

When recorded, mail to:

City Clerk  
City of Flagstaff  
211 W. Aspen Ave.  
Flagstaff, AZ 86001

Exempt: A.R.S. § 11-1134(A)2

## DECLARATION OF PUBLIC ACCESS EASEMENT

This PUBLIC ACCESS EASEMENT (the “Easement”) is made this \_\_\_ day of \_\_\_\_\_, 2023, by NORTHERN ARIZONA HEALTHCARE CORPORATION, an Arizona non-profit corporation, (the “Grantor”) and the CITY OF FLAGSTAFF, a municipal corporation, organized and existing under and by virtue of the laws of the State of Arizona (the “City”), in favor of the General Public (the “Public”).

### RECITALS

WHEREAS Grantor is the owner of that certain parcel of land situated in the City of Flagstaff, State of Arizona, more particularly described and set forth in Exhibit “A” attached hereto and incorporated by reference herein (the “NAH Open Space Parcel”); and

WHEREAS as part of its development of its Health Village concept, the Grantor desires to provide an open space for pedestrian access and use for the Public, subject to the conditions and limitations herein.

### AGREEMENT

NOW THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

**1. Grant of Easement.** Grantor hereby grants to the City, in favor of the Public, a non-exclusive easement over the entire NAH Open Space Parcel for multi-modal public access subject to the terms herein.

**2. Allowed Uses.** The Public may utilize the NAH Open Space Parcel for passive outdoor recreational and educational opportunities (which may include an outdoor fitness loop with equipment and/or small active fitness court(s) or outdoor gym), subject to the terms and limitations contained herein.

**3. Motorized Use Prohibited.** Motorized travel on the NAH Open Space Parcel by the Public is prohibited.

**4. Easement Hours.** The NAH Open Space Parcel may be accessed by the Public from dawn to dusk; provided, however, that Grantor shall have the right to close from Public access all or portions of the NAH Open Space Parcel from time to time for purposes of construction, maintenance, repair and special events.

**5. Maintenance Restrictions; Special Events.** Grantor reserves the right to impose reasonable restrictions on the Public's access to the NAH Open Space Parcel to enable Grantor to conduct special events, and to construct, repair and maintain the NAH Open Space Parcel and any improvements thereon, provided that such restrictions related to special events do not impair or diminish the rights of the Public provided herein for more than ten percent of available open hours during any given month.

**6. General Restrictions.** The following are prohibited within the NAH Open Space Parcel: accessing the NAH Open Space Parcel during closed hours, alcohol, drugs, all other impairment inducing substances, campfires, camping, dumping, vandalism, encampment, fuelwood collection, firearms, any activities that may result in damage to the NAH Open Space Parcel or nearby property, any activities that may result in harm to the Grantor, the Grantor's property, or members of the Public, including but not limited to excessive noise or other nuisance. The Grantor reserves the right to impose other reasonable restrictions from time to time.

**7. Reserved Rights.** Grantor reserves the right to cause any member of the Public to be removed from the NAH Open Space Parcel if such member of the Public is engaged in any activity in violation of the terms herein. Grantor reserves the right to conduct all legally permitted activities within the NAH Open Space Parcel and to alter and improve the NAH Open Space Parcel, provided that such activities, alterations, and/or improvements do not substantially interfere with the Public's right to access the NAH Open Space Parcel as detailed herein. Grantor reserves the right to barricade off certain parts of the NAH Open Space Parcel from Public access if necessary to protect Grantor's property or to protect members of the Public.

**8. Representations.** Grantor represents and warrants that (a) it has all necessary power and authority to execute and deliver this Easement and to carry out its obligations hereunder, and (b) the execution and delivery of this Easement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite approvals.

**9. Waiver of Liability.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Open Space Parcel resulting from causes beyond Grantor's control, including, without limitation, natural processes, by force majeure, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Open Space Parcel, or the Grantor's surrounding property, resulting from such causes. The parties agree that any member of the Public utilizing the Open Space Parcel pursuant to this Easement does so at their own risk and that Grantor shall not be held liable for damage, injury, or death to any member of the Public caused by any action outside of Grantor's control.

**10. Binding Agreement.** This Easement shall be binding upon said Grantor and its heirs, assigns, and successors in interest to the Property. The parties further agree that this Easement

shall represent in all respects a covenant which shall run with the land and shall be recorded in the office of the County Recorder of Coconino County, Arizona.

**11. Modification.** This Agreement may be modified or revoked by agreement of Grantor and the City. No modification of this Agreement shall be deemed effective unless in writing and signed by the parties thereto, and any waiver granted shall not be deemed effective except for the instance and in the circumstances particularly specified therein and unless in writing, executed by the party against whom enforcement of the waiver is sought.

**12. Entire Agreement.** This Agreement constitutes the entire agreement, whether written or oral, between the parties. Any written or oral understandings, terms or conditions between the parties regarding the Easement not set forth herein shall be deemed to be superseded hereby.

**13. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

IN WITNESS WHEREOF, the Grantor hereby executes this Agreement on the date set forth above.

GRANTOR:

NORTHERN ARIZONA HEALTHCARE CORP.

\_\_\_\_\_  
Joshua Tinkle, President & CEO

STATE OF ARIZONA        )  
  ) ss.  
County of Coconino        )

On this the \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned Notary Public, personally appeared Joshua Tinkle, President & CEO of Northern Arizona Healthcare Corporation, known to me or satisfactorily shown to be the person whose signature appears above, and acknowledged to me that he executed the foregoing Development Agreement for the purposes therein contained.

Seal:

\_\_\_\_\_  
Notary Public

**ACCEPTANCE**

The City of Flagstaff, Arizona, a municipal corporation, does hereby accept the foregoing Declaration of Public Access Easement and the terms and conditions thereof.

IN WITNESS THEREOF, the City of Flagstaff has caused this acceptance to be executed by its Mayor pursuant to authority granted by its City Council, this \_\_\_ day of \_\_\_\_\_, 2023.

CITY OF FLAGSTAFF

\_\_\_\_\_  
Becky Daggett, Mayor

Attest:

\_\_\_\_\_  
Stacy Saltzburg, City Clerk

Approved as to form and authority:

\_\_\_\_\_  
Sterling Solomon, City Attorney

STATE OF ARIZONA        )  
  ) ss.  
County of Coconino        )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned Notary Public, personally appeared Becky Daggett, Mayor of the City of Flagstaff, known to me or satisfactorily shown to be the person whose signature appears above, and acknowledged to me that she executed the foregoing Development Agreement for the purposes therein contained.

Seal: \_\_\_\_\_  
Notary Public