

CITY OF FLAGSTAFF
INVITATION FOR BIDS (IFB)
FOR
PURCHASE OF REAL PROPERTY

SOLICITATION FOR: City property near Butler Avenue and Herold Ranch Road – for sale and development

SOLICITATION NO.: 2019-67

CLOSING DATE AND TIME: Thursday, February 21, 2019 at 3:00 PM Arizona Time

WHERE TO SUBMIT BIDS (“OFFERS”): Offers shall be submitted on the online bid platform with PlanetBids at the enclosed link prior to the Closing Date and Time at:
<https://www.planetbids.com/portal/portal.cfm?CompanyID=27606>.

CITY PROPERTY FOR SALE: The City is seeking to sell right of way owned by City. The right of way may be encumbered by easements. The City may require that property be sold at a minimum price. Adjacent property owners who bid on the property may be given the right of first refusal.

INFORMATION: The Solicitation and all related materials and any addenda may be downloaded from the Planetbids Website, <https://www.planetbids.com/portal/portal.cfm?CompanyID=27606>.

SENIOR PROCUREMENT SPECIALIST: Matthew Luhman, Email: mluhman@flagstaffaz.gov. If the Senior Procurement Specialist cannot be immediately reached, you may contact the receptionist for the City Management Services Purchasing Department at (928) 213-2206.

QUESTIONS: Any questions must be received by the Senior Procurement Specialist via email at least five (5) calendar days prior to the Closing Date and Time of this RFP.

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PROPERTIES FOR SALE

PROPERTIES FOR SALE: The following property is for sale:

Property A: The eastern portion of City property located at 2989 E. Butler Avenue, Assessor parcel number 106-04-007B, approximately 0.75 acres, identified in Exhibit A, attached hereto

Address: This property is located at 2989 E. Butler Avenue in Flagstaff Arizona.

Coconino County Assessor's Parcel No: 106-04-007B

Zoning: The property is zoned Highway Commercial. Permissible land uses are described in the Flagstaff Zoning Code, which can be accessed at www.flagstaffaz.gov.

Adjacent Property Uses: High Density Residential, Highway Commercial

Access: Access to the property is limited. The purchaser of the property will be required to obtain access at its own expense across a neighboring property. The City will not permit access to the Property from Butler Avenue, due to the future construction of a roundabout at the juncture of Butler and realigned Herold Ranch Road. If and when the roundabout is completed, the City anticipates the property will have access from realigned Herold Ranch Road as a right-in, right-out ONLY. The construction of the roundabout is not currently budgeted and it is unknown when construction will occur. The successful bidder must establish its legal right of access to the Property prior to, or simultaneously with, close of escrow.

Improvements: None

Historical use: Vacant Land

Legal description/survey: To be provided in escrow and prior to closing. If the City pays for upfront fees, City will be reimbursed at closing from the purchaser. The purchase price will be based on a per square foot basis.

Easements: Any purchase shall be subject to existing easements and encumbrances of record. Title report to be provided in escrow, paid for by purchaser.

Estimated fair market value: The City estimates the property value is \$175,000 which is about \$5.40 per square foot based on comparable sales in the area. The property has not been formally appraised.

Minimum Bid: The City is requesting a minimum bid of \$130,000 for the property assuming 32,404 square feet or \$4.00 per square foot, plus the legal obligation to construct a minimum of five (5) permanently affordable ownership units (residential housing).

Right of First Refusal (Best Interests of Community): The adjacent property owner may be interested in purchasing the property. If the adjacent property owner submits a responsible and responsive bid, then it shall be granted the right of first refusal. This means that the adjacent property owner may offer to purchase the property at the highest bid (price) submitted by any offer or minimum bid requested by City, whichever is more.

Desired Development: Affordable housing is a priority for the City. The City desires that the property be developed to provide affordable ownership units to the public. The City is requiring the buyer of the

property to provide a minimum of five permanently affordable ownership units. The units shall be constructed and offered for sale within five (5) years from the date the property is sold. If the unit(s) are not sold within two (2) years from the date the certificate of occupancy for the unit(s) are issued, the City shall have the option to purchase the units at the same price the unit must be sold at to satisfy the deed restriction or City may approve rental of the units for affordable housing and subject to terms and conditions solely in discretion of City. The affordable ownership units will be deed restricted to secure permanent affordability and must be sold to households earning up to 100% of the Area Median Income (AMI). Any deed restriction language must be approved by City and developer's lender prior to close of escrow. A sample form of deed restriction is included. Developer must finance the costs of construction for the affordable housing units. Each unit shall be priced 20% less than the fair market value per square foot of comparable units, with qualifying buyers spending no more than 30% of monthly income on mortgage payments. The units may be single- or two-bedroom units. The units may be either condominium or townhome units and must comply with all Flagstaff zoning requirements, which may include obtaining a Conditional Use Permit (CUP) for a Planned Residential Development in a commercial zone. The successful bidder and the City shall enter into a development agreement prior to close of escrow for the development of the property.

Contingent Sale: This sale is contingent on the City Council passing an Ordinance authorizing the sale of the property, approving the purchase contract, and approving the development agreement.

INSTRUCTIONS IN GENERAL

DUE DILIGENCE: It is your responsibility to examine the entire Solicitation prior to completing your offer, including the form of contract.

INSPECTION OF PROPERTY: Before submitting an offer, you are required to inspect any properties referenced in the Solicitation and notify the Agent if you believe the properties or conditions do not match the description found in the Solicitation or are unsafe.

PRE-OFFER MEETING: If a Pre-Offer Meeting is scheduled, you are strongly encouraged to attend. If scheduled, the date and time of this meeting will be indicated on the cover page of the Solicitation. The purpose of this meeting shall be to clarify the Solicitation in order to prevent any misunderstandings. Any questions, apparent omission or discrepancy should be presented to the City at this time. The City shall then determine the appropriate action necessary, if any, and issue a written amendment to the Solicitation. Oral statements or instructions shall not constitute an amendment to this Solicitation.

DISABILITIES: A person with a disability may request a reasonable accommodation in the Solicitation process by contacting the Agent as early as possible to allow time to arrange the accommodation.

SUBMITTAL OF OFFER: Offers shall be submitted on the online bid platform with PlanetBids prior to the Closing Date and Time, presented on the cover page of this IFB, at the following link:
<https://www.planetbids.com/portal/portal.cfm?CompanyID=27606>.

COST OF OFFER: You are responsible for all costs related to preparation and submittal of an offer. The City will not reimburse any such costs.

LATE OFFERS: Late Bids shall not be accepted on the Planetbids website. Please make sure to submit the Bid in a timely manner to allow for all documents to transfer to Planetbids. Keep in mind that if a Bidder does not receive a notice from Planetbids stating the Bid was submitted successfully, then the submittal is not valid.

WITHDRAWAL OF OFFERS: You may withdraw an offer before the Closing Date and Time by removing it from PlanetBids. After the Closing Date and Time, a withdrawal must be signed by the bidder's authorized representative and submitted to the Agent by hand delivery or mail.

OFFER ACCEPTANCE PERIOD: An offer made in response to this Solicitation shall be valid and irrevocable for ninety (90) days after the Closing Date and Time.

QUESTIONS: If a Bidder has any questions about this Solicitation, contact the Senior Procurement Specialist. **The City will only respond to questions at least ten (10) calendar days before the Closing Date and Time.** Questions should be submitted in writing. All questions shall refer to the Solicitation number, page and paragraph number in question. The City **will not** be responsible if a Bidder adjusts the Bid based on any verbal statements made by employees or officers of the City, particularly if such statements conflict with the Solicitation. A Bidder may request the Senior Procurement Specialist to issue an addendum to the Solicitation.

ADDENDA: The City will issue any interpretation or correction of the Solicitation only by written addendum and will be posted on the PlanetBids website. Failure to acknowledge ANY addenda issued will show the Contractor non-responsive once the solicitation has closed. **PLEASE MAKE SURE TO ACKNOWLEDGE ALL ADDENDA ITEMS ON THE PLANETBIDS WEBSITE.**

IMPROPER CONTACT WITH CITY EMPLOYEES: All bidders submitting an offer (including the firm's employees, representatives, agents, lobbyists, attorneys, and subcontractors) will refrain from direct or indirect contact for the purpose of influencing or creating bias in the evaluation/selection process with any person who may play a part in the evaluation/selection process. This includes but is not limited to the evaluation committee, City Council Members, City Manager, Assistant City Manager(s), Deputy City Manager(s), Department Directors or other staff ("City Staff"). This policy is intended to create a level playing field for all potential firms, assure that contract decisions are made in public, and to protect the integrity of the selection process. Bidder is responsible for bringing all questions and concerns to the Agent identified on Page One of this document. If the Agent is unresponsive, the bidder may contact the City Manager. A bidder may be disqualified if the bidder: (a) contacts a quorum of the Council or contributes to an open meeting law violation; (b) offers political support or gratuities in exchange for approval or support of bidder's offer; (c) obtains information from City Staff not available to other bidders which may result in an unfair advantage in the competitive procurement process and fails to notify Agent of this fact within 48 hours thereafter; or (d) engages in any other egregious conduct.

CONTRACT WITH CITY

FORM OF CONTRACT: The City's proposed form of contract is included with this solicitation as Attachment A – Sample Real Estate Purchase Contract. The final form of contract will be conformed to match this Solicitation prior to contract award.

EXCEPTIONS: You may request changes to the form of contractor any terms and conditions as part of your offer. (Use the Exceptions form)

CHANGES TO CONTRACT AFTER CONTRACT AWARD: Requests to change the contract after contract award, including but not limited to changes to insurance may be rejected by the City. The contract shall not be modified within the first year after contract award where: (a) an amendment may result in a competitive advantage that was not made available to other bidders; (b) requests for changes may delay commencement of performance.

FINANCIAL AND TAX CONSIDERATIONS FOR OFFER

OFFER ON SINGLE OR MULTIPLE PROPERTIES: Bidder may submit an offer on one or multiple properties for sale included in this Invitation for Bids. The City reserves the right to accept all or part of an offer for purchase (one or multiple properties).

UNIT PRICES: Please check all math prior to submittal of your offer. If the offer unit prices do not correspond with the multiplied subtotal or total, the unit price shall prevail unless there is a blatant clerical error in the unit price.

EVALUATION OF OFFER AND CONTRACT AWARD

HIGHEST RESPONSIBLE AND RESPONSIVE BID: The City will award a contract to the responsible and responsive bidder whose offer is the highest in price for the Property.

RESPONSIBILITY: In evaluating responsibility, the City may consider all matters related to the bidder's ability to perform the contract satisfactorily as further described in Flagstaff City Code, Title 1, Chapter 1-20.

EVALUATION PROCESS: The City of Flagstaff will review each offer to determine if it is responsive and responsible. A bid tabulation will be created showing the pricing offered by each bidder. The highest bid/offer will be determined using the enclosed Offer form.

FINANCIAL STATUS: If requested by the City following the Closing Date and Time, you must provide a current audited financial statement, a current audited financial report, or a copy of a current federal income tax return. Failure or refusal to provide this information within five (5) business days after communication of the request by the City shall be sufficient grounds for the City to reject an offer, and/or to declare the offer as non-responsive or non-responsible.

REQUESTS FOR ADDITIONAL INFORMATION: After the Closing Date and Time, the City may request you to provide additional information related to your offer. Failure to provide this information within five (5) business days after communication of the request by the City will be grounds for the City to reject an offer, and/or to declare the offer as non-responsive or non-responsible.

RESERVATION OF RIGHTS: The City reserves the right to reject any and all offers, or any part thereof. The City reserves the right to waive any clerical error or nonmaterial defect in the offer when it is deemed to be in the City's best interest. The City reserves the right to cancel or reissue a Solicitation.

NOTICE OF PROPOSED CONTRACT AWARD OR RECOMMENDATION: All bidders will receive an email notifying them of the City's proposed contract award or recommendation to reject all offers. This notice will be posted as part of the agenda for the regular meeting of the City Council, on the City website. The agenda is typically posted at least one (1) week prior to the Council Meeting.

PUBLIC RECORDS: Offers received by the City are available for public inspection after a contract has been awarded, subject to any confidentiality restrictions.

PROTESTS: If you wish to protest the Solicitation, a protest shall be in writing and shall be personally delivered or served upon the City Purchasing Director. A protest related to the Solicitation (such as specifications, requirements, or scope) shall be received by the City Purchasing Department before the Closing Date and Time. A protest of a proposed award or of an award shall be personally delivered or served upon the City Purchasing Director within ten (10) days after the protester knows or should have known the basis of the protest. A protest shall include:

- a. The name, address and telephone number of the protester;
- b. The signature of the protester or its representative;
- c. Identification of the solicitation or contract number;
- d. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
- e. The form of relief requested.

CHARTER REQUIREMENTS: The City Charter Article VIII, Section 10 provides that properties may be sold to the highest responsible bidder after published notice at least one time per week for three (3) weeks prior to opening of bid. Council shall have the right to reject all bids submitted. If there are no bids submitted, then for a two-year period the City Manager may, subject to Council approval, enter into an agreement to sell the property for an amount reasonably consistent with an appraisal without further notice and bid process.

ABANDONMENT OF PUBLIC RIGHT-OF-WAY: If City seeks to sell public right-of-way which is no longer of use, and no bid is received for the property, then pursuant to A.R.S. § 28 -2701 et seq. the Council may make a finding that the property has no value and it may be abandoned to the adjacent property owner.

ORDINANCE REQUIRED: The City Charter Article VII, Section 5 the Council must authorize sale of real properties by ordinance.

OFFER FORMAT

Cover:

The cover should contain the following:

- Solicitation Number
- Solicitation Name
- Closing Date and Time
- Company name (and logo if desired)
- Other information/graphics as desired

Sections of Offer:

A. Cover Letter (1 page)

B. Financial Qualifications

- Describe your company, and the state in which the firm was incorporated or organized.
- Confirm that your company is in good standing with the Arizona Corporation Commission.
- Provide financial information to demonstrate ability to purchase property for cash or provide a conditional loan approval from a reputable lender.

C. Offer (form) (attach)

D. Bidder Questionnaire (form) (attach copies of licenses)

E. Exceptions (form) (attach information)

F. Confidential Materials (form) (attach information)

Disclosure (form); Declaration Related to Solvency (form); Declaration Related to Gratuities (form); Declaration of Non-Collusion (form) (attach explanations)

All completed forms must be submitted with offer!

OFFER (FORM)

TO THE CITY OF FLAGSTAFF:

The undersigned Bidder hereby offers to purchase real property in compliance with the Solicitation, including the Addenda, and as described in this offer made to the City.

REAL PROPERTY: 2989 E. Butler Avenue, Coconino County Assessor Parcel No. 106-04-007B, consistent of approximately .7439 acres or 32,404 square feet.

OFFER AMOUNT PER SQUARE FOOT (\$): _____

(City requires a minimum bid of \$4.00/square foot or \$130,000, assuming the parcel is 32,404 square feet, plus five (5) affordable ownership units. If bidder is willing to provide more than five (5) units, each additional unit will be credited as \$10,000 toward the bid price. For example, if the bidder offers six (6) affordable units, \$10,000 will be added to the bidder's cash bid offer and counted toward the minimum bid.)

NUMBER OF AFFORDABLE OWNERSHIP UNITS TO BE PROVIDED: _____
(City requires a minimum of 5 units)

ACCESS TO PROPERTY: _____
(Please describe how Bidder intends to access the property being purchased. Legal right of access must be obtained prior to, or simultaneously with, close of escrow).

Signature of Person Authorized to Sign Offer

Title

Printed Name

Date

BIDDER QUESTIONNAIRE (FORM)

Bidder:

Company Name: _____

Doing Business As (if different than above): _____

Address: _____

City: _____ State: _____ Zip: _____ - _____

Phone: _____ Fax: _____

E-Mail Address: _____ Website: _____

Taxpayer Identification Number: _____

Mailing Address (if different than above):

Address: _____

City: _____ State: _____ Zip: _____ - _____

Bidder Contact for Questions about Offer:

Name: _____ Fax: _____

Phone: _____ E-Mail Address: _____

EXCEPTIONS (FORM)

Notations. Any strikeouts, notes or modifications to the Solicitation documents shall be initialed in ink by the authorized person who signs the offer. If notations are made, they must be submitted with your offer and are considered Exceptions.

Exceptions: In addition to any notations on the Solicitation documents, please identify and list any exceptions to the Solicitation, by section/paragraph, on this Exceptions Form. The City reserves the right to reject, accept or further negotiate Exceptions. Exceptions may render the offer non-responsive.

Exceptions to Form of Contract: You may request changes to the form of contract (including any Standard or Special Terms and Conditions) on the Exceptions Form. You may also submit your own form of contract. The City will consider these in the same manner as any other exceptions.

You must indicate any and all exceptions taken to the requirements, specifications, and/or terms and conditions of this Solicitation, including the contract.

Exceptions (INITIAL ONE):

_____ No exceptions

_____ Exceptions taken (describe). Attach additional pages if needed.

CONFIDENTIAL MATERIALS (FORM)

If you believe part of your offer is confidential, mark the page(s) "CONFIDENTIAL" and isolate the pages as an attachment to this form. Also include an explanation why they are confidential.

Requests to deem the entire offer as confidential will not be considered.

If you want confidential information returned to you after contract award (and you are not selected for contract award), then note this below. You will be responsible for pick up.

Generally, information submitted in response to a Solicitation is subject to disclosure pursuant to the Arizona Public Records Law after contract award.

The information identified as confidential shall not be disclosed until the City makes a written determination whether the information may be treated as confidential. If the City determines it is necessary to disclose the information, the City will inform you in writing.

Confidential/Proprietary Materials (INITIAL ONE):

_____ No confidential/proprietary materials have been included with this offer

_____ Confidential/Proprietary materials are included in this offer. See attached.

DISCLOSURE (FORM)

For any item checked YES, you must provide information. Answering YES to one or more questions does not necessarily mean you will be disqualified from this Solicitation. **FAILURE TO PROVIDE TRUE AND COMPLETE INFORMATION MAY RESULT IN DISQUALIFICATION FROM THIS SOLICITATION.**

1. Has your company or any affiliate* in the past 5 years: (i) had a permit revoked or suspended, (ii) been required to pay a fine, judgment or settlement of more than \$100,000, (iii) been convicted of a criminal offense (including a plea of guilty or *nolo contendere*), or (iv) been found in contempt of court, as a result of or in connection with any of the following:
 - a. Any offense relating to integrity or honesty, including fraud, bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, theft, price fixing, proposal rigging, restraint of trade or other antitrust law violation? YES _____
NO _____
 - b. Violation of the terms of any public contract? YES _____
NO _____
 - c. Failure to pay any uncontested debt to a government agency? YES _____
NO _____
 - d. Violation of any law or regulation pertaining to the protection of public health or the environment? YES _____
NO _____

*An "affiliate" of your company means any person, company or other entity that, either directly or indirectly (for example, through stock ownership by family members), controls, is controlled by, or is under common control with, your company.

2. Has your company or any affiliate in the past 5 years been named as a party in any lawsuit related to performance of a contract (you do not need to list subcontractor lien claims which have been fully paid/satisfied)?
YES _____ NO _____
3. Has your company or any affiliate of your company in the past 5 years been debarred or suspended from submitting proposals on public contracts?
YES _____ NO _____

I hereby verify that the foregoing information, and any explanation attached are to the best of my knowledge, true and complete.

Signature of Person Authorized to Sign Offer

DECLARATION RELATED TO SOLVENCY (FORM)

Is your firm currently involved in an ongoing bankruptcy as a debtor, or in a reorganization, liquidation, or dissolution proceeding, or has a trustee or receiver been appointed over all or a substantial portion of the property of your firm under federal bankruptcy law or any state insolvency law?

_____ Yes _____ No (INITIAL ONE)

DECLARATION RELATED TO GRATUITIES (FORM)

I hereby verify and declare that, to the best of my knowledge, neither the bidder nor anyone associated with the bidder has given, offered to give, or intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the offer ("Gratuities").

Signature of Person Authorized to Sign Offer

DECLARATION OF NON-COLLUSION (FORM)

I hereby verify and declare that:

The pricing for this offer has been arrived at independently and without consultation, communication or agreement with any other bidder who may submit an offer.

The pricing for this offer has not been disclosed to any other bidder who may submit an offer, and will not be, prior to the Closing Date and Time.

No attempt has been made or will be made to induce any firm or person to refrain from submitting an offer, or to submit an offer with higher pricing than this offer, or to submit an intentionally high or noncompetitive offer or other form of complementary offer.

This offer is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.

Bidder, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.

Signature of Person Authorized to Sign Offer

Exhibit A - Map of Property in relation to other properties, and planned future roundabout

APN#106-04-009E
PEDRICK TRUST

APN#106-04-006B
SIERRA VISTA

APN#106-04-007C
SIERRA VISTA

APN#106-04-006C
FLASH & THE BOYS

APPROXIMATELY
.74 ACRES

BUTLER AVE

HEROLD RANCH RD

APN#106-04-005B
LITTLE AMERICA HOTEL

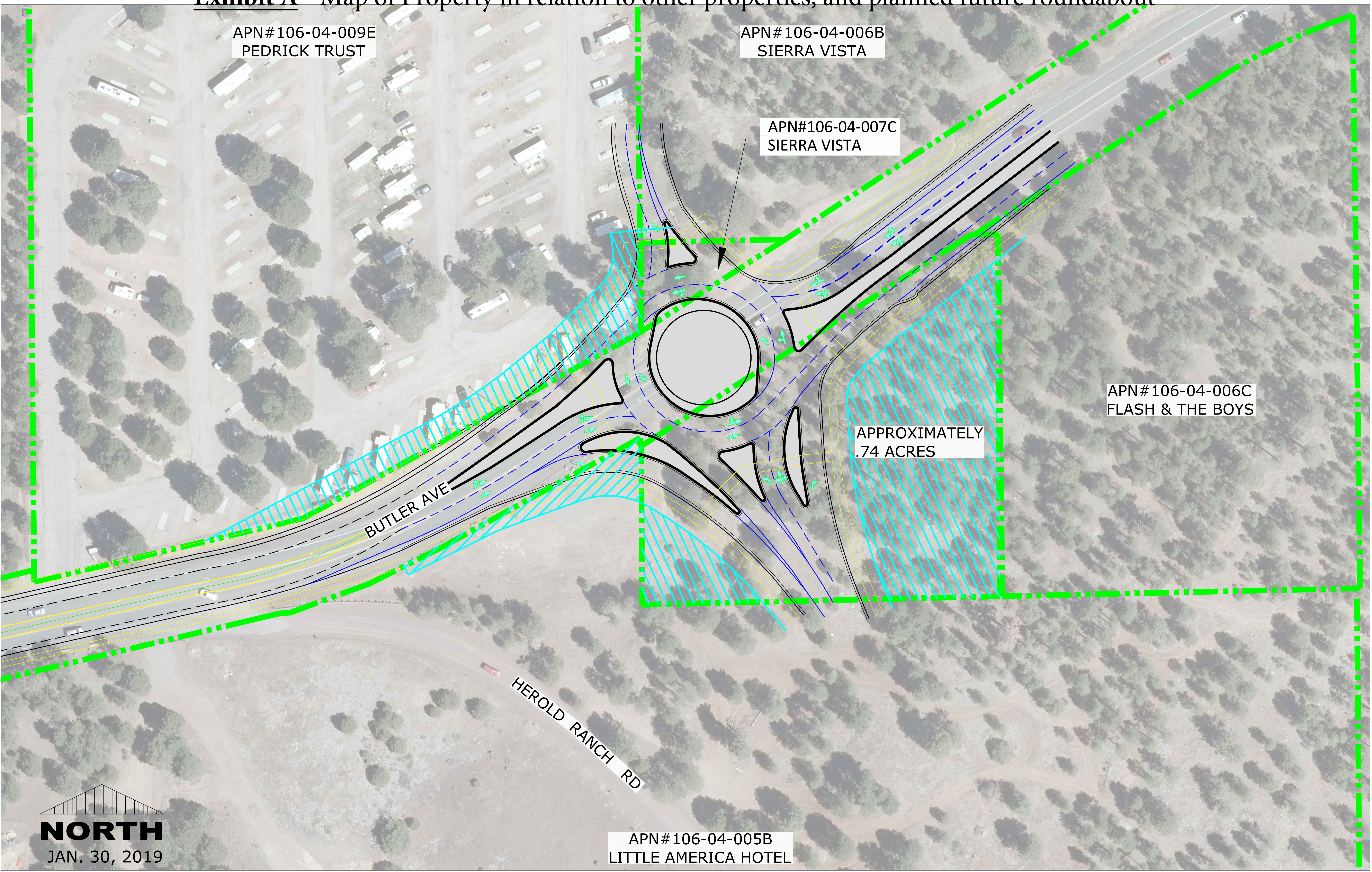


Exhibit B - Legal Description

LEGAL DESCRIPTION

EXHIBIT 'A'

APN: 106-04-007B

Ref No. #18245

1-17-2019

A portion of that parcel of land as described in Instrument Number 3207467, Official Records of Coconino County (herein referred to as R1), lying within the northeast quarter of Section 23, Township 21 North, Range 7 East, of the Gila and Salt River Meridian, Coconino County, Arizona, described as follows:

Parcel 1:

Commencing at a the northeast corner of said Section 23, a found 2"x 2" metal plate set in concrete;

Thence along the east line of said Section 23, South 00°44'24" East, 706.41 feet (Basis of Bearing) to a found ½" rebar with yellow plastic cap stamped "RLS 11369" on the north Right-of-Way line of Butler Avenue as shown on Book 21 of Surveys, Page 25, Official Records of Coconino County (herein referred to as R2);

Thence South 00°37'35" East, 93.27 feet to a found ½" rebar with yellow plastic cap stamped "RLS 11369" on the south Right-of-Way line of Butler Avenue as shown on R2;

Thence along the east line of that parcel of land as shown on R2, South 00°44'14" East, 523.54 feet to a found 1.5" brass cap stamped "ARENCO RLS 4321" at the southeast corner of said parcel;

Thence along the south line of said parcel, South 88°43'33" West, 326.77 feet to a found ½" rebar with yellow plastic cap stamped "RLS 11369" at the southeast corner of that parcel of land as described in R1;

Thence along the south line of said parcel as described in R1, South 88°40'49" West, 216.15 feet to the **TRUE POINT OF BEGINNING**;

Thence continuing along said south line, South 88°40'49" West, 110.66 feet to a found ½" rebar with yellow plastic cap stamped "WILLDAN PE 10301" at the southwest corner of said parcel;

Thence along the west line of said parcel, North 00°32'50" West, 93.37 feet to the beginning of a non-tangent curve concave to the southwest having a radius of 74.57 feet and being subtended by a chord which bears South 62°16'52" East, 11.88 feet;

Thence leaving said west line and southeasterly along said curve, 11.90 feet through a central angle of 9°08'27";

Thence South 58°15'33" East, 19.67 feet to the beginning of a non-tangent curve concave to the southwest having a radius of 388.50 feet and being subtended by a chord which bears South 49°18'05" East 102.42 feet;

Thence southeasterly along said curve, 102.72 feet through a central angle of 15°08'55";

Thence South 39°04'21" East, 10.51 feet to the **TRUE POINT OF BEGINNING**;

Containing 5,854 square feet, or 0.134 Acres, more or less.

Parcel 2:

Commencing at a the northeast corner of said Section 23, a found 2"x 2" metal plate set in concrete;

Thence along the east line of said Section 23, South 00°44'24" East, 706.41 feet (Basis of Bearing) to a found ½" rebar with yellow plastic cap stamped "RLS 11369" on the north Right-of-Way line of Butler Avenue as shown on Book 21 of Surveys, Page 25, Official Records of Coconino County (herein referred to as R2);

Thence South 00°37'35" East, 93.27 feet to a found ½" rebar with yellow plastic cap stamped "RLS 11369" on the south Right-of-Way line of Butler Avenue as shown on R2;

Thence along the east line of that parcel of land as shown on R2, South 00°44'14" East, 523.54 feet to a found 1.5" brass cap stamped "ARENCO RLS 4321" at the southeast corner of said parcel;

Thence along the south line of said parcel, South 88°43'33" West, 326.77 feet to a found ½" rebar with yellow plastic cap stamped "RLS 11369" at the southeast corner of that parcel of land as described in R1;

Thence along the south line of said parcel as described in R1, South 88°40'49" West, 100.63 feet to the **TRUE POINT OF BEGINNING**;

Thence continuing along said south line, South 88°40'49" West, 115.52 feet;

Thence North 39°04'21" West, 10.51 feet to the beginning of a non-tangent curve concave to the southwest having a radius of 388.50 feet and being subtended by a chord which bears North 49°18'05" West 102.42 feet;

Thence northwesterly along said curve, 102.72 feet through a central angle of 15°08'55";

Thence North 58°15'33" West, 19.67 feet to the beginning of a non-tangent curve concave to the southwest having a radius of 74.57 feet and being subtended by a chord which bears North 62°16'52" West 11.88 feet;

Thence northwesterly along said curve, 11.90 feet through a central angle of 9°08'27" to a point on the west line of said parcel;

Thence along said west line, North 00°32'50" West, 50.42 feet to a set ½" rebar with aluminum cap "RLS 48756" on the southerly Right-of-Way line of Butler Avenue as described in Docket 918, Page 572, Official Records of Coconino County;

Thence North 57°20'18" East, 359.20 feet to a set ½" rebar with aluminum cap stamped "RLS 48756" on the southerly Right-of-Way line of said Butler Avenue, said point being in common with a point on the northwesterly property line of that parcel of land as shown on R2.

Thence North 88°40'26" East, 21.88 feet to a found ½" rebar with aluminum cap stamped "LS 18548" at an angle point in the northwesterly property line of said parcel of land as shown on R2;

Thence along the west line of said parcel, South 00°39'43" East, 30.29 feet;

Thence leaving said west line, South 52°21'57" West, 17.99 feet;

Thence South 62°44'34" West, 20.31 feet;

Thence South 51°25'21" West, 1.30 feet to the beginning of a non-tangent curve concave to the northwest having a radius of 1169.67 feet and being subtended by a chord which bears South 52°48'05" West, 72.98 feet;

Thence southwesterly along said curve, 72.99 feet through a central angle of 3°34'31";

Thence South 49°09'35" West, 38.94 feet;

Thence South 41°07'19" West, 12.46 feet to the beginning of a non-tangent curve concave to the east having a radius of 31.06 feet and being subtended by a chord which bears South 16°49'28" West, 21.91 feet;

Thence southwesterly and southerly along said curve, 22.39 feet through a central angle of 41°18'32";

Thence South 03°49'48" East, 54.18 feet to the beginning of a non-tangent curve concave to the east having a radius of 424.97 feet and being subtended by a chord which bears South 14°21'56" East 118.06 feet;

Thence southerly along said curve, 118.45 feet through a central angle of 15°58'09";

Thence South 22°15'26" East, 14.24 feet to the **TRUE POINT OF BEGINNING**;

Containing 41,256 square feet, or 0.947 Acres, more or less.

Parcel 3:

Commencing at the northeast corner of said Section 23, a found 2"x 2" metal plate set in concrete;

Thence along the east line of said Section 23, South 00°44'24" East, 706.41 feet (Basis of Bearing) to a found ½" rebar with yellow plastic cap stamped "RLS 11369" on the north Right-of-Way line of Butler Avenue as shown on Book 21 of Surveys, Page 25, Official Records of Coconino County (herein referred to as R2);

Thence South 00°37'35" East, 93.27 feet to a found ½" rebar with yellow plastic cap stamped "RLS 11369" on the south Right-of-Way line of Butler Avenue as shown on R2;

Thence along the east line of that parcel of land as shown on R2, South 00°44'14" East, 523.54 feet to a found 1.5" brass cap stamped "ARENCO RLS 4321" at the southeast corner of said parcel;

Thence along the south line of said parcel, South 88°43'33" West, 326.77 feet to a found ½" rebar with yellow plastic cap stamped "RLS 11369" at the southeast corner of that parcel of land as described in R1 and the **TRUE POINT OF BEGINNING**;

Thence along the south line of said parcel as described in R1, South 88°40'49" West, 100.63 feet;

Thence leaving said south line, North 22°15'26" West, 14.24 feet to the beginning of a non-tangent curve concave to the east having a radius of 424.97 feet and being subtended by a chord which bears North 14°21'56" West 118.06 feet;

Thence northerly along said curve, 118.45 feet through a central angle of 15°58'09";

Thence North 03°49'48" West, 54.18 feet to the beginning of a tangent curve concave to the east, having a radius of 31.06 feet;

Thence northeasterly along said curve, 22.39 feet through a central angle of 41°18'32";

Thence North 41°07'19" East, 12.46 feet;

Thence North 49°09'35" East, 38.94 feet to the beginning of a non-tangent curve concave to the northwest having a radius of 1169.67 feet and being subtended by a chord which bears North 52°48'05" East 72.98 feet;

Thence northeasterly along said curve, 72.99 feet through a central angle of 3°34'31";

Thence North 51°25'21" East, 1.30 feet;

Thence North 62°44'34" East, 20.31 feet;

Thence North 52°21'57" East, 17.99 feet to a point on the west line of that parcel of land as shown on R2;

Thence along said west line, South 00°39'43" East, 300.35 feet to the **TRUE POINT OF BEGINNING**;

Containing 32,404 square feet, or 0.7439 Acres, more or less.

This legal description was prepared by Aaron D. Borling, RLS 48756, on behalf of and at the request of Shephard-Wesnitzer, Inc., Flagstaff, AZ.

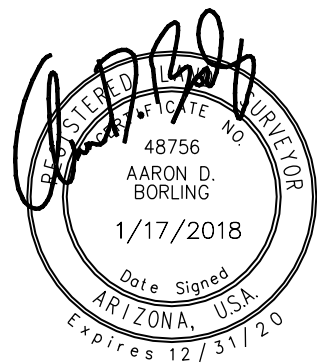
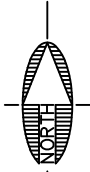


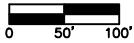
EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

A PORTION OF THE NORTHEAST QUARTER OF SECTION 23,
TOWNSHIP 21 NORTH, RANGE 7 EAST
GILA AND SALT RIVER MERIDIAN
COCONINO COUNTY, ARIZONA

POINT OF COMMENCEMENT
NE COR.
SEC. 23



SCALE: 1" = 100'



S 0°44'24" E 706.41'
(BASIS OF BEARING)

'RLS 11369'

'RLS 11369'

APN: 106-04-006B

'RLS 11369'

APN:
106-04-006C

'RLS 48756'

LS 18548

N 0°40'53" W
186.85'

'RLS 48756'

N 57°20'18" E 359.20'

APN: 106-04-006C

E. BUTLER AVE

L14
C4
L15
C5

L12
L11
C3
L10

S 0°39'43" E 300.35'

SUBJECT PARCEL
APN: 106-04-007B

PARCEL 3

PARCEL 2

PARCEL 1



'RLS 11369'

S 88°43'33" W 326.77'

'RLS 4321'

APN:
106-04-005B

'PE 10301'

POB
PARCEL 1

POB
PARCEL 2

POB
PARCEL 3

E 1/4 COR.
SEC. 23

EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

A PORTION OF THE NORTHEAST QUARTER OF SECTION 23,
 TOWNSHIP 21 NORTH, RANGE 7 EAST
 GILA AND SALT RIVER MERIDIAN
 COCONINO COUNTY, ARIZONA

Curve Table						Parcel Line Table		
Curve #	Length	Radius	Delta	Chord Direction	Chord Length	Line #	Length	Direction
C1	11.90	74.57	9.14	S62° 16' 52"E	11.88	L1	110.66	S88° 40' 49"W
C2	102.72	388.50	15.15	S49° 18' 05"E	102.42	L2	93.37	N0° 32' 50"W
C3	72.99	1169.67	3.58	N52° 48' 05"E	72.98	L3	19.67	S58° 15' 33"E
C4	22.39	31.06	41.31	N16° 49' 28"E	21.91	L4	10.51	S39° 04' 21"E
C5	118.45	424.97	15.97	N14° 21' 56"W	118.06	L5	115.52	S88° 40' 49"W
						L6	50.42	N0° 32' 50"W
						L8	21.88	N88° 40' 26"E
						L9	30.29	S0° 39' 43"E
						L10	17.99	N52° 21' 57"E
						L11	20.31	N62° 44' 34"E
						L12	1.30	S51° 25' 21"W
						L13	38.94	S49° 09' 35"W
						L14	12.46	S41° 07' 19"W
						L15	54.18	S3° 49' 48"E
						L16	14.24	S22° 15' 26"E
						L17	100.63	S88° 40' 49"W
						L21	93.27	S0° 37' 35"E

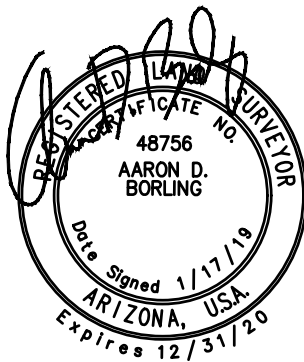


Exhibit C – Draft Deed Restriction

**City of Flagstaff
Deed Restriction
DRAFT**

**DECLARATION OF DEED COVENANTS, CONDITIONS AND
RESTRICTIONS FOR “NEW DEVELOPMENT” AFFORDABLE
PROPERTIES**

THIS AMENDED DECLARATION OF DEED COVENANTS, CONDITIONS AND RESTRICTIONS (“Amended Declaration”) is made this ___ day of _____, 2018, by DEVELOPER (“Declarant”).

WHEREAS, Declarant, a real estate developer, is the fee owner of those certain parcels of real property located in Coconino County, City of Flagstaff, Arizona as more particularly described in **Exhibit A**, attached to and made a part hereof, and the Plat recorded in xxxxxxxx, records of the Coconino County Recorder (“Real Property”);

WHEREAS, Declarant and the City of Flagstaff, an Arizona municipal corporation (“City”), entered into a certain Development Agreement dated November 13, 2003 (“Development Agreement”), a copy of which is recorded as Instrument Number 3236027, records of the Coconino County Recorder, and pursuant to which, among other things, Declarant purchased the Real Property from the City in order to develop the Rio Homes Subdivision (“Subdivision”) on the Real Property;

WHEREAS, the principal reason that the City entered into the Development Agreement was to participate in the creation and retention of affordable housing (“Affordable Properties”) for purchase and occupancy by persons or families of low to moderate income in the City of Flagstaff, who meet certain “Eligible Buyer” criteria set forth below;

WHEREAS, pursuant to the terms of the Development Agreement, the Declarant agreed that at least twenty percent (20%) of the Subdivision units to be offered for sale as Affordable Properties shall be offered to Eligible Buyers, who must convey the units on resale to Subsequent Eligible Buyers;

WHEREAS, the Affordable Properties are identified on the map designated **Exhibit B**, attached to and made a part hereof;

NOW, THEREFORE, Declarant, for the purposes set forth above, declares that the portions of the Real Property constituting Affordable Properties shall be held, transferred, sold, conveyed, occupied and used subject to the covenants, conditions, restrictions, obligations, privileges and rights hereinafter set forth, all of which shall run with the land

and be binding upon the portions of the Real Property constituting Affordable Properties, or any part thereof, and which shall inure to the benefit of each owner thereof (“Owner”) and to the benefit of the City.

1. City’s Right of First Refusal.

Affordable Properties shall be sold only to Eligible Buyers, subject to a right of first refusal hereby granted by the Declarant to the City. The City’s right of first refusal shall extend to each proposed sale of an Affordable Property. The City’s right of first refusal shall also extend to the purchase of Affordable Properties for resale to other Eligible Buyers and shall be for an amount either equal to or below the Purchase Option Price described in **Section 4** hereof. The City shall have ninety (90) days from receipt of the Intent to Sell Notice to exercise its right of first refusal, open an escrow with a title company, and close escrow.

2. Sales to Eligible Buyers and Subsequent Eligible Buyers.

Subject to the provisions set forth below, in the event that the Declarant desires to sell an Affordable Property, the Declarant shall sell an Affordable Property only to a buyer (“Eligible Buyer”) having a household income not in excess of one hundred percent (100%) of the United States Department of Housing and Urban Development Area Median Income for Coconino County, Arizona (“HUD AMI”). In the event that the Owner desires to sell an Affordable Property, the Owner shall sell an Affordable Property only to a buyer having a household income not in excess of one hundred twenty-five percent (125%) of the HUD AMI (“Subsequent Eligible Buyer”). A copy of the 2018 HUD AMI, for illustrative purposes, is designated **Exhibit C**, attached to and made a part hereof. The then current HUD AMI will be used to determine eligibility.

3. Developer Prices.

The Declarant shall sell the Affordable Properties at a price affordable to at or below 100% AMI per Section X of the “Project Name” Development Agreement. The Developer Prices will remain constant until all of the Affordable Properties are initially sold, except, however, that the 100% AMI limits shall be adjusted based on the annual AMI provided by the U.S. Department of Housing and Urban Development (HUD).

4. City’s Purchase Option, Maximum Resale Price, and Sales to Subsequent Eligible Buyers.

- a. Intent to Sell Notice. In the event that an Owner wishes to sell an Affordable Property, the Owner shall notify the City in writing thereof (“Intent To Sell

Notice”). Such Intent to Sell Notice shall include a statement as to whether the Owner has identified a prospective buyer.

b. Appraisal. After the City’s receipt of the Intent To Sell Notice, the City shall obtain at the City’s cost a market valuation of the Affordable Property (“Appraisal”) by a duly licensed appraiser. The Appraisal shall be conducted by analysis and comparison of comparable properties. The City shall provide a copy of the Appraisal to the Owner. The City will pay for the first appraisal after Intent to Sell Notice is given. Subsequent appraisals will be at homeowner’s expense.

c. City’s Purchase Option. Upon receipt of the Intent to Sell Notice, the City shall have the option to purchase the Affordable Property (“Purchase Option”) at the Maximum Sales Price calculated as set forth below. The Maximum Sales Price is designed to further the purpose of preserving the affordability of the Affordable Property for Subsequent Eligible Buyers while taking fair account of the investment by the Owner.

(i) The Maximum Sales Price shall be equal to the lesser of the current appraised value of the Affordable Property, as determined below, or the sum of the Owner’s purchase price, plus twenty-five percent (25%) of the increase in market value of the Affordable Property, if any.

(ii) The increase in market value of the Affordable Property shall be determined by subtracting the amount of the appraised value of the Affordable Property at the time of the purchase as documented by the Appraisal, from the amount of the appraised value of the Affordable Property at the time of the Intent to Sell Notice, as described in Subsection (iii) below.

(iii) Within ten (10) days of receipt of the Appraisal from the City, the Owner shall either accept the Appraisal as accurately representing the market value of the Affordable Property for purposes of calculating the Maximum Sales Price, or obtain a second appraisal (“Owner’s Appraisal”) by a duly licensed appraiser, at the Owner’s expense, who shall conduct the appraisal by analysis and comparison of comparable properties. The Owner shall provide a copy of the Owner’s Appraisal to the City within forty-five (45) days of providing the Intent to Sell Notice. If the Owner’s Appraisal results in an appraised value which is at least ninety percent (90%) but not greater than one hundred ten percent (110%) of the amount of the City’s Appraisal, the amount to be used in determining the increase in market value of the Affordable Property shall be the average of the two (2) appraised values. If the amount of the Owner’s Appraisal is more than ten percent (10%) greater or lesser than the City’s Appraisal, the two (2) appraisers shall then select a third duly licensed appraiser, who shall conduct the appraisal by analysis and comparison of comparable properties. The cost of the third appraiser shall be shared equally between the City and the Owner. The market value of the Affordable Property for purposes of calculating the Maximum Sales Price shall be deemed to be the average of the values determined by the three (3)

appraisers.

(iv) If the City's Purchase Option expires and the City or its assignee fails to complete the purchase within the period allowed herein, the Owner may sell the Affordable Property to any Subsequent Eligible Buyer for a price not more than the Maximum Sales Price established above.

5. Right of First Refusal in Lieu of Option.

If the provisions of the Purchase Option set forth in this Declaration are determined to be unenforceable by a court of competent jurisdiction, the City will nevertheless have a right of first refusal to purchase the interest in the Affordable Property at the highest bona fide written offer made to the Owner. The City shall have ninety (90) days from the date of the judicial determination of unenforceability of the Purchase Option to exercise its right of first refusal, open an escrow with a title company, and close escrow.

6. Sale to Ineligible Buyer.

The Owner shall not transfer, sell or otherwise dispose of an Affordable Property to an Ineligible Buyer. Any such attempted transfer, sale or disposition shall be null and void. An "Ineligible Buyer" is a buyer of an Affordable Property who does not meet the criteria of an "Eligible Buyer" or "Subsequent Eligible Buyer". Such prohibition, however, shall not diminish the rights of a bona fide mortgage holder or trustee under a deed of trust to exercise its lawful remedies in the event of an Owner's default in the terms of a mortgage or deed of trust. The Ineligible Buyer and its grantor shall have ninety (90) days from notice of sale to the Ineligible Buyer to convey the Affordable Property to an Eligible Buyer or Subsequent Eligible Buyer.

7. Rights Upon Death of Owner.

Notwithstanding the above, upon death of the last surviving Owner of an Affordable Property, one or more of the following parties (the "Heir" or "Heirs" through intestate succession or "Devisee" or "Devises" through testate succession) may hold title to the Affordable Property whether or not such Heir or Devisee qualifies as an Owner, upon the same conditions as the original Eligible Buyer and subject to all of the terms and conditions set forth in this Declaration, including, but not limited to, the obligation to reside on the Affordable Property as set forth in **Section 8** hereof and the restrictions against leasing set forth in **Section 9** hereof:

- (i) the spouse of the Owner (or co-Owner)
- (ii) the child or children of the Owner
- (iii) member(s) of the Owner's household who have resided on the Affordable Property for at least one (1) year
- (iv) any other person or persons who have inherited the Affordable

Property by will or by operation of law from the Owner

8. Occupancy Condition.

All Affordable Property is conveyed subject to the condition that the Owner shall reside on the Affordable Property. This condition will not apply during any period in which the Affordable Property is uninhabitable or no longer habitable due to fire or other catastrophic damage or in cases where temporary absence is unavoidable due to military or other similar obligation. In such event, the Owner shall promptly use his or her best efforts to restore the Affordable Property to a habitable condition, where uninhabitable, or the Owner shall notify the City of the situation for approval in the event of temporary unavoidable absence, as set forth above.

Owner shall occupy the Affordable Property as principal residence for twelve (12) months of each year, unless otherwise agreed by the City. Occupancy by children or other immediate family members or dependents of the Owner shall be considered occupancy by the Owner, and all requirements applying to the Owner with regard to occupancy shall also apply to the children, other immediate family members or dependents of the Owner. Relevant factors in determining that the Owner's principal residence is located on the Affordable Property include, but are not limited to:

- (i) Owner's place of employment is in Flagstaff, Arizona, or within the boundaries of the Flagstaff Metropolitan Planning Organization;
- (ii) The principal place of abode of Owner's immediate family members is at the address for the Affordable Property;
- (iii) The address listed on Owner's federal and state tax returns, driver's license, automobile registration, and voter registration card is the same as that for the Affordable Property;
- (iv) Owner's mailing address for bills and correspondence is the same as that for the Affordable Property;
- (v) The location of Owner's bank accounts is in Flagstaff, Arizona;
- (vi) The location of educational institutions, religious organizations and recreational clubs or organizations with which Owner is affiliated is in Flagstaff, Arizona, or within the boundaries of the Flagstaff Metropolitan Planning Organization

9. Restrictions Against Leasing and Encumbrances.

The Owner shall not lease or otherwise convey any rights under this Declaration without the prior written consent of the City. The City will apply written guidelines which it has developed to any request to assign, lease, or otherwise convey any of the Owner's rights or obligations under this Declaration, and the City shall have broad and full discretion to withhold such consent in order to further the mutual purposes and goals set forth in this Declaration. If the City grants such permission, any assignment or lease shall be subject to the conditions that any such lease shall be subject to all of the applicable terms of this

Declaration, and any rental or occupancy fee charged the lessee shall not be more than a pass through of actual costs to the Owner for the Affordable Property, such as debt service costs under a Permitted Mortgage.

10. Rights of Mortgagees.

a. If the bona fide holder of a first mortgage or first deed of trust granted to a state or national bank, state or federal savings and loan association, or other institutional lender, or its successors or assigns, shall acquire any Affordable Property by reason of foreclosure or similar remedial action under the provisions of a mortgage or deed of trust or upon conveyance of the Affordable Property in lieu of foreclosure, the rights and restrictions contained in this Declaration shall not apply to such holder upon such acquisition of the Affordable Property and to any purchaser of the Affordable Property at a foreclosure or trustee's sale. Notwithstanding the foregoing, nothing shall prevent such holder or such purchaser from selling the Affordable Property subject to this Declaration to a Subsequent Eligible Buyer, in which case the deed shall specify that the Affordable Property is being sold subject to this Declaration.

b. Each Owner subject to this Declaration recognizes that it would be contrary to the fundamental concept of this Declaration if an Owner could realize more than the Purchase Option Price as the result of any foreclosure of any mortgage or trustee's sale pursuant to a deed of trust. Accordingly, each Owner subject to this Declaration hereby irrevocably assigns to the City any and all net proceeds of sale of an Affordable Property remaining after payment of costs of foreclosure or trustee's sale and satisfaction of the lien created under such mortgage or deed of trust, which would otherwise have been payable to such Owner, to the extent that such net proceeds exceed the net proceeds that such Owner would have received had the Affordable Property been sold for a Purchase Option Price established in accordance with **Section 4** of this Declaration, and authorizes and instructs the party conducting any sale to pay the amount of said excess proceeds directly to the City. In the event that, for any reason, such excess proceeds are paid to the Owner, such Owner hereby agrees to promptly pay the amount of such excess proceeds to the City.

11. Covenants to Run with the Land.

The Declarant intends, declares and covenants on behalf of itself and its successors and assigns that this Declaration and the covenants, agreements, rights and restrictions contained herein shall be and are: (i) covenants running with the land encumbering any subject Affordable Property in perpetuity and are binding upon the Declarant's successors in title, (ii) are not merely personal covenants of the Declarant, and (iii) shall bind the Declarant, its successors and assigns, and inure to the benefit of the City, and its successors and assigns, in perpetuity.

12. Default and Enforcement.

In the event of an Owner's breach of any of the provisions of this Declaration, the

Declarant or the City, and their successors and assigns, shall be entitled to all available remedies at law or in equity, including specific performance, to enforce the same, all remedies of which shall be cumulative and not mutually exclusive. In the event of a breach by an Owner of any of the provisions of this Declaration, Declarant or the City may notify the Owner thereof in writing, and the Owner shall have thirty (30) days from the mailing of such notice to cure such breach, or in the event of a breach that cannot be cured within thirty (30) days, the Owner shall within such period commence curing the breach and diligently continue to cure the breach until the breach is cured. Otherwise, Declarant or the City may exercise its available remedies against the Owner or the Owner's successors in interest. The prevailing party in any action hereunder shall be entitled to reasonable attorneys' fees and court costs.

13. Notice.

Any notices, demands, or requests that may be given under this Declaration shall be sufficiently served if given in writing and delivered by hand or mailed by certified or registered mail, postage prepaid, return receipt requested as follows:

To Declarant:

Developer's address

To City:

City of Flagstaff
Attn: City Manager
211 West Aspen Avenue
Flagstaff, AZ 86001

or to such addresses as may be specified by such notice. Any such notice, demand or request shall be deemed to have been given on the day it is hand delivered or mailed.

14. Waiver and Amendment.

Nothing contained herein shall limit the rights of the City to release or waive, from time to time, in whole or in part, any of the rights, restrictions, covenants or agreements contained herein with respect to any Affordable Property. Any such release or waiver must be made in writing and must be executed by an authorized agent of the City. The City shall have the right to modify this Declaration by recording an amendment to this Declaration with the Office of the Coconino County Recorder. The Declarant shall not have the right to consent to any release or waiver or amend this Declaration without obtaining the prior written consent of the City.

15. Severability.

If any provision hereof shall be determined by a court of record to be invalid or unenforceable, the remaining provisions hereof shall not be affected thereby, and each provision hereof shall be valid and enforceable to the fullest extent permitted by law.