

When recorded, mail to:
Aspey, Watkins & Diesel, PLLC
Attn: Whitney Cunningham
123 N. San Francisco St, Suite 300
Flagstaff, Arizona 86001

EXEMPTION: ARS Section 11-1134(A)2

DECLARATION OF PUBLIC ACCESS EASEMENT

This PUBLIC ACCESS EASEMENT (the “Easement”) is made this ___ day of 2022, 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 “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 Grantee, in favor of the Public, a non-exclusive easement over the entire Open Space Parcel for pedestrian access and use, subject to the terms herein.
- 2. Allowed Uses.** The Public may utilize the Open Space Parcel for passive outdoor recreational and educational opportunities, subject to the terms and limitations contained herein.
- 3. Motorized Use Prohibited.** Motorized travel on the Open Space Parcel by the Public is prohibited.

4. Easement Hours. The Open Space Parcel may be used by the Public pursuant to this instrument only during those times when the Open Space Parcel is open to the Public, as the Grantor may decide from time to time. Grantor reserves the right to impose reasonable open hour restrictions regarding the use of the Open Space Parcel and Grantor shall post such hours on the Open Space Parcel.

5. Maintenance Restrictions. Grantor reserves the right to impose reasonable restrictions on the Public's use of the Open Space Parcel to enable Grantor to repair and maintain the Open Space Parcel and any improvements thereon provided that such restrictions do not substantially impair or diminish the rights of the Public provided herein.

6. General Restrictions. The following are prohibited within the Open Space Parcel: accessing the 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 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 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 Open Space Parcel and to alter and improve the Open Space Parcel, provided that such activities, alterations, and/or improvements do not substantially interfere with the Public's right to access the Open Space Parcel as detailed herein. Grantor reserves the right to barricade off certain parts of the Open Space Parcel from Public access if necessary to protect Grantor's property or to protect members of the Public.

8. Representations. Grantor and Grantee each hereby represent and warrant to each other 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

The City of Flagstaff, Arizona, a municipal corporation, does hereby accept the foregoing grant of 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

By: _____
Mayor

Attest:

City Clerk

Approved as to Form: _____

City Attorney