

When Recorded Return to:

CITY OF FLAGSTAFF  
211 W. Aspen Avenue  
Flagstaff, Arizona 86001  
Attn: Legal Department

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## **DECLARATION OF RESTRICTIVE COVENANTS**

This Declaration of Restrictive Covenants (the “Declaration”) made this \_\_\_ day of \_\_\_\_\_, 2026 by FLAGSTAFF ELKWOOD PARTNERS LP, a Delaware limited partnership, (hereinafter referred to as “Project Owner”), as successor in interest to Flagstaff at 4<sup>th</sup> LLC, a Delaware limited liability company, is in favor of the CITY OF FLAGSTAFF, Arizona, a municipal corporation of the State of Arizona (hereinafter referred to as the “City”). Project Owner and the City are sometimes collectively referred to as the “Parties” and singularly referred to as “Party.”

### **RECITALS**

**WHEREAS**, the Project Owner is the owner of the property legally described in Exhibit A, attached hereto and incorporated here (“Property”); and

**WHEREAS**, the Project Owner hereby agrees and covenants that the Project Owner’s Property shall be subject to the provisions, covenants, and restrictions contained herein; and

**WHEREAS**, this Declaration is made for the express benefit of the City, and it shall remain in full force and effect until released by the City; and

**WHEREAS**, the City is making a loan in the original principal amount of Five Hundred Thousand Twenty-Eight Thousand Dollars (\$528,000.00) of funds from the Rental Incentive Bond Program (the “Program”) to Project Owner (“Loan”) in connection with the construction of the Project, as more particularly described below; and

**WHEREAS**, the Project Owner is developing a project that will, among other things, increase the supply of rental housing units in the community, to be known as the Elkwood Apartments (hereinafter referred to as the "Project"), which consists of two hundred twenty-four (224) units located at the northeast corner of 4<sup>th</sup> Street and Butler Avenue, City of Flagstaff, County of Coconino, State of Arizona; and

**WHEREAS**, the City’s allocation of funds for the Project is subject to that certain Funding Agreement (“Loan Agreement” or “Funding Agreement”), Promissory Note (“Note”), Deed of Trust, and this Declaration of Restrictive Covenants entered into on or about this date between the City and the Project Owner (collectively the “Loan Documents”); and

**WHEREAS**, Project Owner desires to make a binding commitment to assure that the Project is maintained and operated in accordance with the provisions of the Loan Documents; and

**WHEREAS**, Project Owner, as a condition for receiving the Loan funds, is required to record in the Public Records of Coconino County, Arizona, this Covenant obligating the Project Owner, its successors, and assigns to maintain and operate the Project in accordance with the Loan Documents; and

**WHEREAS**, the Project Owner hereby declares that this Covenant shall be and is a covenant running with the Project Owner's Property and, unless released by the City, is binding on the Project Owner's Property for the entire Affordability Period, and is not merely a personal covenant of the Project Owner; and

**NOW THEREFORE**, Project Owner voluntarily covenants and agrees that the Project shall be subject to the following restrictions that are intended and shall be deemed to be covenants running with the Project Owner's Property and binding upon Project Owner, and its heirs, transferees, successors and assigns as set forth below.

#### **TERMS:**

Section 1. Recitals: The recitals and findings set forth in the preamble of this Covenant are hereby adopted by reference thereto and incorporated herein as if fully set forth in this Section.

Section 2. Use of Property: The use of twenty-two (22) units ("the Affordable Units") in the Project is governed by the Development Agreement by and between the City of Flagstaff and Project Owner as successor in interest to Flagstaff at 4<sup>th</sup>, LLC, a Delaware limited liability company recorded on November 30, 2020 in the official records of the Coconino County Recorder, instrument no. 3896757, including but not limited to the Affordability Plan incorporated therein.

Commencing on the date the Affordable Units are placed into service and continuing thereafter for a period of thirty (30) years ("the Development Agreement Period"), as provided for in the Development Agreement, the rental rates for the Affordable Units will be set at no more than thirty percent (30%) of the qualified tenant's gross household income, and Affordable Units shall be rented to households earning, on average, up to seventy percent (70%) of the Area Median Income ("AMI") income for Flagstaff, Arizona, adjusted for family size, as determined annually by the U.S. Department of Housing and Urban Development, but in no event exceeding one hundred percent (100%) AMI.

Commencing on the first day after expiration of the Development Agreement Period and continuing through the end of the Affordability Period (as defined in Section 3 below), the Affordable Units in the Project shall be rented to households whose annual income does not exceed seventy percent (70%) of the AMI for Flagstaff, Arizona.

Section 3. Term of Declaration: This Declaration is a covenant running with the land and shall remain in full force and effect and shall be binding upon the Project Owner, its successors, transferees, and assigns from the Effective Date until the expiration of the Affordability Period. The Affordability Period of this Project will be the earlier of (i) fifty (50) years commencing on the date the Loan funds have been disbursed, or (ii) upon repayment of the Loan and any interest,

fees, and charges due under the Note (the “Affordability Period”). Upon the expiration of the Affordability Period, this Declaration shall immediately lapse and be of no further force and effect without the necessity of any other written document or instrument. Notwithstanding the foregoing, upon the expiration of the Affordability Period, upon request of the Project Owner, the City shall record an instrument evidencing the expiration of and other termination of this Declaration in the Official Records of Coconino County, Arizona. Termination of this Declaration shall not have the effect of terminating any obligations under the Development Agreement.

Section 4. Prohibited Conveyances: Except as provided in the Loan Agreement, the Project Owner covenants and agrees not to encumber or convey its interest in the Project, interest in the Property, or any portion thereof, without City’s prior written consent in accordance with the terms of the Loan Agreement.

Section 5. Repayment Upon an Event of Default: The Project Owner covenants and agrees that upon (i) an Event of Default as described in the Loan Documents, subject to the terms and any notice and cure rights as provided therein, (ii) of the sale or conveyance of any interest in the Project and/or the Project Owner’s interest in the Property without City’s prior written consent as required by the Loan Documents (except as otherwise provided in the Loan Documents), or (iii) that the Project Owner ceases to exist as an organization, the Project Owner shall, subject to the subordination in the Note and Deed of Trust, immediately make payment to the City in an amount equal to the full amount of Loan funds disbursed and outstanding, with interest thereon as provided in the Note, and all unpaid fees, charges and other obligations of the Project Owner due under any of the Loan Documents.

Section 6. Inspection and Enforcement: It is understood and agreed that any official inspector of the City shall have the right any time during normal working hours, upon at least seventy-two (72) hours’ prior written notice, to enter and investigate the use of the Property to determine whether the conditions of this Declaration are in compliance, subject to the rights of residential tenants under their leases.

Section 7. Amendment and Modification: This Declaration may be modified, amended, or released in whole or in part by a written instrument executed on behalf of the City and the Project Owner, or their respective successors-in-interest. Should this instrument be modified, amended or released, a written instrument executed by the City and Project Owner will be recorded in the Official Records of Coconino County, Arizona, effectuating and acknowledging such modification, amendment, or release.

Section 8. Definitions: All capitalized terms not defined herein shall have the meanings provided in the Loan Agreement.

Section 9. Severability: Invalidation of one or more of the provisions of this Declaration by judgment of court shall not affect any of the other provisions of the Declaration, which shall remain in full force and effect.

Section 10. Recordation: This Declaration shall be recorded in the Official Records of Coconino County, Arizona, at the sole cost and expense of the Project Owner.

Section 11. Covenant Running with the Land: Any and all requirements of the laws of the State of Arizona that must be satisfied in order for the provisions of this Covenant to constitute a restriction and covenant running with the Project Owner's interest in the Property shall be satisfied in full, and any requirements or privileges of estate are intended to be satisfied, or in the alternate, an equitable servitude has been created to insure that these restrictions run with the Project Owner's interest in the Property. For the term of this Covenant, each and every contract, deed, or other instrument hereafter executed conveying the Project Owner's interest in the Property or portion thereof shall expressly provide that such conveyance is subject to this Covenant, provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed, or other instrument hereafter executed conveying the Project Owner's interest in the Property or portion thereof provides that such conveyance is subject to this Covenant.

Section 12. Governing Law and Venue: This Declaration shall be construed and enforced pursuant to the laws of the State of Arizona, excluding all principles of choice of laws, conflict of laws and comity. Any action pursuant to a dispute under this Declaration must be brought in Coconino County and no other venue. All meetings to resolve said dispute, including voluntary arbitration, mediation, or other alternative dispute resolution mechanism, will take place in this venue. The Parties both waive any defense that venue in Coconino County is not convenient.

Section 13. Effect on Development Agreement: Nothing herein shall be construed to waive or modify any terms of the Development Agreement.

Section 14. Costs, Including Attorneys' Fees: If any legal services by an attorney are required to enforce the requirements of this Declaration or any of the Loan Documents, the prevailing party will be reimbursed by the other party for all costs and expenses of such action, including reasonable attorneys' fees, and if in legal action costs and expense of such action, including reasonable attorneys' fees as may be fixed by the court.

*[Signature Pages Follow]*

**IN WITNESS WHEREOF**, the Project Owner has caused this Declaration to be executed by its duly authorized officers and the corporate seal to be affixed hereto on the day and year first above-written.

**PROJECT OWNER:**

**FLAGSTAFF ELKWOOD PARTNERS LP,  
A DELAWARE LIMITED PARTNERSHIP**

**BY: FLAGSTAFF ELKWOOD GP LLC, A  
DELAWARE LIMITED LIABILITY  
COMPANY**

**ITS: GENERAL PARTNER**

**BY: \_\_\_\_\_**

**NAME:**

**TITLE: AUTHORIZED SIGNATORY**

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

This Declaration was signed and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2026, by \_\_\_\_\_, as \_\_\_\_\_ of Flagstaff Elkwood Partners, LP, a Delaware limited partnership on behalf of the company(ies) and pursuant to authority given to her/him by said company(ies). She/He is personally known to me or has produced \_\_\_\_\_ as identification.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**CITY:**

**CITY OF FLAGSTAFF, ARIZONA, A  
MUNICIPAL CORPORATION OF THE  
STATE OF ARIZONA**

By: \_\_\_\_\_  
Joanne Keene, City Manager

**ACKNOWLEDGMENT**

STATE OF ARIZONA)  
COUNTY OF COCONINO)

This Declaration was signed and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2026, by Joanne Keene as City Manager on behalf of the City of Flagstaff. She/He is personally known to me or has produced her/his Arizona Driver's License as identification.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**Exhibit A**  
**Legal Description Of The Property**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF COCONINO,  
STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS: