

EXHIBIT K

**DECLARATION OF DEED COVENANTS,
CONDITIONS, AND RESTRICTIONS FOR
RIO HOMES AFFORDABLE PROPERTIES**

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THIS DECLARATION OF DEED COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made this ____ day of _____, 2003, by AZNORTH Development, Inc., an Arizona corporation ("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 Case ____, Map ____, 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 _____ ("Development Agreement"), a copy of which is recorded as Instrument Number _____, 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 and meeting certain "Eligible Buyer" criteria set forth below;

WHEREAS, pursuant to the terms of the Development Agreement, the Developer has 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 other Eligible Buyers;

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

WHEREAS, the parcel of land that is the subject of the deed to which this Declaration is attached is an Affordable Property;

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 shall inure to the benefit of each owner thereof 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. If exercised, the City's right of first refusal shall be for the purchase of Affordable Properties for resale to other Eligible Buyers.

2. **Eligible Buyer.** Subject to the provisions set forth below, in the event that the Declarant or the Declarant's grantee ("Grantee-Seller") desires to sell an Affordable Property, the Declarant or Grantee-Seller shall sell an Affordable Property only to a buyer ("Eligible Buyer") having a household income not in excess of eighty percent (80%) of the United States Department of Housing and Urban Development Area Median Income for Coconino County, Arizona ("HUD AMI"), referred to in the Affordable Properties Description and Price Schedule ("Price Schedule"). A copy of the current HUD AMI is designated **Exhibit C**, attached to and made a part hereof; and a copy of the Price Schedule is designated **Exhibit D**, attached to and made a part hereof. The Price Schedule is based upon a family of four (4) and is for illustrative purposes only.

To ensure that these designated Affordable Properties are marketed to the appropriate segment of the public, the Declarant or Grantee-Seller shall place an advertisement for sale of the Affordable Property in a daily newspaper of general circulation in the City of Flagstaff for at least four consecutive weeks, stating the Maximum Sales Price, Declarant's or Grantee-Seller's phone number, as the case may be, and the phrase: "Sale of this property subject to certain guidelines and restrictions with respect to the maintenance and retention of affordable housing for households of low and moderate income."

3. **Maximum Sale or Resale Price.** The Declarant shall sell the Affordable Properties for pre-determined prices referred to in the Development Agreement as "Developer Prices," and described in the Price Schedule referenced above. The Developer Prices will remain constant until all of the Affordable Properties are initially sold, except, however, that Developer Prices shall be adjusted annually on the anniversary of the effective date of this Agreement based on the then current thirty (30) year fixed rate mortgage published daily in the Interest Rates and Bonds section of the *Wall Street Journal*, or other well recognized financial or governmental publication. Subsequent sales of Affordable Properties to Eligible Buyers shall be at the Developer Prices described in the Price Schedule, as adjusted.

The Declarant shall certify the income of the initial Eligible Buyers in accordance with the income qualification rules of the Federal HOME program or other reasonable standards, which take into account income, family size, assets and other economic circumstances. The City shall have the right to audit Declarant's records at reasonable times and from time to time, as the City deems desirable, to verify certifications on all Affordable Properties. In subsequent sales of the Affordable Properties, the title company used for the escrow and closing transactions shall certify that the income of the buyer meets the Eligible Buyer criteria as set forth above.

4. **Sale to Ineligible Buyer or Other Breach.**

The Declarant or, if the Declarant declines to do so, the City, shall have the right to foreclose on any Affordable Property should either the Declarant or the City find that an Affordable Property has been sold to an Ineligible Buyer. An "Ineligible Buyer is a buyer of an Affordable Property who does not meet the criteria of an "Eligible Buyer." Such rights, however, shall not supersede the rights of a bona fide mortgage holder or trustee under a deed of trust to redeem the value of its interest in the subject property. The Ineligible Buyer and its grantor shall have sixty (60) days

from notice of sale to an Ineligible Buyer to reconvey the Affordable Property to an Eligible Buyer.

In the event that an Eligible Buyer breaches any other provision of this Declaration, the Eligible Buyer shall have thirty (30) days from notice thereof to cure the breach. In the event that the breach is not cured within such period, either the Declarant and or the City shall have all available remedies at law or in equity to enforce compliance with this Declaration.

5. **Rights of Heirs and Devisees.**

Notwithstanding the above, upon death of the last surviving Eligible Buyer of an Affordable Property, one or more of the following parties (the "Heir" or Heirs" through intestate succession or "Devisee" or "Devisees" through testate succession) may hold title to the Affordable Property whether or not such Heir or Devisee qualifies as an Eligible Buyer, 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 6 hereof and the restrictions against leasing set forth in Section 7 hereof:

- (a) the spouse of the Eligible Buyer (or co-Eligible Buyer) or
- (b) the child or children of the Eligible Buyer; or
- (c) member(s) of the Eligible Buyer's household who have resided on the Affordable Property for at least one (1) year; or
- (d) any other person or persons who have inherited the Affordable Property by will or by operation of law from the Eligible Buyer.

6. **Occupancy Condition.** All Affordable Property is conveyed subject to the condition that the Eligible Buyer 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. In such event, the Eligible Buyer shall promptly use its best efforts to restore the Property to a habitable condition.

7. **Restrictions Against Leasing and Encumbrances.** The Affordable Property shall not be leased or sub-leased at any time. The Property shall not be encumbered (voluntarily or otherwise) with the exception of a first mortgage with the conveyance or refinancing as to each new Eligible Buyer.

8. **Rights of Mortgagees.** If the bona fide holder of a first mortgage or 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 herein shall 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.

9. **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.

Without limitation on any other rights or remedies of the Declarant or the City, their agents, successors, designees and assigns, any sale or other transfer or conveyance of any Affordable Property in violation of the provisions of this Declaration shall be voidable by the Declarant or the City, their agents, successors, designees and assigns by suit in equity to enforce the provisions hereof.

10. **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:

AZNORTH Development, Inc.
Attn: Tom Brewster
2410 East Route 66
Flagstaff, Arizona 86004

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.

11. **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 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.

12. **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.

13. **Attorney Fees.** In the event that the Declarant or the City employs any attorney or attorneys to file suit to enforce compliance with this Declaration, the prevailing party in any such action shall be entitled to recover from the other party or parties its reasonable attorney fees and costs incurred in the action and in any appeal.

14. **Captions.** The captions used herein are for convenience only, are not a part of this Declaration and do not in any way limit or amplify the terms and provisions hereof.

IN WITNESS WHEREOF, the Declarant has caused this Declaration of Covenants, Conditions and Restrictions for Rio Homes Affordable Properties to be executed this ____ day of _____, 2003.

AZNORTH Development, Inc.,
an Arizona corporation

By: _____

Its: _____

APPROVED BY THE CITY OF FLAGSTAFF

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF ARIZONA }
 } ss.
County of Coconino }

ACKNOWLEDGMENT. On this ____ day of _____, 2003, before me, a Notary Public, personally appeared _____, known to be and satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same on behalf of AZNORTH, Inc., an Arizona corporation, for the purposes therein contained.

Notary Public

My Commission Expires:

STATE OF ARIZONA }
 }
County of Coconino } ss.

ACKNOWLEDGMENT. On this ____ day of _____, 2003, before me, a Notary Public, personally appeared Joseph C. Donaldson, Mayor of the City Flagstaff, known to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same on behalf of the City of Flagstaff, for the purposes therein contained.

Notary Public

My Commission Expires:
