

When recorded, return to:

Quarles & Brady LLP  
Renaissance One  
Two North Central Avenue  
Phoenix, Arizona 85004-2391  
Attn: Diane M. Haller, Esq.

### **ASSIGNMENT OF DEVELOPMENT AGREEMENT**

THIS ASSIGNMENT OF DEVELOPMENT AGREEMENT (“Assignment”) is entered into as of January \_\_\_, 2012, by and between YAVAPAI HILLS COMMERCIAL, INC., a Delaware corporation (“Assignor”), and YK COMMERCIAL REALTY, LLC, an Arizona limited liability company (“Assignee”).

### **WITNESSETH**

WHEREAS, Yavapai Hills, Inc., a Delaware corporation (“YHI”), and the TOWN OF PRESCOTT VALLEY, a municipal corporation (“Town”), entered into that Development Agreement dated July 8, 1999, and recorded July 14, 1999, at Book 3679, Page 601, Official Records of Yavapai County, Arizona (“Original Agreement”), as amended by that First Amendment to Development Agreement dated July 31, 2003, and recorded August 28, 2003, at Book 4068, Page 323, Official Records of Yavapai County, Arizona (“First Amendment”);

WHEREAS, YHI assigned to Assignor all of YHI’s interest in the Original Agreement and the First Amendment pursuant to that Assignment and Assumption of Development Agreement dated July 20, 2004, and recorded July 28, 2004, at Book 4171, Page 318, Official Records of Yavapai County, Arizona (“YHI Assignment”);

WHEREAS, Assignor and the Town entered into that Second Amendment to Development Agreement dated August 11, 2005, and recorded August 12, 2005, at Book 4297, Page 746, Official Records of Yavapai County, Arizona (“Second Amendment”) (the Original Agreement, First Amendment, YHI Assignment and Second Amendment are collectively referred to as the “Agreement”);

WHEREAS, Assignor has previously assigned to Assignee certain of Assignor’s rights and obligations under the Agreement;

WHEREAS, pursuant to that Partial Assignment of Development Agreement of even date herewith, Assignor has assigned to PVL, LLC, an Arizona limited liability company (“PVL”) certain of Assignor’s rights and obligations under this Agreement; and

WHEREAS, Assignor desires to assign to Assignee all of Assignor's remaining rights and obligations under the Agreement, and Assignee desires to accept and assume such rights and obligations in accordance with this Assignment.

## ASSIGNMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### 1. ASSIGNMENT AND ASSUMPTION.

1.1 Assignment. Assignor hereby transfers and assigns to Assignee all of Assignor's right, title and interest in and to the Agreement. The right, title and interest of Assignor under the Agreement that is assigned to Assignee pursuant to this Section 1.1 is referred to as the "Assigned Rights." All right, title and interest of Assignor under the Agreement that is not assigned to Assignee pursuant to this Section 1.1 was either previously assigned by Assignor or is concurrently being assigned by Assignor and all of such right, title and interest is collectively referred to as the "Previously Assigned Rights."

1.2 Assumption. Assignee hereby accepts from Assignor all of Assignor's right, title and interest in and to the Assigned Rights and undertakes the duties, responsibilities and obligations of Assignor with respect to the Assigned Rights. In no event does Assignee accept or assume any other rights, interests or obligations of Assignor under the Agreement pursuant to this instrument.

1.3 Division of Agreement. The parties, with the agreement of the Town as evidenced by its signature below, intend that the Agreement be divisible and separable with respect to the Assigned Rights, on one hand, and the Previously Assigned Rights, on the other hand, to the extent that such rights are held by different entities. By way of example, but without limitation:

(a) Notwithstanding the provisions of the first sentence of Section 14 of the Agreement, the Agreement may be amended with respect to the Assigned Rights only by a written agreement fully executed by the Town and Assignee, and no consent of Assignor shall be required for such amendment to be effective. Further, the Agreement may be amended with respect to the Previously Assigned Rights only in accordance with the instruments assigning such Previously Assigned Rights.

(b) Notwithstanding the provisions of Section 10 of the Agreement, disputes between the Town and Assignee relating to the Assigned Rights shall be resolved exclusively between the Town and Assignee. Disputes relating to the Previously Assigned Rights shall be resolved only in accordance with the instruments assigning such Previously Assigned Rights.

(c) Notwithstanding the provisions of Section 13 of the Agreement, an incident of default that relates to the Assigned Rights shall be separate and distinct from an incident of default that relates to the Previously Assigned Rights.

The rights and remedies under Section 13 arising from an incident of default that relates to the Assigned Rights shall be strictly limited to those available to the City and Assignee, respectively, as against each other and with respect to the Property, and in no event shall such incident of default affect the rights and obligations of the City and the applicable assignee of Assignor's interest under the Agreement with respect to the Previously Assigned Rights. The rights and remedies under Section 13 arising from an incident of default that relates to the Previously Assigned Rights shall be strictly limited to those available to the City and the applicable assignee of Assignor's interest under the Agreement with respect to the Previously Assigned Rights, as against each other and with respect to real property other than the Property, and in no event shall such incident of default affect the rights and obligations of the City and Assignee under the Agreement with respect to the Assigned Rights.

## 2. INDEMNIFICATION.

2.1 Assignor Indemnification. Assignor shall defend, hold harmless and indemnify Assignee from, for, of and against any and all direct and indirect, known and unknown, obligations, actions, liabilities, judgments, claims, demands, losses, including consequential losses, damages, costs, including costs of defense, expenses and fees (including reasonable attorneys' fees and costs) arising out of or relating to any breach or default by Assignor or YHI under the Agreement with respect to the Assigned Rights occurring before the date of this Assignment.

2.2 Assignee Indemnification. Assignee shall defend, hold harmless and indemnify Assignor and YHI from, for, of and against any and all direct and indirect, known and unknown, obligations, actions, liabilities, judgments, claims, demands, losses, including consequential losses, damages, costs, including costs of defense, expenses and fees (including reasonable attorneys' fees and costs) arising out of or relating to any breach or default by Assignee under the Agreement with respect to the Assigned Rights occurring on and after the date of this Assignment.

## 3. GENERAL.

2.1 Third Party Beneficiary. YHI shall be deemed a third party beneficiary of this Assignment and entitled to enforce the terms hereof.

2.2 Counterparts. This Agreement may be executed in any number of counterparts. Each such counterpart hereof shall be deemed an original, but all counterparts shall constitute but one agreement.

2.3 Notices. The addresses for notices to the parties under this Assignment and the Agreement shall be as follows:

Assignor, at: Yavapai Hills Commercial, Inc.  
2200 Northern Boulevard,  
Greenvale, New York 11548  
Attn: Aaron W. Weingarten

With a copy to: Quarles & Brady LLP  
Renaissance One  
Two North Central Avenue  
Phoenix, Arizona 85004-2391  
Attn: Diane M. Haller, Esq.

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

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

2.4 Ratification. The parties hereby ratify and confirm the Agreement. The Agreement shall remain in full force and effect subject to the terms and conditions of this Assignment.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Assignment of Development Agreement as of the date first set forth above.

YAVAPAI HILLS COMMERCIAL, INC., a Delaware corporation

By:   
Michael J. Klein, Sr.,  
Vice President and Treasurer

STATE OF ARIZONA        )  
                                  ) ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of January, 2012, by Michael J. Klein, Sr., the Vice President and Treasurer of YAVAPAI HILLS COMMERCIAL, INC., a Delaware corporation, for and on behalf of said corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public



IN WITNESS WHEREOF, the parties have executed this Assignment of Development Agreement as of the date first set forth above.

YK COMMERCIAL REALTY, LLC, an Arizona limited liability company

BY: KITCHELL DEVELOPMENT COMPANY, an Arizona corporation  
Its Manager

By: Jeffrey W. Allen  
Jeffrey W. Allen  
President

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of January, 2012, by Jeffrey W. Allen, the President of Kitchell Development Company, an Arizona corporation, Manager of YK COMMERCIAL REALTY, LLC, an Arizona limited liability company, for and on behalf of said company.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Carol A. Vitellaro  
Notary Public



