

DRAFT

When recorded, mail to:

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

DEVELOPMENT AGREEMENT

NAH Health Village

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is entered into this ____ day of _____, 2023 by and between the City of Flagstaff, an Arizona municipal corporation (“**City**”), and Northern Arizona Healthcare Corporation, an Arizona nonprofit corporation (“**NAH**”). City and NAH may be referred to in this agreement as “**Party**” in the singular, and collectively as the “**Parties.**”

RECITALS

- A. Section 9-500.05 of the Arizona Revised Statutes authorizes the City to enter into development agreements with landowners and persons having an interest in real property in order to facilitate development of property.
- B. NAH owns approximately 172.62 acres in gross located generally north and east of the Fort Tuthill County Park, which is depicted and legally described in Exhibit “A” hereto (collectively, the “**Property**”).
- C. NAH intends to develop the Property in accordance with the Concept Zoning Map Amendment and the Phase 1 Specific Plan (defined below) for use as a regional hospital, an ambulatory care facility, medical office, and administration buildings. The Specific Plan is intended to be adopted in two phases. In the first phase, the Specific Plan will serve as a regulatory document for Land Use Areas 1a, 1b, and 2b (defined in the Land Use Plan, Appendix 10), and it will provide a planning framework for all of the Planning Area.
- D. The Parties desire to enter into this Agreement in order, among other things, to facilitate development of the Property as depicted and described in the Concept Zoning Map Amendment and the Phase 1 Specific Plan.
- E. This Agreement, and the Project (defined below) described and conditioned as set forth in this Agreement, are consistent with the Flagstaff Regional Plan 2030, as amended, in effect on the Effective Date of this Agreement.
- F. NAH acknowledges that development of the Property pursuant to this Agreement will be beneficial and advantageous to NAH because it provides assurances to NAH that it will have

the ability to develop the Property in accordance with the Concept Zoning Map Amendment and the Phase 1 Specific Plan and as set forth herein.

- G. The City has an interest in ensuring that development of the Property complies with City standards for development and engineering improvements, and the City believes that development of the Property pursuant to this Agreement will result in planning, safety, and other benefits to the City and its residents.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and representations, and the mutual promises contained in this Agreement, the Parties agree as follows:

1. DEFINITIONS

The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

“**City**” means the City of Flagstaff, an Arizona municipal corporation and any successor public body or entity.

“**NAH**” means Northern Arizona Healthcare Corporation, an Arizona nonprofit corporation and any successor-in-interest or assignee of Northern Arizona Healthcare Corporation as provided in Section 6.6, below.

“**Notice**” means notice as defined in Section 10.1, below.

“**Project**” means the development of the Property for the uses, intensities, and densities, and subject to the Concept Zoning Map Amendment and the Phase 1 Development Plan and Development Standards, all as shown and described in the Phase 1 Specific Plan.

“**Property**” means all of the real property legally described in Exhibit “A” hereto.

“**Infrastructure Improvement**” means any improvement, facility, or service, together with customary improvements and appurtenances thereto, necessary to provide for public or Project needs such as: streets, alleys, pedestrian/bikeway walks or paths, storm sewers, flood control improvements, water supply and distribution facilities, sanitary sewage disposal and treatment, public utility, and energy services. *See* Zoning Code § 10-80.20.160.

“**Specific Plan**” means the Phase 1 Specific Plan identified in Sections 2.1 and 3.1, below.

“**Zoning Code**” means Title 10 of the Flagstaff City Code.

2. EFFECTIVE DATE AND TERM

2.1. Effective Date. This Agreement will not become effective, and no Party will have any obligation under this Agreement, unless each of the following occurs: (a) this Agreement is executed by all Parties and recorded in compliance with A.R.S. 9-500.05(D); (b) the City enacts Ordinance No. 2023-___ amending the City's Zoning Map as defined in Zoning Code § 10-80.20.260; (c) the City enacts Ordinance No. 2023-___ adopting the NAH Health Village Specific Plan.

2.2. Term. The term of this Agreement begins on the Effective Date and automatically terminates on the fortieth (40th) anniversary of the Effective Date without necessity of any notice, agreement, or recording by or between the Parties.

3. ENTITLEMENTS

3.1. Concept Zoning Map Amendment, Phase 1 Specific Plan, and Zoning. NAH is bound by all the terms, conditions, and stipulations of Ordinance No. 2023-___ amending the City's Zoning Map and Ordinance No. 2023-___ adopting the NAH Health Village Specific Plan.

3.2. Reversion of Zoning Amendments. In addition to the provisions for reversion set forth in Ordinance No. 2023-___ and the Flagstaff City Code, NAH's failure to obtain vertical building permits (not grading) for the entirety of the Project within five (5) years of the effective date of the rezoning ordinance shall entitle the City, in its sole discretion, to conduct a public hearing for the purpose of reverting to the initial zoning on the Property to its former zoning classification, in accordance with Arizona Revised Statutes § 9-462.01. The time requirement of this Section 3.2 shall not apply to planned future expansion of the Project as described in Section III(A) of the Specific Plan.

3.3. Development Standards. For a period of five (5) years from the Effective Date, development of the Property, as well as the requirements for Improvements, will be governed by the Flagstaff Zoning Code, ordinances, regulations, rules, guidelines, and standards in effect on the Effective Date. For any development application(s) made after five (5) years from the Effective Date, the codes, ordinances, regulations, rules, guidelines, and standards in effect at the time of application, including the Specific Plan, shall apply. Regardless of the time of development, current City Engineering Standards, Building Code, Fire Code, and other Code provisions, regulations, rules, and guidelines shall apply to the Project.

3.4. Permits and Fees. Construction and building permit fees, fees enacted under A.R.S. § 9-463.05, and all other usual and customary fees applicable to construction within the City will apply to construction of all on-site and off-site improvements related to the Project. The amount of such fees are set at the discretion of the City, and the fees in effect at the time of any application will apply to the Project.

4. SUPPLEMENTAL TO SPECIFIC PLAN - GENERAL

4.1. Project Description; Incorporation of Concept Zoning Map Amendment, Phase 1 Specific Plan. The NAH Health Village is intended to comprise a regional hospital, an ambulatory care center (“ACC”), medical office, and administration buildings as set forth in the Concept Zoning Map Amendment, Phase 1.

4.2. Open Space and Civic Space in Land Use Areas 1a and 1b.

4.2.1. Public Access to Open Space. Land Use Areas 1a and 1b, as defined in the Concept Zoning Map Amendment and Phase 1 Specific Plan, shall be open to the general public, subject to a public access easement substantially in the form set forth in Exhibit “B” hereto, and incorporated by reference into the final block plat. The public access easement covering these Land Use Areas shall include terms necessary to ensure public access while also protecting the Project, including uses by NAH, its employees, patients, vendors, and the like. Accordingly, proposed restrictions in the public access easement shall include open hours, and prohibitive language regarding camping, possession of firearms, open fires, etc.

4.2.2. Planning and Development of Land Use Area 1b. Section III(B) of the Specific Plan discusses open space and civic space within the Project. The parties acknowledge that programming for Land Use Area 1b has not occurred beyond conceptual descriptions and depictions. NAH shall consult with the City’s Parks Section in developing plans for this area, and it must further goals and policies set forth in the City’s Parks and Recreation Organizational Master Plan (Feb. 2013). Specifically, NAH shall include and maintain an outdoor fitness loop with equipment and/or small active fitness court(s) or outdoor gym (reference National Fitness Campaign website). In addition, the City and NAH will cooperate to explore grants or other funding mechanisms to assist in the implementation of the objectives of this Section 4.2.2.

4.2.3. Maintenance. With the exception of the FUTS trail in Land Use Area 1a, NAH is responsible for all maintenance of Land Use Areas 1a and 1b.

4.3. Residential Density. Section III(A) of the Specific Plan discusses the land use plan and program for the Project. Phase 2 of the development, if approved by the City, shall include not less than 315 residential units across the Property, and of this number, not less than ten percent (10%) or 32 dwelling units shall qualify as Category 1 - Permanent Affordability as defined in Division 10-30.20: Affordable Housing Incentives. Development applications consistent with the Phase 1 Specific Plan and this Section 4.3 shall set forth the type, size, and location of residential units once the required rezonings have been approved. NAH shall be entitled to all development incentives defined in Division 10-30.20 for which it qualifies, including the commitment to Affordable Housing set forth in this Section 4.3.

4.4. Sustainability. Section III(L) of the Specific Plan sets forth NAH’s sustainability plan. NAH has committed to promoting sustainable design and incorporating sustainable

practices, as set forth in the goals and policies of the sustainability plan, throughout the Project. In addition to following the sustainability guidelines provided within Section III(L) of the Specific Plan, development within the Project shall be subject to the following sustainability commitments:

4.4.1. Buildings shall be designed to perform in the top 25th percentile (EnergyStar 75 or higher) and shall be required to demonstrate first year performance within the top 25th percentile based on an initial annual energy performance report.

4.4.2. All buildings developed on-site shall use best practices in high performance design, with the intent of limiting energy and water use during operation, including:

- A vacuum waste system (AcornVac or similar) shall be utilized throughout the regional hospital and ACC;
- Standard (baseline) heating shall be provided by electric, not natural gas, power (redundancy and special uses will require natural gas);
- Mechanical equipment efficiencies shall comply with ASHRAE 189.1.

4.4.3. The roof of the parking structure planned for the Project shall be a Solar-Ready Zone as defined in Appendix CA of the 2018 International Energy Conservation Code (IECC). As required by the IECC, the total solar-ready zone area shall be not less than 40 percent of the roof area calculated as the horizontally projected gross roof area less the area covered by skylights, occupied roof decks, vegetative roof areas and mandatory access or set back areas as required by the International Fire Code. NAH shall install a solar photovoltaic or solar thermal system covering not less than 40 percent of the roof area, as calculated above, not later than 2030.

4.4.4. NAH shall install electric vehicle charging stations capable of serving not less than 24 electric vehicles at a time, which shall be open to the public for electric vehicle charging. Not less than four of the charging stations shall be fast charging (Level 3) stations. NAH shall periodically audit usage of its charging stations to determine usage. Not less than annually, NAH shall review its audits and upon surpassing 80% utilization of existing charging stations, NAH shall install additional electric vehicle charging stations sufficient to serve another 20 electric vehicles at a time.

4.4.5. NAH shall join the APS Green Connect Partner Program prior to receiving the first certificate of occupancy for the Project.

4.5. Private Shuttle Service/Transit Stops. Shuttle service to the regional hospital and ACC shall begin no later than the issuance of a certificate of occupancy for any improvements within Land Use Area 2b, as defined in the Phase 1 Specific Plan. Transit stops for public transportation shall be provided within Land Use Area 2b for use in the future should a public

transit route be in operation. Stop locations shall be determined during site planning. Private shuttle service shall include, at minimum, (a) continuation of NAH's current program of providing point-to-point shuttle service for low-income persons and/or persons with mobility needs from the regional hospital to Flagstaff Shelter Services facilities and other locations at no cost to riders; (b) continuation of NAH's current program of coordinating shuttle service for low-income persons and/or persons with mobility needs through private providers at no cost to riders; and (c) new 30-minute peak hour shuttle service during operational hours when the ACC opens, and then 20-minute peak hour shuttle service upon the opening of the Hospital during Mountain Line's hours of operation, between the regional hospital and one or more connections to Mountain Line, open to everyone (including employees) free of charge. The parties further agree that the foregoing private shuttle service may be replaced substituted in whole or in part through NAH's consummation of a service agreement with Mountain Line, upon written consent of the City Manager.

4.6. Fire Protection Impacts. A Fire Service Impact Assessment was completed by FACETS Consulting on December 29, 2021. This Assessment recommended that given the expansion of the urban core of Flagstaff to the South, that an analysis of Flagstaff Fire Department fire station locations, station capacity, and service delivery depth be completed to determine if the existing station locations, apparatus housing capabilities, and emergency service capabilities are appropriate for the longer term. In response to this recommendation, NAH paid the cost for the expansion of a Standards of Cover Analysis for the Property. On November 22, 2022, the City received a Community Risk Assessment and Standards of Cover Analysis, which includes a discussion of fire protection requirements for the Project.

4.6.1. Fire Protection Capital Requirements. The Community Risk Assessment and Standards of Cover Analysis recommends that a fully staffed ladder company be relocated to Fire Station #6 located on Lake Mary Road due to the location of this high-risk facility. This Fire Station is unable to accommodate the required equipment on site and a new station within the immediate vicinity is required in order to accommodate the ladder company in this area. To mitigate impacts, the City and NAH will share responsibility. The City will be responsible for the capital costs associated with a new quint, engine, and Battalion Chief SUV as well as 50% of the capital costs (including land acquisition) associated with constructing a new fire station to house the resources previously located at Fire Station #6 as well as the new ladder company required to serve the Property. NAH shall be responsible for the remaining 50% of capital costs (including land acquisition) associated with constructing the new fire station. NAH's payment(s) to the City is(are) due within 30 days of receiving written notification from time to time from the City of the amount(s) due based upon contracts approved by the City for the purposes set forth in this Section 4.6.1, unless a different payment structure is approved by the City Manager. However, in the event that NAH seeks its first certificate of occupancy for the Project prior to the completion of construction of the new fire station, NAH will pay an estimated amount of its share of the new fire station as determined by the City prior to receiving the certificate of occupancy. If NAH's share of costs for the new fire station exceeds the estimated amount paid by NAH, the City will bill and NAH will pay within 30 days any amounts owed. If

NAH's share of costs for the new fire station is less than the estimated amount paid by NAH, the City will return any overpayments to NAH within 30 days of the completion of the new fire station.

4.7. Avigation Easement. Pursuant to Zoning Code Section 10-20.40.020, NAH shall grant to the City an avigation easement in form approved by the City and incorporated in any final plat.

4.8. Conference Center. Section IV(B) of the Specific Plan permits meeting facilities in Land Use Areas 2a, 2b, 2c, and 2d, as defined in the Specific Plan. In the event NAH submits development plans that would include construction of public meeting facilities, the parties agree such application will be subject to the City's major approval process for site plan review.

4.9. Legacy Campus. NAH's development of the Project will result in moving the Flagstaff Medical Center to the Property and away from its current location at 1200 N. Beaver Street. NAH and the City shall coordinate a public participation and planning process in conjunction with community members and facilitated by a private consultant team to develop a Vision Plan for the existing medical campus. The Vision Plan will be advanced by a steering committee that represents Flagstaff's diverse community with the intention that the Vision Plan will inform the FMC-centered activity center (U3) of the Regional Plan that the City is concurrently preparing. The steering committee will be co-led by a community leader and an NAH representative, and will include City and Coconino County representatives. The steering committee shall coordinate a public participation process that will result in a Vision Plan for the legacy campus that includes, among other things, proposed uses of the land and/or buildings at the existing medical campus, timing of redevelopment, and, if necessary, transportation impact analyses for the proposed redevelopment. Upon completion of the steering committee's public participation and formulation of the Vision Plan, and once NAH has approved the Vision Plan, then NAH shall submit the Vision Plan to the City Council for consideration and approval and as a supplement to the Regional Plan. The Vision Plan may be amended from time to time by NAH, with City Council approval in accordance with City Code, as needed to facilitate final redevelopment of the legacy campus. Notwithstanding the foregoing, in the event the City and NAH do not mutually agree on redevelopment of the existing campus under a Vision Plan, NAH retains the right to develop the existing campus as of right under then applicable provisions of the Flagstaff Zoning Code, ordinances, regulations, rules, guidelines, and standards.

4.10. Heritage Preservation. In accordance with findings and recommendations presented to and approved by the Flagstaff Heritage Preservation Commission at a hearing on July 21, 2021, NAH shall implement these conditions: (a) Identified stone piers/fence remains and impacted rail alignment are to be avoided to the extent practicable; and (b) If not avoided, additional archival research is to be conducted along with appropriate mitigation that can include but not is limited to interpretive signage/installation(s).

4.11. Ongoing Discussions with Coconino County. NAH agrees to be available for monthly meetings with Coconino County for discussions related to Fort Tuthill Regional Park,

the County’s master planning efforts, and any other issues that may arise related to the interface between the Project and the Fort Tuthill Regional Park, both during Project construction and after until the County determines that monthly meetings are no longer necessary. NAH acknowledges that major events occur at Fort Tuthill Regional Park that generate large amounts of traffic and noise, often well into the late hours of the night.

5. INFRASTRUCTURE IMPROVEMENTS

The Project will include certain Infrastructure Improvements relating to drainage, water, sewer, and traffic circulation. The following impact analyses are approved in connection with the Phase 1 Specific Plan and Concept Zoning Map Amendment:

- Preliminary Drainage Report and Drainage Impact Analysis, each stamped August 30, 2022 (herein collectively, the “DIA”).
- Public Water & Sewer Impact Analysis stamped February 9, 2022, as amended December 5, 2022, by letter (herein, the “WSIA”).
- Transportation Impact Analysis – Confined Scope 2027 Study Year stamped March 30, 2023, which includes the Hospital and Ambulatory Care Center (herein, the “TIA”).

5.1. Modifications to Infrastructure Improvements. Modifications to Infrastructure Improvements required or desirable for the Project may be necessary or advisable from time to time to adapt to the progress, sequence, and scope of development of the Project. The Parties may agree to any such modifications from time to time upon approval of NAH and the City Engineer without the need to amend this Agreement so long as such modifications are not inconsistent with the terms of the Concept Zoning Map Amendment, Phase 1 Specific Plan, or approved impact analyses.

5.2. Sequence and Construction of Infrastructure Improvements. NAH shall have the right and obligation, at any time subsequent to the Effective Date of this Agreement, to construct or cause to be constructed and installed, in accordance with the applicable rules, regulations, construction standards, and governmental review processes, all portions of the Infrastructure Improvements that relate to the portion of the Property to be developed by NAH at any given time subject to approved civil plans. NAH shall construct all Infrastructure Improvements in accordance with the approved Phasing Plan as set forth in Section III(K) of the Specific Plan. NAH shall ensure that each phase of the Project shall have improvements designed to be fully operational and function in perpetuity without reliance on the development of future phases.

5.3. Necessary Easements. As a condition precedent of NAH’s obligation to construct any Infrastructure Improvements, NAH shall have obtained any and all easements, rights of entry, or other use rights on or about all real property, other than the Property, upon, through, or under which will be installed all or any portion of such improvements (collectively, the “Easements”).

5.4. Right of Entry. NAH, its agents, and employees, pursuant to any applicable encroachment permit issued by the City, may enter, cross, and remain upon City easements or rights-of-way to the extent reasonably necessary to facilitate such construction, or to

perform maintenance or repairs of Infrastructure Improvements. NAH, promptly upon completion of construction activity, shall restore City easements and rights-of-way used under an encroachment permit to their condition prior to NAH's entry and use.

5.5. Infrastructure Assurance. The parties acknowledge and agree that the City, prior to recording the final block plat or issuance of a permit for the commencement of construction in connection with the Project, shall require NAH and/or its designees, grantees, or buyers under contract, to provide appropriate assurances in such form and amount as required by City Code to assure the installation of Infrastructure Improvements as required for the Project.

5.6. Right-of-Way Acquisition. NAH shall be responsible for acquiring the right(s)-of-way necessary for all required Infrastructure Improvements. If NAH is unable to acquire the necessary rights-of-way within a reasonable timeframe and after the exercise of reasonable diligence, then NAH may request that the City initiate eminent domain proceedings to acquire the rights-of-way. A request by NAH under this paragraph shall not bind the City. The City, at its sole option, shall determine whether to proceed and upon such terms as it may determine. Should the City agree to acquire property by eminent domain, all costs of the acquisition shall be paid by NAH.

5.7. Rights-of-Way Dedication. All right-of-way dedications required for the Project shall be completed in conjunction with the final block plat. If the City determines in its sole discretion through additional analysis that there is excess right-of-way, then that right-of-way may be returned to NAH at no cost.

6. WATER & SEWER IMPROVEMENT REQUIREMENTS

6.1. Water & Sewer Improvement Requirements. NAH shall construct, in accordance with City rules and regulations, Infrastructure Improvements as specified in the approved WSIA and as identified below.

6.2. On-Site Water & Sewer Improvements Phasing. As identified in the approved Phasing Plan as set forth in Section III(K) of the Specific Plan, construction of On-Site Water and Sewer Improvements shall be phased appropriately as provided for in this Agreement to ensure standalone water and sewer availability within each Phase. All phased on-site water and sewer infrastructure shall be designed and built in accordance with the City of Flagstaff Engineering Standards and Arizona Department of Environmental Quality. NAH agrees to provide all on-site water and sewer systems required to support the overall development plan. Each of the development blocks shall be connected to the water main within the collector or arterial roadways. The water system shall be extended in coordination with the phasing and as needed for individual parcels. Except as provided in this Agreement, all required improvements must be completed and accepted by the City prior to the issuance of any certificates of occupancy for the Project.

6.3. Water Storage. NAH shall construct a water storage tank and the associated waterlines to connect it to the Zone 'B' system. The tank shall store a minimum net volume of 685,000 gallons and must be placed at an elevation that will provide adequate pressure for

the zone 'B' system. The City of Flagstaff has confirmed that there is sufficient storage capacity for the ACC, but anything constructed after the ACC shall require the tank to be constructed prior to certificate of occupancy. The City of Flagstaff has agreed to acquire the appropriate land rights necessary to place the tank(s) and convey the water from the tanks(s) to the public distribution system. In the event the City is unable to obtain the necessary land rights, NAH shall be responsible for finding an appropriate location for the 685,000-gallon water tank prior to any certificate of occupancy beyond the ACC. The City of Flagstaff is currently evaluating an upsize of the tank to approximately 2 million gallons. If requested by the City, NAH shall construct an upsized water tank. Any additional costs affiliated with the upsized storage will be reimbursed by the City beyond the required 685,000 gallons. Should the City desire to upsize the tank, NAH acknowledges that public procurement requirements may apply. The City's Procurement Director will make a determination on procurement requirements at the time NAH has approved civil plans for the tank.

6.4. Off-Site Water Improvements. NAH shall complete the remainder of the 16-inch waterline loop in pressure zone 'B'. The improvements shall begin at the termination of the Phase 1 and Phase 2 waterline improvement for Fort Tuthill and connect to the existing 12-inch waterline in University Heights. The extension is approximately 9,125 linear feet and must comply with Section 13-09-001-0008A & B of the Flagstaff City Code. The City may choose to extend the waterline from West University Heights Drive South to Lake Mary Road as part of the improvement to be installed by NAH, in which case the City will credit or reimburse NAH the cost of the extension. Should the City desire to extend the waterline, NAH acknowledges that public procurement requirements may apply. The City's Procurement Director will make a determination on procurement requirements at the time NAH has approved civil plans for the extension.

6.5. On-Site Sewer Improvements. A private lift station and private pressure sewer line are intended to provide sewer service to future development along Purple Sage Trail (Land Use Areas 2c, 2d, and 3 as shown on Image 10 of the Specific Plan). If NAH can demonstrate through a Water Sewer Impact Analysis that other alternative sewer designs are feasible, the City will allow future development to deviate from the pressure system to a gravity system design as approved by the City of Flagstaff Water Services Division. NAH is responsible for any required property acquisition, upsizing, or design to accommodate the alternative sewer design.

6.6. Sewer Reimbursement to Coconino County. The main sewer service for this project is the completed 18" sewer extension from Fort Tuthill to University Heights. The County paid for the cost to complete this infrastructure improvement and has elected to participate in the reimbursement agreement. NAH shall be required to reimburse the County the cost of their proportionate share as determined by the City in the reimbursement agreement prior to the first civil plan approval within the Project. NAH shall be required to build the minimum 8" sewer lines to connect to the new 18" main.

7. STORMWATER DRAINAGE

7.1. Stormwater Improvements. NAH shall meet all City of Flagstaff stormwater, pre

versus post retention, peak flow mitigation, Low Impact Development, and rainwater harvesting requirements per the approved drainage impact analysis, drainage report, and Specific Plan. The Parties agree that except as described in approved preliminary drainage report, no off-site infrastructure improvements are required other than to serve the Project.

8. TRANSPORTATION IMPROVEMENTS

8.1. Transportation Improvements. NAH shall construct, in accordance with all applicable City, State, and Federal rules, regulations, and design standards, the Transportation Improvements as specified in the approved TIA and as identified below.

8.1.1. On-Site Transportation Improvements. NAH shall be responsible for all transportation improvements within the Property as set forth in the TIA approved with conditions and as shown on the approved NAH Health Village Block Plat and Specific Plan including but not limited to curb, gutter, sidewalks, pedestrian ways, multi-modal paths, FUTS trails, bicycle ways, medians, and turn lanes. On-site improvements include all property frontage improvements along Beulah Boulevard, Woody Mountain Boulevard, and Purple Sage Trail. All on-site transportation improvements shall be completed prior to the issuance of the first certificate of occupancy within the Project, unless otherwise approved by the City Engineer. The following improvements are included in the on-site transportation improvements:

- Signalized intersection for Beulah Blvd and Woody Mountain Rd
- Stop-Controlled intersection for Beulah Blvd and Main Entrance of the Hospital and ACC to include underground utilities for a future signal and to be constructed with correct approach grades and signal ramp slopes
- Re-alignment of Purple Sage Rd
- Signalized intersection at Beulah Blvd and the re-aligned Purple Sage Rd to include construction at the correct grades for a future underpass at I-17
- Improvements to the intersection of Beulah Blvd and Infantry Rd (current Purple Sage Rd) to include underground utilities for a future signal and to be constructed with correct approach grades and signal ramp slopes
- Improvements to the Cosmic Ray Tunnel on Sheep Crossing Trail to accommodate the widening of Beulah Blvd
- Internal intersection improvements as determined by the TIA

8.1.2. Off-Site Transportation Improvements. Prior to issuance of a certificate of occupancy for the hospital or ACC, unless otherwise approved by the City Engineer, NAH, at its cost, shall have constructed and dedicated to the City, and the City shall have accepted, all off-site transportation improvements identified in the TIA. The following improvements are included in the off-site transportation improvements:

- Widening Beulah Blvd from University Heights Drive N/Lake Mary Road to JW Powell Blvd to a 4-lane cross section with 10-foot FUTS and 5-foot

parkway on the west side, buffered bicycle lanes, a median, drainage improvements, and curb and gutter on the east side.

- Improvements to the intersection of Beulah Blvd and McConnell Dr to include:
 - Addition of a second westbound left turn lane
 - Restriping the eastbound left turn lane to add storage capacity
 - Make the driveway into Walmart right in/right out
 - Restrict the lefts out of the driveway at the Comfort Inn 1-17 & I40
- Improvements to the intersection of Beulah Blvd and Woodlands Village Blvd:
 - Addition of a second northbound left turn lane and extending the storage
- Improvements to the intersection of Beulah Blvd and University Heights Dr N/Lake Mary Rd:
 - Configuring the dedicated northbound right turn lane into a shared through/right turn lane
 - Configuring the westbound channelized right turn lane into a dedicated right turn lane
 - Addition of northbound and southbound buffered bicycle lanes.
- Improvements to the intersection of Beulah Blvd and University Heights Dr S:
 - Addition of a signal,
 - Addition of a new northbound left turn lane
 - Addition of a second northbound and southbound through lane
 - Addition of northbound and southbound buffered bicycle lanes
 - Providing dedicated eastbound left and right turn lanes
- Re-alignment of Mountain Dell Rd and improvements to the intersection of Beulah Blvd and the re-aligned Mountain Dell Rd:
 - Addition of underground utilities for a future signal and intersection constructed with correct approach grades and signal ramp slopes
 - Addition of a new southbound right turn lane
 - Addition of a new northbound left turn lane
 - Addition of a second northbound and southbound through lane
 - Addition of a northbound and southbound buffered bicycle lanes
 - Providing an eastbound left turn refuge lane for at least one vehicle on Beulah Blvd
- Improvements to the intersection of Beulah Blvd and Fairgrounds Rd:
 - Addition of underground utilities for a future signal and intersection constructed with correct approach grades and signal ramp slopes
 - Addition of a second northbound and southbound through lane
 - Addition of a northbound and southbound buffered bicycle lanes
- Improvements to the roundabout at Beulah Blvd and JW Powell Blvd:
 - Addition of a westbound right by-pass/U-turn lane adjacent to the dual roundabouts
 - Addition of a southbound left turn approach lane and a second eastbound receiving lane
 - Addition of a north leg receiving lane and transitioning bicycle lanes and buffers into the roundabout

- Improvements to the roundabout at JW Powell Blvd and the I-17 southbound ramps:
 - Addition of a southbound right by-pass/U-turn lane adjacent to the dual roundabouts
 - Addition of an eastbound right to southbound channelized right turn lane and a south leg receiving lane
- Improvements to the intersection of JW Powell Blvd and the I-17 northbound ramps:
 - Addition of a single lane roundabout with two approach lanes northbound and eastbound, and one approach lane westbound, and, if necessary, bicycle and pedestrian facilities

8.2. Phased Transportation Impact Analysis. The proposed NAH Health Village entitlements will be approved in two phases. The first phase includes the Hospital, ACC, affiliated medical offices, and wellness retreat. The Phase 1 TIA has been approved in conjunction with the Phase 1 Concept Zoning Map Amendment and Specific Plan. Phase 1 required transportation mitigation has prioritized improvements within the Project and the immediate surrounds over regional improvements. Within one year of completion of the initial build out of the hospital and ACC, NAH shall submit a transportation impact analysis evaluating the Beulah and University Heights Drive N/Lake Mary Road intersection. If the intersection needs additional mitigation, NAH shall undertake that mitigation immediately. An approved Phase 2 TIA shall be required prior to processing the Phase 2 Concept Zoning Map Amendment and Phase 2 Specific Plan for the remainder of the NAH Health Village.

8.3. Continuing Cooperation Between the City and NAH. The City will work in cooperation with NAH, and support where feasible NAH's efforts, if any, to seek grants to support regional traffic improvements. Specific grant opportunities may include, but are not limited to, Safe Street and Roads for All (SS4A) grants, Bridge Investment Program grants, RAISE grants, and Bus Rapid Transit (BRT) grants. Additional funding for Transportation Improvements may become available through the Arizona Department of Transportation or other sources. To the extent feasible, the City and NAH will cooperate to schedule Transportation Improvements in order to take advantage of any third-party funding opportunities.

9. DEFAULT; REMEDIES

- 9.1. Events Constituting Default. A party hereunder shall be deemed to be in default under this Agreement if such party breaches any obligation required to be performed by the respective party hereunder within any time period required for such performance and such breach or default continues for a period of thirty (30) days after written notice thereof from the party not in default hereunder; provided, however, that if the nature of the default is such that it cannot reasonably be cured within the 30-day period, no default shall be deemed to exist if the party failing to perform commences a cure within such 30-day period and thereafter diligently and expeditiously pursues such cure to completion within sixty (60) days.
- 9.2. Dispute Resolution. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before the commencement of litigation. The mediations shall be held under the commercial mediation rules of the American Arbitration Association. The mediator selected shall have at least five (5) years' experience in mediating or arbitrating disputes relating to commercial property development. The costs of any such mediation shall be divided equally between the City and NAH or in such other fashion as the mediator may order. The results of the mediation shall be nonbinding on the parties and any party shall be free to initiate litigation upon the conclusion of mediation.
- 9.3. NAH's Remedies. In the event that the City is in default under this Agreement and fails to cure any such default within the time period required therefore as set forth in Section 9.1 above, then, in that event, in addition to all other legal and equitable remedies which NAH may have, NAH may terminate this Agreement by written notice delivered to the City.
- 9.4. City's Remedies. In the event that NAH is in default under this Agreement, and NAH thereafter fails to cure any such default within the time period described in Section 9.1 above, then, in that event, in addition to all other legal and equitable remedies which the City may have, the City may terminate this Agreement by written notice delivered to NAH.
- 9.5. Development Rights in the Event of Termination. Upon the termination of this Agreement as provided herein, NAH shall have no rights to develop the Property pursuant to this Agreement.
- 9.6. No Personal Liability. No current or former member, manager, officer, director, agent, representative, official, employee or other natural person of the City or NAH when acting within the scope of their official capacity shall be personally liable (a) in the event of any default or breach by the City or NAH, as applicable; (b) for any amount which may become due to the nonbreaching party or its successor or assign; or (c) pursuant to any obligation of the City or NAH, as applicable, under the terms of this Agreement.

9.7. Liability and Indemnification. NAH shall indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, and agents for, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the performance of this Agreement by City or NAH, or nonperformance of this Agreement by the City or NAH.

10. GENERAL PROVISIONS

10.1. Notice. Any notice required or permitted to be given under this Agreement must be in writing and will be deemed to have been given if (a) delivered during normal business hours to the Party at the address(es) set forth below; (b) deposited in the U.S. Mail, registered or certified, return receipt requested, with sufficient postage, to the address(es) set forth below; or (c) given to a recognized and reputable overnight delivery service, for overnight delivery, with payment for all required charges, to the address(es) set forth below.

If to City:

City of Flagstaff
Attn: City Manager
211 W. Aspen Ave.
Flagstaff, AZ 86001

Copy to:

City of Flagstaff
Attn: City Attorney
211 W. Aspen Ave.
Flagstaff, AZ 86001

If to NAH:

Northern Arizona Healthcare Corp.
Attn: Chief Executive Officer
1200 N. Beaver St.
Flagstaff, AZ 86001

Copy to:

Northern Arizona Healthcare Corp.
Attn: Chief Legal Officer
1200 N. Beaver St.
Flagstaff, AZ 86001

Notices will be deemed received (a) when delivered to the Party; (b) three business days after being sent by U.S. Mail; or (3) the following business day after being sent by overnight delivery service. The notice recipients and addresses may be updated from time to time by either Party by giving Notice as required in this Section.

10.2. Incorporation of Recitals. Each of the recitals set forth at the beginning of this Agreement is incorporated into this Agreement as though fully set forth herein.

10.3. Entire Agreement; Incorporation of Exhibits. This Agreement, including the following exhibits which are incorporated in this Agreement by reference, constitutes the entire agreement between the parties and supersedes any prior written or oral understandings or agreements between the parties. This provision applies only to the entirety of this Agreement; additional and separate zoning stipulations and agreements with the City may apply to the Property, and this provision has no effect on them.

Exhibit "A" Legal Descriptions
Exhibit "B" Public Access Easement

10.4. Amendment. This Agreement may be amended, in whole or in part, and with respect to all or any portion of the Property, only with the mutual, written consent of the Parties. The City shall record any amendment pursuant to A.R.S. § 9-500.05(D).

10.5. Successors and Assigns. The rights and obligations of the Parties under this Agreement are covenants that run with the land. This Agreement will inure to the benefit of and be binding upon the Parties' respective successors and assigns.

10.5.1. Restriction on Assignment by NAH. Until completion of construction of the Project, the right of NAH to assign its rights, duties, and obligations under this Agreement is limited to the following:

10.5.1.1. An assignment made by NAH as security in connection with obtaining financing and the exercise of lender remedies with respect thereto;

10.5.1.2. An assignment of rights and obligations of NAH under this Agreement to a person or entity reasonably acceptable to and approved by the City; provided, however, that if NAH retains an ownership interest in and management control over such entity, then in that event the City's prior approval shall not be required; or

10.5.1.3. An assignment of rights and obligations of NAH under this Agreement to a corporation, partnership, joint venture, limited liability company, trust, or other legal entity that is controlled by, or under common control with, or which controls, NAH.

With the exception of those instances set forth above, NAH shall not transfer or assign any part of its rights or obligations arising under this Agreement without the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned, or delayed. After the completion of the construction of the Project, NAH may assign this Agreement to any purchaser without the City's consent, provided that the City is timely notified of such assignment. The restrictions on NAH's right to transfer or assign rights and obligations under this Agreement shall not apply to, and shall not restrict, NAH's ability to lease or sublease all or part of the Property, in which event NAH shall remain in privity with the City to exercise its rights and fulfill its obligations under this Agreement. Notwithstanding anything contained in the foregoing to the contrary, no assignment of this Agreement or any specific rights, obligation, or duties of NAH under this Agreement shall release NAH, its successors, or assigns, from its obligations hereunder, unless specifically agreed to by the City.

10.5.2. Restriction on Assignment by City. The City may not transfer or assign all or any part of its rights and obligations under this Agreement without the prior written consent of NAH, which consent may not be unreasonably withheld, conditioned, or delayed.

10.6. Time of the Essence. Time is of the essence in implementing the terms of this Agreement.

10.7. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement.

10.8. Governing Law; Venue; Fees & Costs. This Agreement will be interpreted and enforced under the laws of the State of Arizona. This Agreement has been made and entered into in Coconino County, Arizona, and any lawsuit to dispute or enforce any provision of this Agreement must be brought in Coconino County, Arizona. If legal action by any Party is brought because of a default of this Agreement or to enforce a provision of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees and court costs.

10.9. Headings and Terms. The descriptive headings of the sections and paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement. Common nouns and pronouns will be deemed to refer to the masculine, feminine, neuter, singular and plural, as the identity of the person in context requires, and the words "person" and "party" will include a corporation, limited liability company, partnership proprietorship, or other form of association.

10.10. Severability. If any provision of this Agreement, or the application thereof to any person or circumstance, is determined to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is so determined invalid or unenforceable, will not be affected thereby, and each provision hereof will be valid and will be enforced to the fullest extent permitted by law.

10.11. Recordation of Agreement and Subsequent Amendment. The City will record this Agreement in the Official Records of Coconino County no later than ten (10) days after the City and NAH execute the Agreement, as required by A.R.S. § 9-500.05.

10.12. No Partnership. The Parties acknowledge the Project will be developed as private property, that no Party is acting as the agent of any other Party in any respect, and that each Party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. None of the terms or provisions of this Agreement are intended to create a partnership or other joint enterprise between the Parties.

10.13. Cancellation for Conflict of Interest. This Agreement is subject to the cancellation provisions of A.R.S. § 38-511.

10.14. Authority. The undersigned represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. NAH represents and warrants that it is duly formed and validly existing under the laws of the State of Arizona and that it is duly qualified to do business in the State of Arizona and is in good standing under applicable state laws. NAH and the City warrant to each other that the individuals executing this Agreement on behalf of their respective Parties are authorized and empowered to bind the Party on whose behalf each individual is signing. NAH represents to the City that by entering into this Agreement, NAH has bound the Property and all persons and entities having any legal or equitable interest therein to the terms of this Agreement.

10.15. Counterparts. This Agreement may be executed in any number of counterparts, each of which will constitute an original, but all of which will constitute one and the same agreement.

10.16. No Third-Party Beneficiaries. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person not a Party hereto. No third party may claim any right under, or seek to enforce, this Agreement.

10.17. Compliance with All Laws. NAH will comply with all applicable Federal, State, and County laws, as well as with all applicable City ordinances, regulations and policies.

11. WAIVER OF CLAIM FOR DIMINUTION OF VALUE

NAH waives and fully releases any and all financial loss, injury, claims, and causes of action that NAH may have, now or in the future, for any “diminution of value” and for any “just compensations” under the Private Property Rights Protection Act, codified in A.R.S. §§ 12-1131 through 12-1138 (the “Act”), in connection with the application of the City’s existing land use laws. This waiver constitutes a complete release of any and all claims and causes of action that may arise or may be asserted under the Act with regard to the subject Property. NAH shall indemnify, hold harmless, and defend the City, its officers, employees, and agents, from any and all claims, causes of action, demands, losses, and expenses, including attorney’s fees and litigation costs, that may be asserted by or may result from any of the present or future owners of any interest in the Property seeking potential compensation, damages, attorney’s fees, or costs under the Act that they may have, as a result of the application of the City’s existing land use laws including Ordinance 2023-XX, upon the property.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the City and NAH have caused this Agreement to be executed by their duly authorized representatives.

City of Flagstaff

Northern Arizona Healthcare Corp.

Becky Daggett, Mayor

Joshua Tinkle, President & CEO

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

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

Exhibit A
Legal Description of Property

Exhibit A-1
Legal Description of Land Use Areas 1a and 1b

Exhibit A-2
Legal Description of Land Use Area 2b

Exhibit B
Public Access Easement

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