for), or do both. If the Town determined to extend the 1.50% Periodic Payments past the twelfth payment, the Town would add an interest component at a rate negotiated in good faith; and

WHEREAS, in accordance with Section 6 of the amended Development Agreement the first Periodic Payment was made with respect to transaction privilege taxes received by the Town from the Project during the period commencing August 11, 2005 and ending September 30, 2008 (due to a certificate of occupancy having been issued September 14, 2008 for the first retailer of at least 100,000 square feet); and

WHEREAS, in accordance with Section 6 of the amended Development Agreement, the twelve Periodic Payments at 1.50% were scheduled to be made within sixty (60) days after June 30, 2011, and the last Periodic Payment at 1.00% was scheduled to be made 60 days after August 11, 2025; and

WHEREAS, in a letter dated July 5, 2011, the Town Manager agreed to extend Periodic Payments at 1.50% for another year (until 60 days after June 30, 2012); and

WHEREAS, as of June 30, 2012, the Town had collected \$1,027,204.04 through the 0.50% to be applied towards SR 69 improvements costs. Therefore, the Town Manager authorized payment to the Prior Developer of this amount along with a total lump sum payment

of \$4,307,431.96 (to equal the agreed-upon cost of \$5,334,636.00 for said improvements); and

WHEREAS, said determinations were made by the Manager in his capacity as the designated Town Representative per Section 10 of the amended Development Agreement to act as liaison with the Prior Developer in administration of said Agreement (and to resolve any disputes). Because the supplemental negotiation had been provided for in the amended Development Agreement, the Manager was authorized to settle the matter by separate letter in accordance with Section 29; and

WHEREAS, on March 13, 2008, the Prescott Valley Water District had been dissolved and the water system which it operated sold to and merged with the Town's water system so that domestic water service was thereafter provided to the Project directly by the Town in accordance with the amended Development Agreement; and

WHEREAS, on April 9, 2009, the Town Council adopted Resolution No. 1639 approving FDP 09-002 for development of the remaining approximately fourteen (14) acres within Parcel A of the Project (including Hobby Lobby, Dollar Tree, and spec buildings on Pad B); and

WHEREAS, on July 9, 2009, the Council adopted Resolution No. 1656 approving FDP 09-003 for development of the Chase Bank building within Parcel C of the Project; and

WHEREAS, Section 16 of the amended Development Agreement required the Town to reasonably "consent" to assignments of the amended Development Agreement by acknowledging and accommodating certain lender rights to assume the rights and obligations under said amended Development Agreement. Therefore, as land and financing arrangements were made with businesses that located in the Project the Town was asked to consent to partial assignments of the interests in the amended Development Agreement. Thus, as part of the arrangements with Home Depot the Town Council consented on February 22, 2007 to a partial assignment by the Prior Developer to YK to assist in obtaining financing to construct needed improvements. The Town also consented to a collateral assignment of the amended Development Agreement between YK and the lender. This same process was followed for Sam's Club on October 11, 2007 and Chase Bank on July 9, 2009. Once consent was granted, ARS §9-500.05(D) effectively transferred both the burdens and the benefits under the amended Development Agreement from the Prior Developer to YK with regard to the property involved; and

WHEREAS, on December 8, 2011, the Town Council adopted Resolution No. 1773 approving FDP 11-005 for development of a Carl's Jr. within Parcel C of the Project; and

WHEREAS, at the request of the Prior Developer, on February 9, 2012 the Council approved an assignment of the entire remaining Project (and related documents...including the amended Development Agreement) from the Prior Developer to Developer. The Council also approved a collateral assignment between YK and the lender (Bank of America, N.A.). This was part of a plan by the Initial Developer and the Prior Developer to liquidate all of their commercial and residential development interests in both Prescott Valley and Prescott; and

WHEREAS, on April 11, 2013, the Town Council adopted Resolution No. 1830 approving FDP 13-005 for development of Dick's Sporting Goods within Parcel C of the Project; and

WHEREAS, on June 27, 2013, the Town Council adopted Resolution No. 1841 approving FDP 13-008 to prepare for development of the balance of Parcel C (approximately seventeen (17) acres) within the Project. FDP 13-008 showed (and retroactively confirmed) the previously-approved and permitted uses in Parcel C. Therefore, by approval thereof, the Council retroactively confirmed those uses; and

WHEREAS, since approval of the 2nd Amendment to Development Agreement in 2005 the number of businesses locating within the Project has been less than hoped for due to the world-wide economic recession which began to manifest itself in northern Arizona in 2007; and

WHEREAS, after the Periodic Payment for the period ending March 31, 2013, the Town had collected \$6,282,407.49 in Town transaction privilege taxes from the Project and had reimbursed \$2,696,312.22 under the amended Development Agreement as an economic incentive (separate from the payments towards SR 69 improvements costs); and

WHEREAS, as commercial development slowly recovers in northern Arizona, Developer has approached the Town about extending the period of time during which Periodic Payments would be made to Developer in order to help it recover payments it anticipated but did not receive during the economic recession; and

WHEREAS, to ensure that the Town receives adequate consideration for any such extension Developer has agreed to accelerate conveyance to the Town of real property for open space/recreation use originally planned to be dedicated at the time of residential development of the Described Property, and to add additional real property not originally contemplated for conveyance to the Town for open space/recreation purposes; and

WHEREAS, after considering the proposal the Town Council has concluded that present conveyance of approximately one hundred eighty-one (181) acres of real property on Glassford Hill and near Lynx Creek for open space and/or public recreation purposes is equivalent to the present value of additional Periodic Payments through October 31, 2028; and

WHEREAS, the Council has also determined that it is important to clarify that it is willing to continue to provide domestic water service to the commercial component of the Described Property until such time as Developer constructs an adequate water line to Prescott's water system; and

WHEREAS, the Council desires now to enter into a 3rd Amendment to Development Agreement with Developer which makes these minor amendment to the earlier amended development agreement and shows them by ~~strikeout~~ and double underline but does not

constitute a new agreement and supersedes the original Development Agreement, as amended, only as to the terms changed herein; and

WHEREAS, for practical purposes the parties desire to take the original Development Agreement and incorporate the 1st Amendment to Development Agreement, the 2nd Amendment to Development Agreement, and this 3rd Amendment to Development Agreement into a single document entitled Restated & Amended Development Agreement; and

WHEREAS, the original Development Agreement and the first two amendments were adopted prior to Legislative changes to ARS §9-500.11 in 2005 by SB 1274 which added certain requirements for adoption of “retail development tax incentive agreements”. Those requirements arguably continue not to apply to this 3rd Amendment to Development Agreement. Nevertheless, the Town Council hereby finds that: (a) the value of the approximately 181 acres of real property to be conveyed to the Town hereunder is equivalent to the present value of the extended tax incentive provided in this 3rd Amendment to Development Agreement, (b) the proposed tax incentive is anticipated to raise more revenue than the amount of the incentive within the duration of this 3rd Amendment to Development Agreement, and (c) in the absence of the extended tax incentive the retail business facilities needed and expected to locate in the Project in order to provide the Town and its citizens with tax revenues, employment, and desired goods and services would not locate in the Project in the same time, place or manner (as recently verified by an independent third party);

NOW, THEREFORE, for and in consideration of the mutual covenants and promises herein, the parties hereto enter into this 3rd Amendment to Development Agreement (as set forth in the Restated & Amended Development Agreement) as follows:

SECTION 1. DURATION OF AGREEMENT The term of this Restated & Amended Development Agreement shall be from the date of execution first-above written to and including ~~August 11, 2025~~ October 31, 2028 or the date that the last Periodic Payment (as defined in Section 6 herein) is made, whichever is sooner (“Term”). At the conclusion of the Term, this Restated & Amended Development Agreement shall terminate without the execution or recordation of any further document or instrument as to any lot or parcel within the Described Property. Upon termination, such lots or parcels shall be released from and shall no longer be subject to or burdened by the provisions of this Restated & Amended Development Agreement.

SECTION 2. DISCREPANCIES BETWEEN DOCUMENTS; PRIORITY Conditions and requirements for developing the described property may be found in several documents, including a) any PAD Final Development Plan approved for a construction unit within a development phase, b) any PAD Preliminary Development Plan approved for a development phase, c) this main portion of the Restated & Amended Development Agreement (dated as first-above written), d) the Preliminary Plat included herein, and e) any related zoning ordinance. In the event of a discrepancy between these or any other documents which may

include conditions or requirements for developing the described property, the following priority shall apply:

- 1) the provisions of any PAD Final Development Plan, if any, or Final Plat approved for a particular construction unit within a development phase shall supersede provisions relating to the same topic found in any other document (with regard to that particular construction unit);
- 2) the provisions of any PAD Preliminary Development Plan, if any, approved for a particular development phase or the attached Preliminary Plat, if not PAD Preliminary Development Plan, shall supersede provisions relating to the same topic found in any other document (with regard to that particular development phase), except for any Final Development Plan or Final Plat for a particular construction unit within the development phase;
- 3) the provisions of this main portion of the Restated & Amended Development Agreement shall supersede provisions relating to the same topic found in any other document, except for any Final Development Plan or Final Plat for a particular construction unit within a development phase, and any Preliminary Development Plan for a development phase or the attached Preliminary Plat, if no PAD Preliminary Development Plan; and
- 4) the provisions of any zoning ordinance shall supersede provisions relating to the same topic found in any other document, except for any Final Development Plan or Final Plat for a particular construction unit within a development phase, any Preliminary Development Plan for a development phase or the attached Preliminary Plat, if no PAD Preliminary Development Plan, and this main portion of the Restated & Amended Development Agreement.

SECTION 3. PERMITTED USES; DENSITY AND INTENSITY OF USES By its approval of this Restated & Amended Development Agreement, the Town authorizes the Developer to implement the densities, intensities and types of land uses generally set forth in the Preliminary Plat (Exhibit “B”) and the Project description (Exhibit “G”), provided the Developer pays applicable fees and charges and complies with all applicable rules, regulations and review processes required by statute or ordinance.

The Town shall, in good faith and if requested by the Developer, conduct procedures necessary to rezone portions of the Described Property to add the PAD (Planned Area Development) overlay zone to any underlying zoning designations in the Described Property. Thereafter, the Town (through its Planning and Zoning Commission and its Town Council) shall, in good faith, conduct procedures necessary to adopt the Preliminary and Final Development

Plans per Article 13-19 for each development phase (and the construction units therein), upon application by Developer. However, during the Term the Town shall not initiate any changes or modifications to the zoning for any portion of the Described Property except at the request of the then-owner of such portion of the Described Property. Moreover, any rezoning of the Described Property and any Preliminary and Final Development Plans shall be consistent with this Restated & Amended Development Agreement, as well as with all applicable Town codes. Concurrently with Final Plat or Final Development Plan approval, the Developer shall submit final grading plans for approval by the Planning and Zoning Commission and Town Council. Final Plat or Final Development Plan submittal and supporting engineering documents shall illustrate a minimum of one (1) strategically located ingress/egress within a fifty-foot (50') wide right-of-way to afford public street continuity to the Diamond Valley subdivision located south of the Described Property.

Prior to actual construction on the Described Property, all plans, permits, inspections and approvals required by the Town Code (or by other applicable federal, state, or local statutes and regulations) shall first be provided or obtained by the Developer. However, permits and approvals to be provided by the Town shall not be unreasonably withheld. The Developer shall promptly pay all applicable fees and charges related to such plans, permits, inspections and approvals.

SECTION 4. PHASING OF DEVELOPMENT Development of the described property may be in phases.

No moratorium on development of the described property shall be applied by the Town during the term of this Restated & Amended Development Agreement, except where necessary to a) comply with mandatory requirements imposed on the Town by county, state or federal laws and regulations, court decisions, or other similar superior external authorities beyond the control of the Town, b) alleviate legitimate severe threats to public health and safety (in which event any such moratorium shall be the most minimal and the least intrusive alternative practicable and shall not be imposed arbitrarily), c) respond to limitations on the availability of water for such development or on the capacity of sanitary sewer facilities to handle wastewater resulting from such development, or d) respond to substantial fiscal limitations which affect the ability of the Town to service additional development.

SECTION 5. PUBLIC IMPROVEMENTS AND INFRASTRUCTURE Both on and off-site public improvements and infrastructure required for development of the described property shall be provided by the Developer as required a) in any Final Development Plans approved by the Town, b) in this main part of the Restated & Amended Development Agreement, c) in any applicable zoning ordinance, d) in the Preliminary or Final Plats, and e) in the applicable Town Codes. However, it is acknowledged that the Developer shall have no obligation to construct or cause to be constructed and installed public improvements and infrastructure if the Developer decides not to commence or continue development of the related

real property. [Note that, for purposes of Town Code §14-04-040(G), all of the described property is "reasonably accessible" to the Town's sanitary sewer system. Therefore, all phases of development and the related construction units must be connected to said sanitary sewer system unless otherwise directed by the Town pursuant to §3 above.]

Except as provided in this Restated & Amended Development Agreement, any public improvements and infrastructure to be constructed by the Developer within public easements or rights-of-way shall be constructed in compliance with applicable Town codes, related regulations and policies, and right-of-way permits. During and at completion of construction, all such public improvements and infrastructure may be inspected by the Town (or other entity where appropriate) to determine if the same have been constructed to applicable standards. [Town Code §14-04-030(B)]

Upon approval by the Town of the improvements and infrastructure to be dedicated or conveyed to the Town (which approval shall not be unreasonably withheld), the same shall be dedicated or conveyed to and accepted by the Town for maintenance and/or operation no later than 60 days after approval.

The Town agrees that to accommodate sidewalks on both sides of the streets within the described property, the asphalt road width may be reduced from Town standards to twenty-six (26) feet; provided, however, that Granite View Drive may have a sidewalk on only one side of the street, with an asphalt road width of 26 feet.

SECTION 6. FINANCING PUBLIC IMPROVEMENTS AND INFRASTRUCTURE In recognition of the anticipated public benefits to the Town and its residents described in this Restated & Amended Development Agreement and as an inducement for the Developer to cause retailers typically found in a retail power center (including auto dealerships) to locate at the Project, the Town shall provide the Developer with certain economic incentives and shall assist with financing of public improvements and infrastructure as set forth herein.

Provided that construction of a retail business of at least 100,000 square feet is complete and such retailer opens for business ("Phase 1"), the Town shall pay to the Developer Periodic Payments (as defined below). One-third (1/3) of the first twelve (12) Periodic Payments shall be designated as reimbursement to the Developer of the first \$3,500,000.00 of the cost to study, design, permit, construct, and install any improvements to State Route 69 ("SR 69") required by ADOT as discussed in Section 7 below ("ADOT Improvement Costs"). If, after payment of the twelfth (12th) Periodic Payment, the Developer has not been fully reimbursed for the first \$3,500,000.00 of the ADOT Improvement Costs, then within thirty (30) days after payment of the 12th Periodic Payment, the Town shall pay to the Developer an amount equal to the difference between the sum of the 12 Periodic Payments and \$3,500,000.00. This amount shall be paid to the Developer regardless of whether the Developer has yet incurred \$3,500,000.00 in ADOT Improvement Costs by the 12th Periodic Payment. If the ADOT Improvement Costs are

greater than \$3,500,000.00, the parties agree to negotiate in good faith an additional Town payment amount and/or Periodic Payment(s) towards said additional ADOT Improvement Costs. Nothing herein shall preclude the Town from pre-paying to the Developer any or all of its anticipated payment obligations hereunder (other than any Periodic Payments) from any available source.

The Town shall make (calendar) quarterly payments to the Developer (each, a “Periodic Payment” and, collectively, the “Periodic Payments”). The first 12 Periodic Payments shall be in amounts equal to the sum of 1.50% out of the Town’s current Transaction Privilege Tax rate of 2.33% of all Transaction Privilege Taxes (or similarly denominated taxes) paid by the Project and received by the Town (“TP Taxes”). The remaining Periodic Payments shall be in amounts equal to the sum of 1.00% out of the Town’s current Transaction Privilege Tax rate of 2.33%. In other words, the first 12 Periodic Payments shall be 64.37% of the TP Taxes; the remaining Periodic Payments shall be 42.91% of the TP Taxes. The TP Taxes expressly do not include Transaction Privilege Taxes (or similarly denominated taxes) derived from construction contracting activities on the Project, nor do they include the additional Transaction Privilege Tax levied upon transient lodging on the Project in Town Code §8A-447 (as amended). The first Periodic Payment shall be made with respect to the TP Taxes received by the Town, if any, during the period commencing on the Effective Date and ending on the last day of the calendar quarter during which the certificate of occupancy (“CO”) is issued for the first (1st) retailer of at least 100,000 square feet, and shall be made on or before 60 days after the last day of such calendar quarter. Thereafter, Periodic Payments shall be made quarterly with respect to the TP Taxes received by Town during each successive calendar quarter. The last Periodic Payment shall be made on or before 60 days after the last day of the ~~eighteenth~~ twentieth (~~18th~~ 20th) full calendar year after the first Periodic Payment is made, and shall be with respect to the TP Taxes received by the Town during the fourth (4th) calendar quarter of the calendar year prior to the year in which such Periodic Payment is made. Provided, however, that nothing herein shall require Periodic Payments to be made for any period beyond the Term.

[Note: the Periodic Payments are based on the Town’s current Transaction Privilege Tax rate of 2.33%. Increases or decreases in the Town’s Transaction Privilege Tax rate shall not affect the amount of the Periodic Payments (i.e., the Developer shall always be entitled to reimbursement as if the Town’s Transaction Privilege Tax rate remained at 2.33%).]

The Developer or a successor owner of a portion of the Described Property agrees from time to time to cause sufficient information to be provided to the Town to substantiate the TP Taxes paid by such owner of such portion of the Described Property for purposes of determining the amount of each Periodic Payment.

The Developer shall provide the Town with sufficient financial and other assurances that required phases of on and off-site public improvements and infrastructure shall actually be constructed. In so doing, the Developer shall strictly comply with the requirements of Town Code §14-04-080 (unless otherwise modified pursuant to Town Code §14-05-010). Furthermore, the Town Council may conduct an analysis of present Developer construction costs

vs. future Town operational costs with regard to allowing pump stations to be used in phases of the sewer collection system instead of requiring an all gravity-flow design, and may determine to permit the Developer to use a pump station in one or more phases. Any such approval shall be conditioned on the Developer paying the Town a sum representing the difference between the present value of the Town's estimated future costs and the Developer's estimated present savings, in accordance with the terms of a Promissory Note and Deed of Trust to be executed by the authorized representatives of the parties.

Note that nothing herein limits the right of the Town to impose development fees upon any development of the Described Property [pursuant to statute, including the set-off requirements of ARS §9-463.05(B)], nor to create municipal improvement and other special taxing districts on all or part of the Described Property, regardless of whether a request or petition for the same has been made by the Developer (or its successors-in-interest).

SECTION 7. DEDICATION OF PROPERTY INTERESTS FOR PUBLIC PURPOSES/DEVELOPER AND TOWN CONSTRUCTION OBLIGATIONS The Developer (including its successors-in-interest) shall dedicate or otherwise convey at no cost to the Town or to the public (as the case may be), subject to acceptance of the same at the discretion of the Town, such interests in real property, fixtures, personal property and other property rights as are or will be necessary for the construction, maintenance and operation of the public services, improvements and infrastructure (on and off-site) needed for each development phase (and related construction unit) of the Described Property. Said interests in real property, fixtures, personal property and other property rights shall be dedicated, conveyed or granted to the Town (or the public) by the Developer as set forth in any applicable Final Development Plans, as set forth in this main part of the Restated & Amended Development Agreement, as set forth in the Preliminary or Final Plats, in related zoning ordinances, and as generally set forth in applicable Arizona statutes and Town codes.

More specifically, such dedications, conveyances or grants (and related construction obligations) shall include -

a. a one hundred foot (100') wide public right-of-way (plus slope easements) for the proposed SunDog Ranch Road Collector ("SunDog Connector") from the westerly right-of-way line of SR 69 to the westerly boundary of Tract E as shown on the Preliminary Plat;

b. public right-of-way (plus slope easements) for development of Sunset Drive. The Town and the Developer agree that Sunset Drive as shown on the Preliminary Plat may be realigned on a Final Plat to a location mutually agreeable to the parties to provide the neighboring commercial component of the Described Property appropriate access;

c. a 50' wide public right-of-way (plus slope easements) as shown on the Preliminary Plat for development of Wolfgang Way, Beethoven Avenue, Cottontail Way, Cottontail Loop, Cottontail Court, and Sunset Court;

d. in accordance with any traffic impact analyses required by ADOT, the Developer shall study, design, permit, construct and install the SR 69 improvements required by ADOT in connection with development of the Described Property (including, but not limited to, the required SR 69/Sun Dog Connector Intersection improvements). It is expressly understood that the Developer may study, design, permit, construct and install any SR 69 improvements required by ADOT in any phases permitted by ADOT;

e. the Developer shall construct the other street improvements (including intersection improvements) necessary to serve the Described Property as set forth in any preliminary and final plats or PAD final development plans;

f. the Developer shall construct the sewer improvements necessary to serve the Described Property, which include the sewer trunk line expansion and lift station improvements; and

f. ~~approximately because the Developer has designated one hundred thirty (130) 185~~ acres of the Described Property as shown in Exhibit "H" (attached hereto and expressly made a part hereof) for open space and/or recreation purposes (as determined by the Town), conveyed as set forth herein within 60 days after approval by the Town Council of this Restated & Amended Development Agreement. Additional as open space shown on the Preliminary Plat [representing approximately sixty percent (60%) of for the residential acreage in the Described Property and being complementary to the open space preserve for Glassford Hill], and because the Developer agrees to dedicate shall also be dedicated said open space to the Town (and, to ensure that the open space is kept as open space in perpetuity, to execute prior to such dedication either restrictive covenants or a conservation easement on the open space portion of the Described Property) at the time of residential development in accordance with Town subdivision standards. However, the Developer shall not be obligated to dedicate land for parks, schools, or other public purposes not specifically set forth in this Restated & Amended Development Agreement.

Upon approval by the Town of the improvements and infrastructure to be dedicated or conveyed to the Town (which approval shall not be unreasonably withheld), the same shall be dedicated or conveyed to and accepted by the Town for maintenance and/or operation no later than 60 days after approval.

Unless otherwise set forth in the main part of this Restated & Amended Development Agreement, the timing and location of all such dedications, conveyances and grants shall be determined by the Town in consultation with the Developer (or its successors-in-interest) during the PAD development plan process or Final Plat process (if the Developer elects not to utilize PAD zoning). However, the Developer may make such required dedications, conveyances or grants prior to the required time, subject to acceptance by the Town (which acceptance shall not be unreasonably withheld).

Unless otherwise set forth in this main part of the Restated & Amended Development

Agreement, dedications, conveyances or grants to the Town of interests in real property, fixtures, personal property or other property rights shall be by subdivision plat, warranty deed, or bill of sale (as appropriate), signed by the Developer (or its successor-in-interest) and any spouses [see Town Code §14-02-060(E)(1)].

Recognizing that other developments may a) generate use of on and off-site improvements that the Developer will construct to serve the Described Property, or b) create the need for upsized improvements to accommodate subsequent development phases or units of the Described Property that would not otherwise have been needed but for the impact of those other developments, the Town agrees to use its best efforts under the circumstances to require such other developments to pay their reasonable share of any extensions or increases in said improvements or to otherwise hold the Developer harmless from the costs associated with the impacts of those other developments.

Nothing herein shall require the Town to maintain any property in which an interest has not been expressly dedicated, conveyed or granted to it. The Developer expressly acknowledges that it (and its successors-in-interest) remain solely responsible for any property in which an interest is not conveyed to the Town (including, but expressly not limited to, drainage easements, channels and detention areas not included in the parks/open space dedications).

The Town also agrees to provide ~~(through the District) temporary, interim domestic water service to the commercial component only of the Described Property until such time as the Developer constructs a water line to connect the Described Property to the Prescott's water supply system or until 5 years after the date of the 2nd Amendment (whichever is sooner).~~ ~~Notwithstanding the foregoing, the Town agrees to provide~~ temporary, interim domestic water service to any permitted commercial use or multi-family residential use on the Described Property (including, but not limited to, the Commercial Corner shown in Exhibit "E" and on the Project has shown in Exhibit "G"); during the Term, until such time as the Developer constructs a water line to connect ~~the Commercial Corner and/or the Project~~ such commercial or multi-family residential uses to Prescott's water supply system or otherwise arranges for such uses to be supplied through Prescott's assured water supply. Nothing herein shall require the Town to provide domestic water service for any single-family residential use until such time as the Developer constructs a water line to connect such use to Prescott's water supply system or otherwise arranges for such use to be supplied through Prescott's assured water supply.

The Town shall construct a water storage facility with a capacity adequate to serve the entire Described Property on the Described Property in the location generally shown on Exhibit "C", and shall permit the Developer to utilize such storage facility for storage of water supplied by Prescott at no cost to the Developer.

SECTION 8. SIGNAGE The Town agrees to work with the Developer and ADOT on comprehensive review of signage for the Project under applicable codes and statutes as part of the site plan process. The Developer agrees that the owner of the commercial property adjacent

to the Described Property may construct, at its expense, 1 monument sign (“Sign”) on that portion of the Described Property shown on Exhibit "D", provided that the Sign complies with the Town’s sign code and meets the design standards the Developer adopts for the Described Property. Fifty percent of the Sign shall be available for use by the Developer, its tenants and assigns.

SECTION 9. PRELIMINARY PLAT EXPIRATION Pursuant to Town Code §14-02-030(F)(2), the Town and the Developer agree that the Preliminary Plat shall remain valid for the duration of this Restated & Amended Development Agreement. In addition, upon recordation of the Final Plat for the SunDog Connector right-of-way, the Preliminary Plat shall be deemed vested through completion of development of the described property. Accordingly, the described property shall be included in any growth or urban boundary that may be established by the Town to the extent permitted by law. This Section 9 shall survive the expiration of this Restated & Amended Development Agreement.

SECTION 10. COOPERATION AND ALTERNATIVE DISPUTE RESOLUTION
The Town and the Developer shall each designate a Representative to act as liaison with the other party in the administration of this Restated & Amended Development Agreement and the resolution of disputes hereunder. The Town’s initial Representative shall be the Town Manager. The Developer’s initial Representative shall be Jonathan Klein. The designated Representative may be changed by either party in a writing mailed to the other party as provided in Section 11 hereinafter. It is specifically understood that such representatives may recommend amendments to the provisions of this Restated & Amended Development Agreement.

In the event a dispute arises between the Developer and the Town over implementation of this Restated & Amended Development Agreement, and either party believes an impasse has been reached, then either may appeal to the other party's Representative for an expedited resolution of the impasse. Thereupon, that Representative shall provide the party’s proposed resolution within fifteen (15) working days. In the case of the Town, if the Town Representative determines that a public hearing before the Town Council is necessary before a proposed resolution can be provided, then such hearing shall be scheduled within 30 calendar days of the request. In the event the Town does not have the personnel or other resources to implement the requested expedited review, then the Town shall so inform the Developer and the Developer shall have the option of paying the costs for private consultants retained by the Town to assist in the review of the matter.

The Town agrees that, promptly upon completion of each building within the Project (and at such time as a building is in full compliance with applicable Town codes), the Town will provide the Developer or the then-owner of such portion of the Project with a CO for such building. If the Town refuses or fails to provide a CO for any portion of the Project when requested, the TOWN shall, within six (6) days after written request from the Developer or the then-owner of such portion of the Project, provide the Developer or the then-owner of such

portion of the Project, as the case may be, a written statement indicating in adequate detail how such party failed to satisfy the conditions for issuance of the CO and what measures or acts the Town requires before the Town will issue the CO. The Town shall not withhold approval without good and substantial reasons.

SECTION 11. NOTICES AND FILINGS Unless otherwise specifically provided herein, all notices, filings, demands or other communications relating to this Restated & Amended Development Agreement shall be in writing and shall be deemed to have been duly delivered upon personal delivery, or as of the second business day after mailing by United States mail, postage prepaid, by certified mail, return receipt requested, addressed as follows:

TOWN: Town of Prescott Valley
c/o Town Manager
7501 E. Civic Circle
Prescott Valley, Arizona 86314

YK: YK Commercial Realty, LLC
c/o Kitchell Development Company
1707 East Highland, Suite 100
Phoenix, Arizona 85016
Attn: Jeff Allen

Copy to: Gallagher & Kennedy
2425 East Camelback Road
Phoenix, Arizona 85016
Attn: Alexander L. Broadfoot, Esq.

PVL: PVL, LLC
c/o Kitchell Development Company
1707 East Highland, Suite 100
Phoenix, Arizona 85016
Attn: Jeff Allen

Copy to: Gallagher & Kennedy
2425 East Camelback Road
Phoenix, Arizona 85016
Attn: Alexander L. Broadfoot, Esq.

Notice of address may be changed by any party by giving notice to the other parties in writing of a change of address. Such change shall be deemed to have been effectively noticed 5 days after being mailed by the party changing address.

SECTION 12. INDEMNIFICATION AND HOLD HARMLESS. The Developer hereby agrees to defend, indemnify and hold harmless the Town, its officers, employees, agents and successors (but only to the extent authorized by law) from any and all claims and costs (including but not limited to reasonable attorney fees and other reasonable administrative, consultant or other reasonable costs) actually and directly incurred by the Town, its officers, employees, agents and successors in any subsequent judicial or administrative proceeding whereby a third party challenges the approval, execution, or performance of this Restated & Amended Development Agreement. The Developer shall have the right to intervene and assist in the defense of any legal action arising out of the approval, execution or performance of this Restated & Amended Development Agreement, and to participate fully in any negotiations and settlements involving any such actions.

SECTION 13. DEFAULT Failure or unreasonable delay of either party to act in accord with any provision of this Restated & Amended Development Agreement for 30 calendar days ("Cure Period") following mailing of a written notice from the other party by regular mail, postage prepaid, shall constitute an "incident of default". The notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. [Note, however, that if an action under this Restated & Amended Development Agreement would normally require more than 30 calendar days to complete, the responsible party shall have reasonable additional time beyond 30 days in which to comply.]

Only in the event of an incident of default where a party fails to act in accord with any substantial provision of this Restated & Amended Development Agreement, the non-defaulting party shall have the right to terminate this Restated & Amended Development Agreement by written notice to the defaulting party, which termination shall be effective 30 calendar days following the mailing of the notice by regular mail, postage prepaid (provided the defaulting party has not cured such default).

In addition, if any default is not cured within the Cure Period, the non-defaulting party may exercise all rights and remedies available to it at law or in equity, including without limitation the right to specifically enforce any term or provision hereof and/or the right to institute an action for damages. In addition to any other rights or remedies, the Town or the Developer or any successor-in-interest may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation, including suits for declaratory relief, specific performance, relief in the nature of mandamus and actions for damages. Provided, however, each of the Developer and any successor-in-interest is liable only for any obligations applicable to the portion of the Described Property it then owns during its period of ownership, and no remedy may be taken except only in the event of a default by the party against whom such remedy is threatened. All of the remedies described above shall be cumulative and not exclusive of one another, and the exercise of any one or more of the remedies shall not constitute a waiver or election with respect to any other

available remedy. The provisions of this paragraph are not intended to modify other provisions of this Restated & Amended Development Agreement and are not intended to provide additional remedies not otherwise permitted by law.

The construction of Phase 1 of the Project is a condition precedent which must be satisfied in accordance with the terms and conditions of this Restated & Amended Development Agreement prior to the Developer and/or its assignees receiving the agreed-upon Periodic Payments from the Town. Failure to construct Phase 1 of the Project on the Described Property will not constitute a default, nor will it entitle the Town to seek specific performance or other legal/equitable remedies.

The Town shall be deemed to be in default under this Restated & Amended Development Agreement if the Town breaches any obligations required to be performed by the Town hereunder, including, without limitation, failure to pay Periodic Payments as set forth above.

Any dispute arising under this Restated & Amended Development Agreement may be subject to arbitration in accordance with ARS §12-1501 et seq., but only if mutually agreed to by the parties. Furthermore, if a dispute arises out of or relates to this Restated & Amended Development Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try to settle the dispute through mediation before resorting to arbitration, litigation or some other dispute resolution procedure. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, either party may request the presiding judge of the Superior Court of Yavapai County to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool. All disputes shall be governed by Arizona law.

SECTION 14. AMENDMENTS This Restated & Amended Development Agreement may be amended only by a written agreement fully executed by the Town and the Developer. Any amendment shall be adopted by Town ordinance or resolution and recorded in the Office of the Yavapai County Recorder within ten (10) calendar days of its execution by authorized representatives of the parties.

SECTION 15. BINDING ON SUCCESSORS-IN-INTEREST This Restated & Amended Development Agreement shall inure to the benefit of and shall be binding upon the successors-in-interest of each of the parties hereto, pursuant to ARS §9-500.05(D). However, this Restated & Amended Development Agreement shall terminate without the execution or recordation of any further document or instrument as to any lot within the described property which has been finally subdivided and individually (and not in “bulk”) leased for a period of longer than 1 year or sold to the purchaser or user thereof (a “public lot”), and thereupon such public lot shall be released from and no longer be subject to or burdened by the provisions of this Restated & Amended Development Agreement.

SECTION 16. ASSIGNMENT OF INTERESTS The rights of the Developer under this Restated & Amended Development Agreement may be transferred or assigned, in whole or in part, by written instrument to any subsequent owner of all or any portion of the Described Property upon consent of the Town, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, without the consent of the Town, the Developer may freely assign its rights under this Restated & Amended Development Agreement to an entity that directly or indirectly controls, is controlled by, or is under common control of the Developer. Notice of any transfer or assignment in accordance with this Section 16 shall be provided to the Town at least 15 days before such transfer or assignment. Subject to the provisions of this Section 16, as provided in ARS §9-500.05(D), the burdens of this Restated & Amended Development Agreement bind, and the benefits of this Restated & Amended Development Agreement inure to, the parties hereto and their permitted successors in interest and assigns, except as provided below. The Developer's rights and obligations hereunder may only be assigned to a person or entity that has an interest in the Described Property or a portion thereof and only by a written instrument, recorded in the official records of Yavapai County, Arizona, expressly assigning such rights and obligations. Notwithstanding the conveyance of all or any portion of the Described Property to a subsequent owner, the Developer's right to receive the economic incentives set forth above shall remain with the Developer unless specifically assigned pursuant to this Section 16.

SECTION 17. WAIVER No waiver by any party of a breach of any of the terms, covenants or conditions of this Restated & Amended Development Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein-contained. Furthermore, no delay in exercising any right or remedy shall constitute a waiver thereof.

SECTION 18. COSTS AND ATTORNEY FEES In the event any action shall be instituted between any of the parties in connection with this Restated & Amended Development Agreement, the party prevailing in such action shall be entitled to recover from the other party or parties all of its costs, including reasonable attorney fees.

SECTION 19. SEVERABILITY In the event any phrase, clause, sentence, paragraph, section, article or other portion of this Restated & Amended Development Agreement shall become illegal, null or void or against public policy for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Restated & Amended Development Agreement shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law. If a court prohibits or excuses the Town from completing any act required of it by this Restated & Amended Development Agreement, and the Town fails to voluntarily take such action, Developers may terminate this Restated & Amended Development Agreement pursuant to Section 13 above.

Notwithstanding anything in this Restated & Amended Development Agreement to the contrary, in the event any provision of the 3rd Amendment to Development Agreement is held by any court of competent jurisdiction to be illegal, null or void or against public policy, then Resolution No. 1844 approving said 3rd Amendment to Development Agreement shall be repealed and the Development Agreement, as amended by the 1st Amendment to Development Agreement and 2nd Amendment to Development Agreement, shall remain in full force and effect as though it had not been amended by the 3rd Amendment to Development Agreement.

SECTION 20. FORCE MAJEURE If either party hereto is prevented from performing any of its obligations under this Restated & Amended Development Agreement by reason of natural disasters, wars, insurrections, strikes, acts of government or any other circumstances beyond its control, the particular failure or failures occasioned thereby shall be waived during such period of prevention and shall not be considered breaches of this Restated & Amended Development Agreement.

SECTION 21. MERGER CLAUSE This Restated & Amended Development Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein. Nevertheless, notwithstanding anything in this Restated & Amended Development Agreement to the contrary, in the event any provision of the 3rd Amendment to Development Agreement is held by any court of competent jurisdiction to be illegal, null or void or against public policy, then Resolution No. 1844 approving said 3rd Amendment to Development Agreement shall be repealed and the Development Agreement, as amended by the 1st Amendment to Development Agreement and 2nd Amendment to Development Agreement, shall remain in full force and effect as though it had not been amended by the 3rd Amendment to Development Agreement.

SECTION 22. COUNTERPARTS This Restated & Amended Development Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

SECTION 23. RECORDATION This Restated & Amended Development Agreement shall be recorded in the Office of the County Recorder of Yavapai County within 10 calendar days of execution, pursuant to ARS §9-500.05(D).

SECTION 24. GOVERNING LAW This Development Agreement shall be governed by and construed under the laws of the State of Arizona, and shall be deemed made and entered into in Yavapai County.

SECTION 25. DEVELOPERS' GOOD STANDING AND AUTHORITY YK and PVL each represent and warrant that (a) it is a limited liability company duly organized and validly existing under the laws of the State of Arizona, (b) the execution, delivery and performance of this Restated & Amended Development Agreement has been duly authorized by the responsible officers thereof, and (c) it has a sufficient unencumbered interest in portions of the Described Property to permit it to develop the same and to perform its obligations under this Restated & Amended Development Agreement.

As confirmation of the above, the Developer shall provide the Town with a Condition of Title Report on the Described Property from a title company duly licensed to do business in Arizona, said Report being dated as of the date of this Restated & Amended Development Agreement. In addition, the Developer shall provide the Town with the documents that show the nature and validity of the above-described organizations as of the date of this Restated & Amended Development Agreement. These documents shall be provided to the Town within twenty-one (21) calendar days after the date of this Restated & Amended Development Agreement.

SECTION 26. TOWN PROCEDURE AND AUTHORITY The Town of Prescott Valley represents and warrants that (a) it is a validly existing and incorporated municipal corporation of the State of Arizona, (b) its execution, delivery and performance of this Restated & Amended Development Agreement has been duly authorized and entered into in compliance with its Town Code and any applicable Arizona statutes, and (C) no further action needs to be taken in connection with such execution and delivery.

SECTION 27. HEADINGS The descriptive headings of the paragraphs of this Restated & Amended Development Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

SECTION 28. EXHIBITS Each of the Exhibits attached hereto shall be deemed to have been incorporated herein by this reference, with the same force and effect as if fully set forth in the body hereof.

SECTION 29. FURTHER ACTS Each of the parties hereto shall execute and deliver all such documents and perform all such acts as are reasonably necessary, from time to time, to carry out the matters contemplated by this Restated & Amended Development Agreement.

SECTION 30. NO PARTNERSHIP/THIRD PARTY RIGHTS It is not intended by this Restated & Amended Development Agreement to, and nothing contained in this Agreement

shall, create any partnership, joint venture or other arrangement between the Developer and the Town. No term or provision of this Restated & Amended Development Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

SECTION 31. TITLES TO NAMES, PLANS, ETC. Except with regard to improvements and infrastructure constructed pursuant to public bidding processes, the Developer shall be the owner of all names, titles, plans, drawings, specifications, ideas, programs, designs and work products of every nature developed, formulated or prepared by or at the instance of the Developer in connection with the Described Property. Provided, however, that in connection with any conveyance of portions of said Property to the Town, such rights pertaining to the portions of Property so conveyed shall be assigned (to the extent such rights are assignable) to the Town. Furthermore, notwithstanding the foregoing, the Developer shall be entitled to utilize all such materials described herein to the extent required for Developer to construct, operate or maintain improvements and infrastructure relating to the Described Property.

SECTION 32. CONFLICT-OF-INTEREST This Restated & Amended Development Agreement may be canceled without penalty pursuant to ARS §38-511 in the event of a conflict-of-interest as described therein by any person significantly involved in negotiating this Agreement on behalf of the Town.

It is understood by the parties that the engineering firm of Dava and Associates has not initiated, negotiated, secured, drafted or created this Restated & Amended Development Agreement on behalf of the Town. Rather, it represented the Initial Developer and Prior Developer in certain aspects of this matter after seeking and receiving an opinion pursuant to ARS §38-507 that the same was not a conflict-of-interest under Article 8, Chapter 3, Title 38 of the Arizona Revised Statutes.

IN WITNESS WHEREOF, the parties hereto have executed this Restated & Amended Development Agreement by and through their authorized representatives the day and year first-above written.

TOWN OF PRESCOTT VALLEY, a municipal corporation of Arizona (“Town”)

HARVEY C. SKOOG, Mayor

ATTEST:

Diane Russell, Town Clerk

APPROVED AS TO FORM:

Ivan Legler, Town Attorney

YK COMMERCIAL REALTY, LLC, a limited liability company of Arizona (“YK”)

By _____

Its _____

ATTEST:

, Secretary

PVL, LLC, a limited liability company of Arizona (“PVL”)

By _____

Its _____

ATTEST:

, Secretary

STATE OF ARIZONA)
) ss:
COUNTY OF YAVAPAI)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by HARVEY C. SKOOG, Mayor, Town of Prescott Valley, an Arizona municipal corporation, on behalf of the municipal corporation.

(Seal and Expiration Date)

Notary Public

STATE OF ARIZONA)
) ss:
COUNTY OF YAVAPAI)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by _____, the _____ of YK Commercial Realty, LLC, a limited liability company of Arizona, on behalf of the company.

(Seal and Expiration Date)

Notary Public

STATE OF ARIZONA)
) ss:
COUNTY OF YAVAPAI)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by _____, the _____ of PVL, LLC, a limited liability company of Arizona, on behalf of the company.

(Seal and Expiration Date)

Notary Public