

AGENDA



4:30 P.M.

CITY COUNCIL MEETING

TUESDAY, DECEMBER 12, 2023

NOTES:

- Public Forum:
Comments are generally limited to **3 minutes**.
- Consent Items:
Items listed under Consent Items have been distributed to Council Members in advance for study and will be enacted by one motion. Any member of the Council, staff or the public may remove an item from the Consent Items for discussion. For additional information on pulling a Consent Item, please contact the City Clerk's Office staff, preferably in advance of the Call to Order. Items removed from the Consent Items may be acted upon before proceeding to the next agenda item.
- Meeting room is wheelchair accessible. American Disabilities Act (ADA) accommodations are available upon request. Please phone 928-282-3113 at least two (2) business days in advance.
- City Council Meeting Agenda Packets are available on the City's website at:

www.SedonaAZ.gov

THE MEETING CAN BE VIEWED
LIVE ON THE CITY'S WEBSITE AT
WWW.SEDONAAZ.GOV OR ON
CABLE CHANNEL 4.

GUIDELINES FOR PUBLIC COMMENT

PURPOSE:

- To allow the public to provide input to the City Council on a particular subject scheduled on the agenda.
- This is not a question/answer session.
- No disruptive behavior or profane language will be allowed.

PROCEDURES:

- Fill out a "Comment Card" and deliver it to the City Clerk.
- When recognized, use the podium/microphone.
- State your:
 1. Name and
 2. City of Residence
- Limit comments to **3 MINUTES**.
- Submit written comments to the City Clerk.

1. CALL TO ORDER/PLEDGE OF ALLEGIANCE/MOMENT OF SILENCE

2. ROLL CALL/MOMENT OF ART

3. CONSENT ITEMS - APPROVE

LINK TO DOCUMENT =

- a. Minutes - November 28, 2023 City Council Regular Meeting
- b. Minutes - November 29, 2023 City Council Special Meeting - Executive Session.
- c. AB 3000 Approval of the Tourism Advisory Board Rules of Procedure.

4. APPOINTMENTS - None.

5. SUMMARY OF CURRENT EVENTS BY MAYOR/COUNCILORS/CITY MANAGER

6. PUBLIC FORUM

(This is the time for the public to comment on matters not listed on the agenda. The City Council may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to A.R.S. § 38-431.01(H), action taken as a result of public comment will be limited to directing staff to study the matter, responding to any criticism, or scheduling the matter for further consideration and decision at a later date.)

7. PROCLAMATIONS, RECOGNITIONS & AWARDS - None.

8. REGULAR BUSINESS

- a. **Reports/discussion** regarding Council assignments.
- b. AB 3018 **Presentation/discussion** on the status of the Community Development Block Grant (CDBG) process and award made to Steps to Recovery Homes for the 2023 City of Sedona CDBG grant cycle.
- c. AB 3022 **Discussion/possible action** regarding approval to purchase Stormy Bay, a steel horse sculpture, in the amount of \$25,000, to be installed at the Ranger Station Park and authorization of a transfer of contingency funds of \$25,000.
- d. AB 3016 **Discussion/possible action** regarding approval of a Land Lease Option Agreement and a \$2.25 million loan to the Villas on Shelby, LLC for development of a 30-unit apartment complex.
- e. AB 2995 **Discussion/possible action** regarding authorization of a proposed fare and fare policy for the city's MicroTransit (Sedona Shuttle Connect) service.
- f. **Discussion/possible action** regarding future meeting/agenda items.

9. EXECUTIVE SESSION

Upon a public majority vote of the members constituting a quorum, the Council may hold an Executive Session that is not open to the public for the following purposes:

- a. To consult with legal counsel for advice on matters listed on this agenda per A.R.S. § 38-431.03(A)(3).
- b. Return to open session. Discussion/possible action on executive session items.

10. ADJOURNMENT

CITY COUNCIL CHAMBERS
102 ROADRUNNER DRIVE, SEDONA, AZ

The mission of the City of Sedona government is to provide exemplary municipal services that are consistent with our values, history, culture and unique beauty.

AGENDA



4:30 P.M.

CITY COUNCIL MEETING

TUESDAY, DECEMBER 12, 2023

Page 2, City Council Meeting Agenda Continued

Posted: 12/7/23

By:DJ

JoAnne Cook, CMC City Clerk

Note: Pursuant to A.R.S. § 38-431.02 notice is hereby given to the members of the City Council and to the general public that the Council will hold the above open meeting. Members of the City Council will attend either in person or by telephone, video, or internet communications. The Council may vote to go into executive session on any agenda item, pursuant to A.R.S. § 38-431.03(A)(3) and (4) for discussion and consultation for legal advice with the City Attorney. Because various other commissions, committees and/or boards may speak at Council meetings, notice is also given that four or more members of these other City commissions, boards, or committees may be in attendance.

A copy of the packet with materials relating to the agenda items is typically available for review by the public in the Clerk's office after 1:00 p.m. the Thursday prior to the Council meeting and on the City's website at www.SedonaAZ.gov. The Council Chambers is accessible to people with disabilities, in compliance with the Federal 504 and ADA laws. Those with needs for special typeface print, may request these at the Clerk's Office. All requests should be made **forty-eight hours** prior to the meeting.

NOTICE TO PARENTS AND LEGAL GUARDIANS: Parents and legal guardians have the right to consent before the City of Sedona makes a video or voice recording of a minor child, pursuant to A.R.S. § 1-602(A)(9). The Sedona City Council meetings are recorded and may be viewed on the City of Sedona website. If you permit your child to attend/participate in a televised City Council meeting, a recording will be made. You may exercise your right not to

CITY COUNCIL CHAMBERS
102 ROADRUNNER DRIVE, SEDONA, AZ

The mission of the City of Sedona government is to provide exemplary municipal services that are consistent with our values, history, culture and unique beauty.

Action Minutes
Regular City Council Meeting
City Council Chambers, Sedona City Hall,
102 Roadrunner Drive, Sedona, Arizona
Tuesday, November 28, 2023, 4:30 p.m.

1. Call to Order/Pledge of Allegiance/Moment of Silence

Mayor Jablow called the meeting to order at 4:30 p.m.

Council Present: Mayor Scott Jablow, Vice Mayor Holli Ploog, Councilor Melissa Dunn, Councilor Brian Fultz, Councilor Pete Furman, Councilor Kathy Kinsella, and Councilor Jessica Williamson.

Staff Present: City Manager Karen Osburn, Deputy City Manager Andy Dickey, City Attorney Kurt Christianson, Parks & Recreation Manager Josh Frewin, Police Chief Stephanie Foley, Deputy Police Chief Ryan Kwitkin, Communications Supervisor Erin Loeffler, Director of Financial Services Cherie White, Deputy City Clerk Marcy Garner, and City Clerk JoAnne Cook.

2. Roll Call

3. Consent Items

- a. **Minutes - November 14, 2023 City Council Special Meeting - Executive Session.**
- b. **Minutes - November 14, 2023 City Council Regular Meeting.**
- c. **Minutes - November 15, 2023 City Council Special Meeting.**
- d. **AB 3021 Approval of a Resolution approving and authorizing the Mayor to execute an Intergovernmental Agreement (IGA) between the City of Sedona and the State of Arizona Department of Revenue for the administration, collection, audit, and licensing of transaction privilege taxes, use taxes, severance taxes, jet fuel excise and use taxes and rental occupancy taxes imposed by the state, cities or towns.**

Councilor Furman pulled item 3d. By majority consensus, Council directed the City Attorney to pursue the inquiry with DOR of who is deemed a tax remitter vs. tax payor for short-term rentals.

Motion: Councilor Kinsella moved to approve consent items 3a-3c. **Seconded by Councilor Fultz. Vote:** Motion passed with seven (7) in favor (Jablow, Ploog, Dunn, Fultz, Furman, Kinsella, Williamson) and zero (0) opposed.

Motion: Councilor Williamson moved to approve consent items 3d. **Seconded by Councilor Furman. Vote:** Motion passed with seven (7) in favor (Jablow, Ploog, Dunn, Fultz, Furman, Kinsella, Williamson) and zero (0) opposed.

4. Appointments - None.

5. Summary of Current Events by Mayor/Councilors/City Manager

Vice Mayor Ploog invited all to attend Breakfast with Santa on Saturday, December 2nd

from 8:00-10:00 a.m. at the HUB and advised the Youth Basketball League practice starts next week.

6. Public Forum - None.

7. Proclamations, Recognitions & Awards - None.

8. Regular Business

a. Reports regarding Council assignments.

Vice Mayor advised she, Councilor Dunn, and Mayor Jablow attended the Verde Valley Caregivers Gala last week.

b. AB 2994 AB Public hearing/discussion/possible action regarding adoption of a Resolution and Ordinance updating the City of Sedona's Fee Schedule.

Presentation by Chief Foley, Josh Frewin, and Cherie White.

Questions and comments from Council.

Public Hearing opened at 5:15 p.m.

No public comments heard

Brought back to Council at 5:15 p.m.

Questions and comments from Council.

Motion: Councilor Kinsella moved to approve Resolution No. 2023-33, creating a public record entitled "2023 Amendments to the Sedona Consolidated Fee Schedule," with the amendment that the discounts for nonprofit organizations for Sedona Parks & Recreation facility rental fee for the hub and pavilion be amended from 30% to a 50% discount. Seconded by Vice Mayor Ploog. Vote: Motion passed with seven (7) in favor (Jablow, Ploog, Dunn, Fultz, Furman, Kinsella, Williamson) and zero (0) opposed.

Motion: Councilor Kinsella moved to adopt Ordinance No. 2023-11, adopting proposed changes to the Consolidated Fee Schedule. Seconded by Councilor Fultz. Vote: Motion passed with seven (7) in favor (Jablow, Ploog, Dunn, Fultz, Furman, Kinsella, Williamson) and zero (0) opposed.

c. AB 3014 Discussion/possible action regarding City Council's State Legislative priorities for the 2024 legislative session and a Second Amendment to the Agreement with the Policy Development Group.

Presentation by Paul Senseman and Todd Baughman of the Policy Development Group.

Questions and comments from Council.

By majority consensus, Council agreed to pursue the short-term rental legislation that was proposed last legislative session, and not to pursue the community plan legislation that was proposed last legislative session.

Motion: Councilor Williamson moved to approve the Second Amendment to the Professional Services Agreement with the Policy Development Group in the amount of \$75,000. Seconded by Vice Mayor Ploog. Vote: Motion passed with

seven (7) in favor (Jablow, Ploog, Dunn, Fultz, Furman, Kinsella, Williamson) and zero (0) opposed.

d. AB 2953 Presentation/discussion regarding the September 2023 Sales and Bed Tax Report.

Presentation by Cherie White.

Questions and comments from Council.

e. Discussion/possible action regarding future meeting/agenda items.

Mayor Jablow advised there will be an executive session meeting at 11:30 a.m. in the Vultee Conference Room, and there will be no work session tomorrow.

9. Executive Session

Upon a public majority vote of the members constituting a quorum, the Council may hold an Executive Session that is not open to the public for the following purposes:

- a. To consult with legal counsel for advice on matters listed on this agenda per A.R.S. § 38-431.03(A)(3).**
- b. Return to open session. Discussion/possible action on executive session items.**

No Executive Session was held.

10. Adjournment

Mayor Jablow adjourned the meeting at 7:04 p.m. without objection.

I certify that the above are the true and correct actions of the Regular City Council Meeting held on November 28, 2023.

JoAnne Cook, CMC, City Clerk

Date

**Action Minutes
Special City Council Meeting
Vultee Conference Room
106 Roadrunner Drive, Sedona, Arizona
Wednesday, November 29, 2023, 11:30 a.m.**

1. Call to Order

Mayor Jablow called the meeting to order at 11:30 a.m.

2. Roll Call

Council Present: Mayor Scott Jablow, Vice Mayor Holli Ploog, Councilor Brian Fultz, Councilor Pete Furman, Councilor Kathy Kinsella, and Councilor Jessica Williamson. Councilor Melissa Dunn was absent and excused.

Staff Present item: City Manager Karen Osburn, Deputy City Manager Andy Dickey, City Attorney Kurt Christianson, Human Resources Manager Brenda Tammarine, and City Clerk JoAnne Cook.

Councilor Furman voiced his preference that the meeting be held in open session.

Comments from Council.

Executive Session

Motion: Councilor Kinsella moved to enter into Executive Session at 11:37 p.m. for reasons previously stated by Mayor Jablow. Seconded by Councilor Williamson. Motion carried with five (5) in favor (Jablow, Ploog, Fultz, Kinsella, and Williamson) and one (1) opposed (Furman).

Kurt Christianson gave the admonition.

- a. Discussion/consideration regarding employment, assignment, and appointment of a new City Manager including the recruitment and selection process. This matter is brought in executive session pursuant to A.R.S. § 38-431.03(A)(1).**

Presentation by Vice President Practice Development, Melissa Barker and Executive Recruiter, Nicole Gruenhaupt from Duffy Group, Inc.

Break at 1:00 p.m. Reconvened at 1:27 p.m.

- b. Return to open session. Discussion/possible action regarding executive session.**

Reconvened in open session at 4:14 p.m.

3. Adjournment

Mayor Jablow adjourned the meeting at 4:14 p.m.

I certify that the above are the true and correct actions of the Special City Council Meeting held on November 28, 2023.

JoAnne Cook, CMC, City Clerk

Date



CITY COUNCIL AGENDA BILL

AB 3000
December 12, 2023
Consent

Agenda Item: 3c

Proposed Action & Subject: Approval of the Tourism Advisory Board Rules of Procedure.

Department City Manager

Time to Present N/A

Total Time for Item N/A

Other Council Meetings April 12, 2023, May 10, 2023, August 22, 2023 (Exec Session), September 12, 2023, September 26, 2023, October 10, 2023

Exhibits: A. TAB Rules of Procedure

Finance Approval	CRW 12/4/2023		
City Attorney Approval	Reviewed 12/4/23 KWC	Expenditure Required	
		\$	N/A
City Manager's Recommendation	Approve the Tourism Advisory Board Rules of Procedure with or without possible changes, yet to be determined.	Amount Budgeted	
		\$	N/A
		Account No. (Description)	

SUMMARY STATEMENT

Background: On May 10, 2023 the City Council adopted a resolution to establish an 11-member Tourism Advisory Board (TAB). That resolution called for the new TAB to review and provide input on Rules of Procedure for how they will function as a newly established Board. On September 12, 2023, City Council discussed the TAB further and set the roles and responsibility and the 12+ month work program for the TAB. On October 10, 2023, City Council reviewed and provided comments on the draft Rules of Procedure.

On December 6, 2023, the newly selected TAB will review the draft Rules of Procedure, which is after this agenda bill will be finalized and sent out as part of the December 12 Council Packet. If the TAB recommends any changes to the Rules those recommendations will be shared with Council after the TAB meeting.

The proposed Rules of Procedure are attached as Exhibit A. Pursuant to Resolution 2023-15, the Rules of Procedure require Council approval in order to be effective.

Climate Action Plan/Sustainability Consistent: ☐ Yes - ☐ No - ☒ Not Applicable

Board/Commission Recommendation: ☐ Applicable - ☒ Not Applicable

Alternative(s): N/A

MOTION

I move to: approve the Tourism Advisory Board Rules of Procedure (with or without changes).

City of Sedona, Arizona

Tourism Advisory Board

Rules of Procedure

Article I. Name and Purpose

Section 1.1 Official Name. The Tourism Advisory Board.

Section 1.2 Purpose. The Tourism Advisory Board was established by the Mayor and Council of the City of Sedona, Arizona through the adoption of Resolution 2023-15. The Tourism Advisory Board shall advise the City on tourism marketing and management and on such matters as may be referred to it by the City Council or City Manager. The Tourism Advisory Board shall be an advisory body only. The Board does not set policy and shall have no power to contract on behalf of the City or to authorize the expenditure of funds.

A. The Board is directed to:

1. Provide input and makes recommendations on matters involving tourism marketing and management initiatives, projects, and short and long-range plans.
2. Shares ideas, research, and information about feasibility or implementation to further the city's tourism efforts involving marketing, management, sustainability, increase tax revenue if/when applicable, and management of visitation, with staff, who report to the city leadership and the City Council.

B. Board Members are expected to:

1. Provide constructive insight based on their expertise in the area being discussed.
2. Provide constructive feedback on the ideas and/or content presented by staff or other outside consultants or hired subject matter experts.
3. Provide constructive feedback on content to be presented to council by staff or hired subject matter experts.
4. As required, participate in brainstorming of ideas on topics provided by staff or hired subject matter experts.
5. Come prepared to advisory committee meetings with ideas, feedback and insights that are germane to the topic.
6. Stay on topic during the meeting unless asked to provide other areas of concern or topics to be considered.
7. Submit ideas or comments during the Board meeting, either verbally or written, unless specifically asked to do otherwise by staff or hired experts.

8. Work with and through the Board as a whole and staff rather than attempting to influence work product or decision-making individually or outside the Board process.

C. Board Members do not:

1. Make final decisions on any idea, expenditure, opportunity, promotion or campaign, hired professional services or usage of data collected.
2. Hold governance authority over any city employee, consultant, or the public. City staff and hired experts do not report to the TAB members.
3. Manage any fiduciary responsibilities, including but not limited to grant or other financial opportunities, or program or project expenditures, unless expressly sanctioned by staff liaisons or the City Council.
4. As individuals, speak on behalf of the entire Board.

Article II. MEMBERSHIP

Section 2.1 Number of Members. The Board shall consist of eleven (11) Members.

Section 2.2 Board Makeup. Members of the Board shall be appointed from the following groups:

- A. Residents of the City of Sedona.
- B. Persons who own or operate a business within the City of Sedona.
- C. Represent an organization serving the City of Sedona community.

The following City staff shall serve as liaison to the Board and support the purpose and function of the Board as directed by the City Manager:

- A. Tourism & Economic Initiatives Manager
- B. The City Manager or her/his designee.

Section 2.3 Appointment of Board Members. Members shall be appointed by the City Council. Members shall be selected in accordance with Rule 5 of the Sedona City Council Rules of Procedure and Policies.

Section 2.4 Terms of Office. Terms of office for each Member shall be four (4) years except for the initial appointments as set forth below. Terms shall begin on January 1, and expire on December 31. For the initial appointment of eleven (11) Board Members, five (5) Board Members shall be appointed to two-year terms and six (6) Board Members shall be appointed to four-year terms. Thereafter, all terms shall be four years.

Section 2.5 Vacancies. Vacancies that occur during a term shall be filled for the remainder of the term as soon as reasonably possible and in the same manner as an appointment as set forth in Section 2.3. If possible, the Member shall continue to serve until the vacancy is filled.

Section 2.6 No Compensation and Expenditure of Funds. Members serve without compensation. The Board and its Members have no authority to expend funds or to incur or make an obligation on behalf of the City unless authorized and approved by the City Council. Members may be reimbursed for expenses authorized and pre-approved by City staff and the Board.

Section 2.7 Compliance with City Policy. Members will comply with all City Ordinances, Rules, and Policies applicable to the Board and the Members, including the City of Sedona Commissioner Handbook.

Section 2.8 Conflict of Interest. The Board Members shall comply with Chapter 2.95 of the Sedona City Code, as it may hereafter be amended, concerning matters involving conflicts of interest.

Section 2.9 Removal. Board Members serve at the pleasure of City Council. Any Board Member may be removed at any time by a majority vote of Council for any reason or for no reason at all.

Article III. BOARD OFFICERS

Section 3.1 Officers. The Board Officers are Chair and Vice-Chair. The Chair and Vice-Chair are approved by a majority vote of the Board Members at the first meeting of the calendar year, except for the initial appointment of Chair and Vice-Chair by City Council.

Section 3.2 Terms of Office for Board Officers. Board Officers serve for a term of two years. Officers may not serve more than two (2) consecutive terms. A vacancy in any office shall be elected by majority vote of the Members at the next regularly scheduled meeting, or as soon as reasonably practical for the unexpired term. If possible, a Board Officer shall continue to serve until the vacancy is filled.

Section 3.3 Duties.

A. The Chair presides at Board meetings. The Chair shall generally manage the business of the Board. The Chair shall perform the duties delegated to the Chair by the Board

B. The Vice-Chair shall perform the duties delegated to the Vice-Chair by the Board. The Vice-Chair presides at Board meetings in the Chair's absence. The Vice-Chair shall perform the duties of the Chair in the Chair's absence or disability.

Article IV. MEETINGS

Section 4.1 Date and Time of Regular Meeting. The Board shall meet at least quarterly, at a date and time to be set out in the Board's minutes.

Section 4.2 Notice for Meetings. Board staff liaison will be responsible for notifying the Board of any upcoming meetings, including special meetings. Board members will be given notice consistent with the Arizona Open Meetings Act.

Section 4.3 Agenda. The Board staff liaison shall be responsible for preparing and posting the Board agendas.

Section 4.4 Special Meetings. Special meetings may be set at the will and discretion of the Board whenever it deems necessary. The Chair of the Board shall call the special meeting.

Section 4.5 Electronic Meetings. Meetings of the Board may be held partially or entirely by teleconference, internet videoconference, or other similar electronic transmissions so long as a quorum of Board Members participate. Participation in a meeting pursuant to this Section 4.5 shall constitute presence in person at such meeting.

Section 4.6 Quorum. A quorum shall consist of six (6) Board members. A quorum is required for the Board to convene a meeting and to conduct business at a meeting.

Section 4.7 Minutes. A recording or written minutes shall be made of Board meetings. The City Clerk is the custodian of all Board records and documents. It shall be the duty of the City Clerk to file and preserve the minutes of each meeting of the Board, along with a list of the members of the Board who were present.

Section 4.8 Attendance. Members are expected to attend Board meetings prepared to discuss the issues on the agenda. A Member shall notify the Board staff liaison if the Member is unable to attend a meeting. Excessive absenteeism may be subject to action by the Council and may result in the Member being removed from the Board. Excessive absenteeism is defined as 50% or more of meetings missed in a twelve-month period. If a Member is removed from the Board that position will be considered vacant, and a new Member shall be appointed to the Board in accordance with Section 2.3.

Section 4.9 Public Participation. In accordance with The Arizona Open Meetings Act, the public is welcome and invited to attend Board meetings and to speak on any item on the agenda. If any written materials are to be provided to the Board, a copy shall also be provided to the Board staff liaison for inclusion in the minutes of the meeting.

Section 4.10 Open Meetings. Public notice of Board meetings shall be provided in accordance with the provisions of the Arizona Open Meetings law A.R.S. Section 38-431.01. All Board meetings and deliberations shall be open to the public and shall be conducted in accordance with the provisions of the Arizona Open Meetings law.

Article V. MISCELLANEOUS

Section 5.1 Rules of Procedure Amendments. The Board may recommend amendments to these Rules of Procedure by majority vote of the Board Members at any regular meeting of the Board. The Board's proposed amendments must be approved by City Council. Amendments are not effective until approved by City Council.



CITY COUNCIL AGENDA BILL

AB 3018
November 28, 2023
Regular Business

Agenda Item: 8b

Proposed Action & Subject: Presentation/discussion on the status of the Community Development Block Grant (CDBG) process and award made to Steps to Recovery Homes for the 2023 City of Sedona CDBG grant cycle.

Department	CM
Time to Present	10 minutes
Total Time for Item	30 minutes
Other Council Meetings	January 24, 2023
Exhibits	NA

Finance Approval	CRW 12/4/2023	
City Attorney Approval	Reviewed 12/04/2023 KWC	Expenditure Required
		\$ N/A
City Manager's Recommendation	For information and discussion only.	Amount Budgeted
		\$ N/A
		Account No. (Description)

SUMMARY STATEMENT

Background: On January 24, 2023, the City Council selected Steps to Recovery Homes to receive its 2023 CDBG (Community Development Block Grant) in the approximate amount of \$400,000 towards the acquisition of transitional housing for families and individuals impacted by substance abuse. CDBG is a federal Housing and Urban Development (HUD) program that provides funds for housing and community development activities. The Arizona Department of Housing (ADOH) in conjunction with Northern Arizona Council of Governments (NACOG) administers and plans the annual allocations and provides technical assistance for applications for northern Arizona. Through their process, the City of Sedona is eligible for funds every four years.

Final funding levels will not be determined until later in 2023, but the current estimated total is \$406,016. A portion, approximately 15%, of the grant must be allocated to NACOG for the administration of the grant. The net grant amount is subject to change.

CDBG funds can be used for a diverse range of projects. However, to be eligible for funding, projects must meet at least one of three national objectives:

- At least 51% of persons who benefit from the project must be low-to-moderate income

- Reduce or eliminate slums or blighting conditions
- Address a particular urgency (such as a natural disaster or health threat)

The purpose of this agenda item is to provide an update to the City Council on the grant process and timelines and to allow Damien Browning, CEO of Steps to Recovery Homes to provide an update on this project specifically, and their organizations various programs and activities more broadly.

Climate Action Plan/Sustainability Consistent: ☐ Yes - ☐ No - ☒ Not Applicable

Board/Commission Recommendation: ☐ Applicable - ☒ Not Applicable

Alternative(s): None

MOTION

I move to: for information and discussion only.



CITY COUNCIL AGENDA BILL

AB 3022
December 12, 2023
Regular Business

Agenda Item: 8c

Proposed Action & Subject: Discussion/possible action regarding approval to purchase Stormy Bay, a steel horse sculpture, in the amount of \$25,000, to be installed at the Ranger Station Park and authorization of a transfer of contingency funds of \$25,000.

Department	Arts & Culture
Time to Present	15 minutes
Total Time for Item	30 minutes
Other Council Meetings	NA
Exhibits	A. Agreement to Acquire Artwork

Finance Approval	CRW 12/4/2023	
City Attorney Approval	Reviewed 12/04/23 KWC	
City Manager's Recommendation	Approve the purchase of the Stormy Bay horse sculpture and authorize the use of contingency for \$25,000 to fund the purchase.	Expenditure Required \$ 25,400 Includes transport/install fees. Amount Budgeted \$ 0 Account No. \$25,000 (Description) 10-5246-01-6761 (General Fund Contingency) \$400 26-5420-89-6889 (C-02 Art in the Roundabouts)

SUMMARY STATEMENT

Background: As part of the City's commitment to enhance the Art in Public Places program, as well as for the vision of the Ranger Station Work Group to keep the park historic and procure art, *Stormy Bay*, a sculpture created by artist, Dixie Jewett is being offered for sale and staff and the Ranger Station Work Group are recommending the City purchase this piece of art. This opportunity was presented to the Ranger Station Work Group to evaluate whether this rustic sculpture was a good fit for the park. The decision was unanimous that this sculpture was a perfect choice and fitting with the historic character of the property. Work group members include City staff members Steve Mertes, Sandy Phillips, Nancy Lattanzi, Josh Frewin and Jason Vargo, Historic Preservation Commission (HPC) Vice Chair and Director of the Sedona

Historic Society Nate Meyers, Gallery Owner Linda Goldenstein and Citizen Volunteer Al Comello. The work group convened at the park to assess the sculpture's appropriateness and ultimately select the best location to install the piece. Placing the sculpture at the entrance of the park was agreed upon unanimously.

This purchase was not contemplated at the time the budget was prepared and adopted. The City's budgeted General Fund contingency is \$200,000. A budget transfer of \$25,000 from the contingency account will be needed to cover this potential cost. Costs to cover transporting the sculpture from its current location on Bristlecone Pines Road to the Ranger Station are estimated at \$400 and will be paid from the existing FY24 budget for the Art in the Roundabouts project.

Photo of Stormy Bay



Proposed Location of Stormy Bay (not to scale)



Board/Commission Recommendation: ☒ **Applicable** - ☐ **Not Applicable**

The new owner of the property where the sculpture is located has requested to have this piece relocated as soon as possible. HPC is not meeting until January 2024. Nate Meyers, the Vice Chair of HPC and Steve Mertes, the staff liaison, are both part of the work group that have evaluated and fully support this. In January this will be presented to the entire HPC commission as a courtesy for any additional input

Alternative(s): None

MOTION

I move to: approve a budget transfer of \$25,000 from the contingency account to cover the cost and approve the Agreement to Acquire Artwork to purchase the horse sculpture, *Stormy Bay* from Peggy Lanning in an amount not-to-exceed \$25,000.



Agreement to Acquire Artwork

THIS AGREEMENT TO ACQUIRE ARTWORK (“Agreement”) is made and entered into this 12th day of December, 2023 (the “Effective Date”), by and between the City of Sedona, an Arizona municipal corporation (“City”), and Peggy Lanning (“Owner”). Owner is the sole legal and beneficial owner of the work of art described on Exhibit A attached hereto and incorporated herein by this reference (the “Artwork”), and has the authority to sell the Artwork.

WHEREAS the City of Sedona, an Arizona municipal corporation (“City”) has established “*Art in Public Places Fund*” through Ordinance 92-04 to acquire original artwork within a construction project that is recommended for public display by the Arts and Cultural Commission and approved by City Council; and

WHEREAS on November 14, 2023, the City of Sedona Ranger Station Workgroup recommended the proposal entitled “*Stormy Bay*” (the “Artwork”) by artist Dixie Jewett (“artist”), illustrated in Exhibit A; and

WHEREAS Owner has agreed to sell the Artwork to City, City has agreed to buy the Artwork, on the terms and conditions set forth in this Agreement.

NOW THEREFORE THE CITY AND THE OWNER AGREE AS FOLLOWS:

1. *Incorporation of Recitals.* The matters recited above are hereby incorporated into and made part of this Agreement.
2. *Owner of the Artwork.* Peggy Lanning (“Owner”) currently owns all right, interest, and title to the Artwork, except that Artist retains ownership of the copyright. Owner agrees to:
 - a. Sell all its right, interest, and title to the Artwork (as described in Exhibit A) to the City.
 - b. Owner shall assume all risk of loss or damage to the Artwork prior to removal from the Artwork’s current location. The Owner shall take such measures as are reasonably necessary to protect the Artwork from loss or damage. In the event of physical loss or damage to the Artwork prior to removal, the Owner shall rectify the loss or damage by repair, restoration, replacement or other appropriate means as soon as possible at no additional cost to the City.
 - c. The Owner warrants that the Artwork does not contain any known defects, including defects which may be a hazard or a danger to the health and safety of the public.

3. *Warranties of Title:* The Owner represents and warrants that:
 - a. The owner has good and marketable title to the Artwork.
 - b. The Owner has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof which may affect or impair the rights granted pursuant to this Agreement;
 - c. The Artwork is free and clear of any liens from any source whatsoever.
 - d. The Owner has the full power to enter into and perform this agreement and to make the grant of rights contained in this Agreement.
 - e. All services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill, and diligence.
 - f. These representations and warranties shall survive the termination or other extinction of this Agreement.
4. *Duty and Rights of the City.* The City shall:
 - a. The City shall be responsible for removal and transportation of the Artwork from its current location on or before January 15, 2024.
 - b. City has the right to remove the Artwork from the Site at any time. In addition, in the event that any element of the Artwork constitutes a public safety hazard, City has the right to remove the element posing the public safety hazard. City shall have the right to donate, sell or dispose of the Artwork at any time. The City may proceed with deaccessioning in its sole discretion. City shall have the right to move, relocate, change, or remove Artwork from the intended location and to store or dispose of Artwork as City deems appropriate.
5. *Indemnification.* Owner does hereby agree to indemnify, defend and hold City free and harmless from any and all demands, claims, suits, judgments, obligations, damages, losses, or other liability asserted or alleged against City as well as all reasonable attorney or other professional fees and other reasonable costs, fees and expenses, suffered or incurred by, or asserted or alleged against City arising by reason of, or in connection with, the breach or alleged breach by Owner of any provision of this Agreement, or the actual or alleged falsity or inaccuracy of any representation or warranty by Owner contained in this Agreement. The benefits of the representations, warranties, covenants and indemnities contained in this Agreement shall survive completion of the transaction contemplated by this Agreement, including without limitation transfer of the Artwork to City. It shall be a condition precedent to City's obligations that Owner's representations and warranties contained in this Agreement are true and correct on and as of the Closing Date and delivery of the Artwork to City. Notwithstanding anything to the contrary herein, Owner's representation,

warranty and indemnification relating to the authenticity of the Work shall survive the termination of this Agreement.

6. *Purchase Price.* The City agrees to pay Owner for the purchase of the Artwork and all right, interest, and title to the Artwork the total sum of \$25,000 (the “Purchase Price”). The Purchase Price shall be paid on or before January 15, 2024.
7. *Entire Agreement; Severability; Waiver.*
 - a. This Agreement shall constitute the entire agreement between the parties hereto. No oral representation has been made by any of the parties. This Agreement may not be amended, changed, modified or rescinded except in writing signed by all parties hereto and any attempt at oral modification of this Agreement shall be void and of no effect.
 - b. The waiver by any party of a breach or violation of any term of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach.
 - c. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person, party, or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person, party, or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
 - d. By entering into this Agreement, the Owner certifies that it is not currently engaged in, and agrees for the duration of any resulting contract to not engage in, a boycott of Israel.
8. *Successors and Assigns.* Owner shall not assign this Agreement, in whole or in part, or any right or obligation, without the prior written approval of the City. The Owner’s Services required of the Owner are personal and shall not be assigned, sublet, or transferred unless prior written consent is given by the City. The City shall have the right to assign or transfer any and all of the City’s rights and obligations under this Agreement.
9. *Governing Law; Venue; Waiver of Jury Trial.* This Agreement shall be governed by and enforced using the law of the State of Arizona. The parties agree that any judicial action brought to enforce the terms or conditions of this Agreement shall be brought in a court of competent jurisdiction in Yavapai County, Arizona. Both parties hereby waive any right to a jury trial which they may otherwise have in the event of litigation arising out of this Agreement or the subject matter thereof and consent to a trial to the court.

IN WITNESS WHEREOF, the parties hereto have hereunto signed their hands and seals as of the Effective Date.

Scott M. Jablow, Mayor

Peggy Lanning, Owner

ATTEST:

JoAnne Cook, CMC, City Clerk

Approved as to form:

Kurt W. Christianson, City Attorney



CITY COUNCIL AGENDA BILL

AB 3016
November 14, 2023
Regular Business

Agenda Item: 8d

Proposed Action & Subject: Discussion/possible action regarding approval of a Land Lease Option Agreement and a \$2.25 million loan to the Villas on Shelby, LLC for development of a 30-unit apartment complex.

Department CMO - Housing

Time to Present 15 min

Total Time for Item 45 min

Other Council Meetings March 28, 2024

Exhibits A. Lease Agreement (*draft AB awaiting exhibit A*)

Finance Approval	CRW 12/4/2023		
City Attorney Approval	Reviewed 12/06/23 KWC		
City Manager's Recommendation	Approve Land Lease Option Agreement and a \$2.25 million loan to the Villas on Shelby, LLC for development of a 30-unit apartment complex.		
		Expenditure Required	
		\$ 2,250,000 (balance sheet loan)	
		Amount Budgeted	
		\$ 300,000 (loan for Shelby Dr development loan)	
		\$ 12,000,000 (reserve for unspecified development loans)	
		Account No. 12-0000-00-39xx	
		(Description) (Housing Fund balances)	
		Finance Approval	☒

SUMMARY STATEMENT

Background: The Sedona Housing Needs Assessment and Action plan of 2020 and the Verde Valley Housing Needs Assessment of 2021 both identified a shortage of traditional apartments as a major contributor to the lack of affordable housing for low- and moderate-income households.

"The inventory of traditional apartment units in the Verde Valley is very low. Across Arizona, these units account for nearly 16% of all housing units. In the Verde Valley, they only total 6.2% of total units. In most communities the percentage is even lower... 4.7% in Sedona."

Overall, the studies found a shortage of affordable housing units of any type to be at least 1300 units in Sedona and nearly 3700 units across the Verde Valley by 2026.

The Assessments also found that at least 43% of Sedona households were housing cost burdened, defined as paying more than 30% of their household income towards housing.

The Project: In December of 2022, the City acquired the property at 2250 Shelby Drive for the purpose of developing affordable/workforce housing. The parcel was identified for affordable housing development due to the walkability and proximity to Sunset Park, recreational trails, and other amenities. At that time an analysis indicated the site could support up to a 30-unit apartment building with three stories.

The property is located in the Sunset Community Focus Area (CFA) which allows for buildings up to four stories high and addresses the Community Plan goal of diverse and affordable housing options by supporting and encouraging the development of multi-family housing in the CFA. The property is also located within the City's designated Housing Development Area.

Just prior to closing on the land at 2250 Shelby Drive, the Housing Manager was contacted by an experienced affordable housing developer, HS Development Partners, LLC, currently working in Flagstaff, seeking to identify a site in Sedona for a potential project eligible for Low-Income Housing Tax Credits (LIHTC). Staff determined that an RFP process at the time would preclude any developer from applying in the upcoming cycle and would either delay the project by a year or prevent the deep affordability tax credits can provide a project. In March, this Council voted to support that application with a \$300,000 loan to the project.

The application for 9% LIHTC was unsuccessful in its bid for the competitive credits, but the Arizona Department of Housing (ADOH) offered other funding and financing to support the project. However, a gap of \$2.25 million remains to fully fund the \$14.5 million dollar project and maintain the proposed affordability of rents.

The proposed project with The Villas on Shelby, LLC (a subsidiary of HS Development Partners) will be a three-story apartment building with 30 units (the "Improvements"), all affordable to households at or below 60% of area median income. At this time, the requested City contributions would include an up to 75-year ground lease and a \$2,250,000 loan to the development. In exchange, The Villas on Shelby, LLC agrees to pay \$50,000 up front for the right to lease the vacant land and construct the Improvements and \$1,200 annually thereafter. The Land Lease Agreement includes the City's option to purchase all of the Improvements for \$100 after year 30 of the Lease. The residual value of the Improvements in 30 years will greatly exceed the value of leasing the vacant land to The Villas on Shelby, LLC and the City's loan to the project.

The City's loan will be repaid from 50% of the net cash flow from the project after the construction loan is repaid. The City's loan will be subordinate to ADOH's loan, but still protected by a leasehold deed of trust and promissory note. The developer will also sign a Land Use Restriction Agreement ensuring that the apartments remain affordable housing for the entire 75 years.

Climate Action Plan/Sustainability Consistent: ☐ Yes - ☐ No - ☒ Not Applicable

Board/Commission Recommendation: ☐ Applicable - ☒ Not Applicable

Alternative(s): None

MOTION

I move to: approve Land Lease Agreement and a \$2.25 million loan to the Villas on Shelby, LLC for development of a 30-unit apartment complex.

CITY OF SEDONA, ARIZONA
LAND LEASE AGREEMENT
THE VILLAS ON SHELBY, LLC

(2250 Shelby Drive)

(PLEASE DO NOT REMOVE-THIS IS PART OF THE OFFICIAL DOCUMENT)

LAND LEASE AGREEMENT

This Land Lease Agreement (“this Lease”) is executed to be effective the __ day of ____, 20__ (“Effective Date”), between the City of Sedona, an Arizona municipal corporation (“the City”), and The Villas on Shelby, LLC an Ohio limited liability company (“Lessee”). City and Lessee are sometimes referred to herein collectively as the “Parties,” or individually as a “Party.”

RECITALS

WHEREAS, the City is the owner of vacant land located at 2250 Shelby Drive, Sedona, AZ 86336, also known as Yavapai County APN 408-28-103F, containing approximately 1.14 acres and being more particularly described in the Legal Description attached to **Exhibit A** of this Lease (the “Property”).

WHEREAS, Lessee desires to lease the Property solely for the purpose of constructing and operating a multi-family, rental housing project comprised of 30 residential rental units for the purpose of housing tenants with an income of sixty percent (60%) of Yavapai County area median income (“AMI”) as more particularly described in **Exhibit B** attached to this Lease (the “Project”);

WHEREAS, the Property is located in the City’s Housing Development Area as declared in Resolution 2012-21 and this Lease is entered into under the authority of A.R.S. §9-441 et. seq., which declares municipal assistance in providing for the acquisition, construction or rehabilitation of housing a valid public purpose and authorizes municipalities to use its monies to aid the planning, undertaking and carrying out of housing development projects and authorizes the City the powers listed in A.R.S. §9-441.02.

WHEREAS, the Parties acknowledge that the Project qualifies as an economic development activity; that the Project will assist in the creation and retention of jobs and will otherwise improve and enhance the economic welfare of the residents of the City by increasing access to affordable housing, stimulating further economic development in the City, , and by constructing public infrastructure improvements; that the City’s participation in this Lease will serve legitimate economic development purposes as authorized by A.R.S. §9-500.11; and that the City’s participation authorized by this Lease is not grossly disproportionate to the benefits the City will receive during the Lease and that in the absence of the City’s participation the affordable housing Project would not be constructed.

WHEREAS, the Project will be financed, in part, by funds received in exchange for tax credits awarded under the Arizona Department of Housing Low Income Housing Tax Credit Program and Lessee agrees to restrict 100% of the Project units for affordable housing for tenants at 60% AMI) for the duration of this Lease. This Lease is consistent with the City’s Development Incentives and Guidelines for Affordable Housing (“DIGAH”), and the City’s Community Plan in effect on the date

of this Lease. The Project, as shown in the Site Plan, meets DIGAH requirements and is eligible for a density bonus, if applicable.

WHEREAS, Lessee desires to use the Property for the Project in accordance with the Sedona Land Development Code and subject to the terms and conditions of this Lease; and

WHEREAS, the City is willing to lease the Property to Lessee on the terms and conditions specified below.

AGREEMENT

THEREFORE, in consideration of the following mutual covenants and conditions, the parties hereby agree as follows:

1. The Recitals set forth at the beginning of this Lease are deemed incorporated herein, and the Parties hereto represent they are true and correct.
2. LEASE; PRIVILEGES; RESTRICTIONS; RESERVATIONS.
 - A. The City hereby leases the Property to Lessee and grants to Lessee the following privileges, uses and rights, subject to and conditioned upon Lessee's full, timely, complete, and faithful performance of all terms and conditions:
 1. (a) Lessee will be deemed the sole owner of the Project, (b) Lessee alone will be entitled to all of the tax attributes of ownership including, without limitation, the right to claim depreciation or cost recovery deductions and the right to claim the low-income housing tax credits described in Section 42 of the Internal Revenue Code of 1986, as amended, and (c) Lessee will have the right to amortize capital costs and to claim any other federal or state benefits attributable to the Project improvements.
 2. So long as Lessee is not in default of its obligations hereunder, City shall not transfer, encumber or otherwise dispose of the Property or any interest therein without the consent of Lessee.
 3. In addition to said general privileges, uses and rights, the City grants to Lessee the right to construct and operate the Project on the Property, provided Lessee complies with all applicable federal, state, and local laws, building and fire codes.
 - B. Lessee hereby accepts the Property and the terms and conditions of the Lease. Lessee shall not use the Property for any purposes other than those specified above.
3. TERM.

- A. The construction term of this Lease shall commence on the Effective Date and continue for a maximum period of eighteen (18) months or when the Certificate of Occupancy is issued, whichever comes first (the "Construction Term"). In no event shall the Construction Term last longer than eighteen months.
- B. The original term of this Lease shall be for a period of seventy-five (75) years commencing on the expiration of the Construction Term and expiring on the same date 75 years later, unless sooner terminated pursuant to the provisions contained in this Lease.

4. RENT.

- A. At the Effective Date of this Lease, Lessee will pay the City the sum of FIFTY THOUSAND DOLLARS (\$50,000.00). Annually thereafter, Lessee shall pay, without notice and free from all claims, deductions or set-offs against the City, annual rent in the amount of ONE THOUSAND TWO HUNDRED DOLLARS (\$1,200.00) per year.
- B. If Lessee fails to pay any rent in full on or before the due date, Lessee shall be responsible for interest on the unpaid principal balance at the rate of 18% per annum from the due date until payment in full is made.

5. UTILITIES.

Lessee will pay for all charges, fees, deposits and other amounts for utility connections and for utilities used at the Property. Any changes to utility facilities shall be strictly limited to the Property and shall be undertaken by Lessee at its sole cost and expense.

6. IMPROVEMENTS.

- A. Lessee shall have the right to construct a 30-unit apartment complex and related improvements (collectively, sometimes referred to herein as the "Improvements" or the "Project") on the Property. Before commencing any improvements or modifications, Lessee shall submit detailed construction plans and specifications to the City, and upon completion of any improvements or modifications, Lessee shall furnish to the City two (2) complete sets of detailed plans and specifications of the work as completed. Prior to the start of any construction of improvements or modifications to the Property, Lessee shall secure all applicable building permits and approvals from the City. In addition, Lessee shall furnish any additional information concerning any proposed improvements or modifications, which the City may deem necessary with regard to the safety of the Property and Project. Use of the Property is hereby restricted to affordable housing and related uses and the Property may not be used for any other purpose without the prior written consent of the City, which may be given or withheld at City's sole discretion.
- B. Design Requirements. All of Lessee's improvements, which includes the Improvements, shall comply with the following design requirements:

- 1. All Lessee's improvements shall be contained entirely within the Property and without any encroachment or dependence upon any other property, except that Lessee's improvements shall include construction of related curbs, gutters, pavement, landscaping, and other improvements City determines to be

- appropriate in the public right-of-way.
2. All Lessee's improvements shall be designed so as to present uniformity of design, function, appearance and quality throughout and consistency with other buildings and improvements located at the Property.
 3. All Lessee's improvements shall comply with all requirements of law. Lessee shall be responsible to directly obtain all necessary permits and approvals from any and all necessary governmental agencies.
- C. Lessee shall, at its own cost, finance, design, and construct the Project. All improvements and modifications made by Lessee shall be constructed in a good, workmanlike manner.
- D. City's consent shall not be required for minor changes deemed by Lessee during the course of construction to be necessary to complete construction as contemplated by the latest plans approved by the City. Minor changes are those that do not change compliance with the Sedona Land Development Code or materially alter the structure, size, layout, location, quality, appearance, functionality or other aspects of any area, feature, structure, or other aspects of any Improvements. Lessee shall give to the City as much advance notice of any minor changes as is reasonably possible, and in any event, no less than ten (10) days prior to making such minor changes.
- E. Prior to the start of any construction on the Property, Lessee or its contractor shall name the City as a dual obligee under the payment and performance bonds to be obtained by Lessee's general contractor with respect to construction of the Improvements. Each bond shall be filed with the Yavapai County Recorder prior to commencement by Lessee of the Improvements on the Property.
- F. Lessee shall keep the Property and all improvements free of any liens of any kind or nature for any work done, labor performed or material furnished on or to the Property. If any such lien is filed, Lessee shall, at its sole cost, remove such lien from the Property within thirty (30) days the filing of such lien.
- G. Lessee will begin construction of any improvements and modifications to the Property within a reasonable period of time following the approval of the City and the issuance of a building permit, if necessary, for the construction. Lessee will diligently pursue construction of the improvements or modifications.
- H. The Project, and all other improvements and modifications made by Lessee which become fixtures to the Property become the property of the City, at no cost to the City, upon the expiration or termination of this Lease, free of any security interest or claims of any kind from Lessee.
- I. In the event the Property consists of more or less than any stated acreage or square feet, this Lease shall nevertheless continue and Lessee's obligations hereunder shall not be

increased or diminished.

7. ACCEPTANCE; MAINTENANCE; REPAIRS.

- A. Lessee warrants that it has inspected the Property and accepts possession of the Property and any current improvements thereon “as is” in its present condition, and subject to all limitations imposed upon the use thereof by federal, state and local law, and Lessee acknowledges the suitability and sufficiency of the Property for the uses permitted hereunder. Except as may otherwise be specifically provided for herein, the City shall not be required to maintain or to make any improvements, repairs or restorations upon or to the Property, the Project, or to any of the improvements located thereon. Under no circumstances shall the City have any obligation to repair, maintain or restore the Project and any improvements placed upon the Property by Lessee.
- B. Lessee shall be solely responsible, at its cost, for all repairs and maintenance whatsoever on the Property and shall maintain the Project and all improvements thereon in a good workmanlike manner, whether such repair or maintenance be ordinary or extraordinary, structural or otherwise, including following the lifetime maintenance schedule. Additionally, Lessee, without limiting the generality hereof, shall:
 - 1. Keep at all times, in a clean and orderly condition and appearance, the Property, the Project, all improvements thereon and all of Lessee’s fixtures, equipment and personal property which are located on any part of the Property; and
 - 2. Be responsible for the maintenance and repair of all utility services lines and fire suppression systems placed on the Property and used by Lessee exclusively; and
 - 3. Repair any damage caused by Lessee, or its agents, employees or invitees, to the Property or Project; and
 - 4. Maintain the Property and Project in accordance with all applicable local building, plumbing and electrical codes, construction standards, environmental regulations, neighborhood preservation ordinances, zoning ordinances, and other ordinances.
- C. If Lessee fails to maintain, clean, repair, replace, rebuild or repaint the Project within a period of thirty (30) days after written notice from the City to do any work required to be done by Lessee, the City may terminate this Lease or, at its option, enter the Property, without such entering causing or constituting a termination of this Lease or any interference with the possession of the Property, and repair, replace, rebuild or paint any part of the Property or the improvements thereon, and do all things reasonably necessary to accomplish the work required, and all costs thereof shall be payable to the City by Lessee on demand; provided that if in the opinion of the City, Lessee’s failure to perform any such maintenance endangers the safety of the public, the employees, the tenants or property of the City, and the City so states in its notice to Lessee, the City may, in its sole discretion, elect to perform such maintenance at any time after the giving

of such notice, and Lessee shall pay to the City all costs of such work on demand. If the City, its officers, employees or agents undertake any work hereunder, Lessee hereby waives any claim for damages, consequential or otherwise, resulting there from. The foregoing shall in no way affect or alter the primary obligations of the Lessee as set forth in this Lease and shall not impose upon the City any obligations to be stated otherwise herein.

8. ADDITIONAL OBLIGATIONS OF LESSEE.

- A. Except as expressly set forth herein, City will not make any expenditure in connection with the Property or the Project, and all costs, expenses and obligations of every kind relating to the Property and the Project, which may arise or come due during the Lease term will be paid by Lessee.
- B. Lessee agrees to pay during the Lease term, all real estate taxes and special assessments assessed with respect to the Property, Project, and improvements and all personal property taxes assessed with respect to Lessee's personal property.
- C. Lessee shall comply with all written instructions of the City in disposing of its trash and refuse and shall use a system of recycling and refuse disposal approved by the City.
- D. Lessee shall not commit nor permit to be done anything which may result in the commission of a nuisance, waste or injury on the Property.
- E. Lessee shall not do, nor permit to be done, anything which may interfere with the effectiveness or accessibility of the drainage system, sewerage system, fire protection system, sprinkler system, alarm system and fire hydrants and hoses, if any, installed or located on the Property.
- F. Lessee shall not do, nor permit to be done, any act or thing upon the Property which may constitute a hazardous condition so as to increase the risks attendant upon the operations permitted by this Lease.
- G. Land Use Restriction Agreement. The Property or Project shall not be used for short-term rentals (rental terms of less than thirty (30) days) or conversion to a condominium or otherwise divide the Property during the term of this Lease. Lessee shall cause to be recorded, a deed restriction, limiting the rental of Property units in substantially the form provided in **Exhibit "D"** Land Use Restriction Agreement ("LURA") which will be effective only during the term of this Lease. Upon the expiration of the Affordability Period (as defined in the LURA) and for the remainder of the Lease Term, the parties agree that the Project will continue to be affordable housing units with income restrictions to serve households earning at or below 60% of Yavapai County Area Median Income.
- H. Tenant Selection. Prior to leasing any unit at the Property, Lessee will adopt written tenant selection policies and criteria ("Tenant Selection Policies") consistent with applicable

federal laws and regulations, and approved in writing by the City, that are consistent with the purpose of providing affordable housing for low income families and provide for (1) the selection of tenants from written waiting lists in the chronological order of their application, insofar as is practicable, and (2) the prompt written notification to any rejected applicant of the grounds of any rejection.

I. Annual Audit Report and Review of Rents. Lessee shall provide a copy of an annual audit to the City for the previous twelve (12) months of operation of the Project. Additionally, the Lessee shall provide an annual occupancy report to the City providing income amounts of tenant occupied units, unit rent, employer, unit type and AMI bracket of each tenant. The Lessee shall provide to the City a copy of all required audits by HUD or LIHTC funding within ten (10) days of receiving such audit(s). The books and records of the Lessee shall be made available to the City within fourteen (14) days after written request to the Lessee. Lessee will re-examine family income, composition, and rents for the units annually and new rents proposed by Lessee for units must be approved in writing by the City before taking effect.

J. Lessee Representations. Lessee represents and warrants that:

1. Lessee has the full right, power and authority to enter into and perform this Lease and each of the obligations and undertakings of Lessee under this Lease, and the execution, delivery and performance of this Lease by Lessee has been duly authorized and agreed to in compliance with the Lessee's organizational documents.
2. As of the date of this Lease, Lessee knows of no litigation, proceeding or investigation pending or threatened against or affecting Lessee contesting the validity or enforceability of this Lease or Lessee's performance under this Lease.
3. The execution, delivery and performance of this Lease by Lessee is not prohibited by, and does not conflict with, Lessee's organizational documents or any other agreements, instruments, judgments or decrees to which Lessee is a party or to which Lessee is otherwise subject.
4. Lessee has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Lease, other than normal costs of conducting business and costs of professional services such as architects, consultants, engineers and attorneys and any licensed appraiser retained by the Lessee. Lessee has been assisted by counsel of its own choosing in connection with the preparation and execution of this Lease.

9. CITY LOAN.

A. City of Sedona Loan. Subject to the terms and conditions of this Lease and as set forth in the loan documents, the City shall provide the Lessee with a loan in an amount not to exceed TWO MILLION TWO HUNDRED AND FIFTY THOUSAND (\$2,250,000.00) ("City Loan") which Lessee shall use toward the development and construction of the Project and the Budget attached hereto as **Exhibit H** "Budget" provided, further, that Lessee must complete each milestone of the Project by no later

than required in the schedule of performance (see **Exhibit G**, “Schedule of Performance”), and Lessee must deliver each phase of the Project having no less than the attributes required by **Exhibit B** “Project Description”. The City Loan shall be evidenced by the City of Sedona Affordable Housing Loan Secured Promissory Note (“Promissory Note”) and secured by the City of Sedona Affordable Housing Loan Deed of Trust and Assignment of Rents (“Deed of Trust”) both executed by the Lessee of even date herewith, substantially in the forms attached hereto as **Exhibit E** “Loan Documents” and incorporated herein by this reference. The term of the City Loan shall be thirty (30) years. Prior to disbursement of any of the City Loan, Property Owner will execute the Deed of Trust, Promissory Note and LURA.

- B. City Loan Repayment Terms. Lessee hereby unconditionally acknowledges and promises to repay the City Loan as follows: Lessee shall pay to City three hundred sixty (360) consecutive monthly, payable on the 1st day of each month, equal principal installments and interest payments (“Loan Payments”), commencing on the expiration of the Construction Term and upon the beginning of original term of this Lease. The City Loan will bear interest at 5.30% (the current long-term Applicable Federal Rate (“AFR”)) beginning to accrue at the time of disbursement.
- C. City Loan Maturity Date. The entire unpaid principal balance and all accrued or deferred interest is due and payable three hundred seventy-eight (378) months (30.5 years) after the Effective Date of this Lease or 30 years after the commencement of the original term of this Lease, whichever occurs first (“Maturity Date”), at which time Lessee shall pay City the entire outstanding principal amount and interest payments of the City Loan.
- D. Deferment. Notwithstanding any other subsection herein, for as long as Lessee is in compliance with all terms and conditions of this Lease, including the Loan Documents, Lessee shall not be required to pay the Loan Payments prior to the Maturity Date, and the Holder shall not be entitled to receive payment on the Promissory Note prior to the Maturity Date, except to the extent Surplus Cash (as defined herein) is available and paid annually as provided herein. Upon the occurrence of any default under the terms of this Lease, or the Loan Documents, after the applicable notice and cure period, the outstanding balance of all previous Loan Payments become immediately due and payable, and the City shall be allowed to exercise any all remedies at law or equity in addition to the other remedies provided hereby.
- E. Surplus Cash Allocation. Prior to the Maturity Date, Lessee must use fifty percent (50%) of its Surplus Cash (as defined herein) to the extent available to make Loan Payments when such payments are due, to make Loan Payments that were not paid when due, and to pay all other amounts due to the City. Any portion of the Loan Payments not paid in accordance with Sections 9.A and 9.B shall be due and payable on the Maturity Date. However, nothing in this Section 9 shall prevent Lessee from making prepayments under the Note.
- F. Annual Project Cash Flow Analysis Report. Not less than thirty (30) days before the first Loan Payment is due and annually thereafter (the “Annual Cash Flow Payment Date”), Lessee shall prepare and deliver to City a cash flow analysis report (“Annual Project Cash Flow Analysis Report”), showing Lessee’s computation of Surplus Cash, as well as the sources and uses of all Project funds. The Annual Project Cash Flow Analysis Report, and the amount of the Surplus Cash deemed to be available for payment of the City Loan, shall be for the preceding calendar year (the preceding year

beginning in January and ending in December). The Annual Project Cash Flow Analysis Report shall be certified as correct by Lessee. Surplus Cash shall be calculated based on Lessee's audited financial statements for the twelve-month period ending on the last day of December for the preceding calendar year.

G. Surplus Cash Definition. "Surplus Cash" means, for the 12-month period ending on the 31st day of December preceding the date on which each Annual Cash Flow Payment Date, the sum of gross rent revenues (less rental taxes and tenant security deposits) and other income received by Lessee from the operation of the Project, less:

1. annual accrued debt service for the permitted encumbrances described in Exhibit F, and
2. actual operating expenses (including but not limited to utilities, supplies, repair and maintenance costs, property taxes, property management fees, insurance escrows and reserves, supportive services cost, and amounts deposited in any replacement reserve account), and
3. payment of asset management fees and operating deficit loans.

H. Disbursement of City Loan. Provided Lessee is otherwise in full compliance with the terms and conditions of this Lease, Lessee will be entitled to request disbursements from the City Loan at specified construction milestones based on the following disbursement schedule:

Construction Milestone	Disbursement Amount
60% total construction completion	1/2 Loan Balance minus retention
90% total construction completion	1/2 Loan Balance minus retention
100% total construction completion	Closeout Disbursement

Construction completion will be determined by comparing the work completed to the total work needed to complete the Project. Disbursement will be for the cost items (each a "Cost Item") reflected in the Budget; and the City will be obligated to disburse the Loan amounts in a timely manner upon delivery to the City in form and substance acceptable to the City, in accordance with the following terms and conditions:

1. Satisfactory supporting invoices, payment receipts, lien waivers, building permits, and such certifications by Lessee evidencing the reasonableness and appropriateness of the costs of the Project as may be requested by the City (collectively, the "Supporting Documents").
2. Satisfactory evidence that the applicable lien periods have expired or, in lieu thereof, Lessee has received lien waivers or releases from all contractors, subcontractors, laborers and materialmen, and any materialmen's or mechanic's liens that may have been recorded have either been paid in full or Lessee has posted an appropriate surety bond to discharge the same.
3. The City may inspect the work completed that is the subject of a Request for Disbursement, or cause an inspection of the work completed to be conducted by a qualified architect or engineer of the City's selection, to verify the statements contained in the Request for Disbursement and Supporting

Documents. After receipt of the required documents and completion of any inspection by or caused by the City, the City will compute the difference between the percentage of completion for each Cost Item approved by the City at the time of the current Request for Disbursement and the percentage of completion for each Cost Item approved by the City at the time of the immediately preceding approved Request for Disbursement, and will disburse an amount equal to 90% of the product of the percentage difference for each Cost Item and the total projected cost for each such Cost Item.

4. The remaining 10% of the City Loan will be disbursed upon delivery by Lessee of each of the following to the City:
 - i. written request with Supporting Documents,
 - ii. written certificate and warranty, in form and substance satisfactory to City, signed by Lessee, certifying the Project has been “substantially completed” in accordance with the Scope of Development and Plans. For purposes of this Agreement, “substantially completed” means the development required by the Scope of Development and the Plans is so substantially complete that it satisfies the City’s minimum property standards as defined in the Land Development Code, all applicable building, plumbing and electrical codes, construction standards, environmental regulations and zoning ordinances, and all other requirements of the City and any other governmental authorities have been satisfied, including all inspections required by those authorities, and is ready to be occupied by tenants in accordance with this Agreement, all as determined by the City.
5. If at any time it appears to the City the undisbursed portion of the City Loan and other sources of funds for construction are insufficient to pay for the completion of the Project, the City will not be required to make further disbursements unless and until within five (5) business days of delivery of notice from the City to Lessee of such deficit Lessee deposits with the City, in cash or instruments satisfactory to the City, the amount the City deems necessary to cure the deficit.

10. CONSTRUCTION CONTRACT REQUIREMENTS & PLANS.

- A. Construction Contract. All construction contracts entered into by Lessee for the Project (each a “Construction Contract”) will comply with applicable state law requirements, and will require the Project be commenced, executed and completed within the time limits set forth in the Schedule of Performance. Lessee will provide the City with copies of each Construction Contract, any amendments or substitutes approved by the City, and any and all other contracts executed pursuant to this Lease.
- B. Construction Quality. Lessee will cause all work on the Project to be performed and installed with labor and materials of at least the quality normally used by builders of good reputation in similar projects in the Yavapai and Coconino County Arizona areas, and in a good and workmanlike manner, in substantial accordance with the Plans (except for deviations approved in writing by all appropriate governmental authorities and by the City).
- C. Contractors. Each Construction Contract will require the general contractor (“General Contractor”) or the Lessee to obtain adequate builder’s all-risk, fire, and general liability insurance coverage, from an insurance company and in amounts satisfactory to Lessee and the City, to ensure the completion of the Project and to prevent the Parties from incurring

any liability for claims arising from the construction or development of the Project pursuant to this Lease. Said insurance will be in addition to, and will not take the place of, the coverage and indemnification pursuant to Section 17. Lessee will obtain and furnish the City with verification that insurance has been obtained by the General Contractor prior to the commencement of construction of the Project. Each such Construction Contract shall require the General Contractor to furnish a bond or bonds covering the Contractor's faithful performance and completion and the payment of all obligations arising thereunder in such form as may be approved by the City and with such insurance company or other surety as City may approve, which approval will not be unreasonably withheld.

- D. Plans. Lessee will provide the City with a copy of detailed plans and specifications for the Project and any amendments thereto ("Plans") and a survey acceptable to the City which will include a site plan and a legal description consistent and improvement measurements, location of adjoining streets (or the distance to the nearest intersecting streets), and location and elevation of the 100-year floodplain (when applicable).
- E. Ownership of Construction Documents. During the Construction Term, upon an event of default, or any expiration or termination of this Lease, Lessee shall promptly assign to and provide the City with all Plans, Project architectural drawings with good license to use such drawings, Project building plans, site plans, permits, and all other documents reasonably related to the construction of the Project.
- F. Procurement Compliance Evidence. Lessee will provide the City, upon request, with evidence satisfactory to the City that it complies with all applicable federal, state including A.R.S. Title 34, and local, procurement laws.

11. RIGHT OF FIRST REFUSAL; OPTION; ASSIGNMENT AND SUBLETTING.

- A. The Lessee shall grant to City (or its designee) a right of first refusal to acquire the Project at the end of the 15-year tax credit compliance period for the "minimum purchase price" as defined in Section 42 of the Code. At the end of the thirtieth (30th) lease year, Lessee shall grant to City an option to purchase the Project at a price of One Hundred Dollars (\$ 100.00). The exercise of the City's option to purchase shall cause this Lease to terminate.
- B. The Parties agree Lessee is uniquely qualified to perform the obligations imposed by this Lease and therefore, this Lessee may not assign this Lease without the prior written consent of the City. Lessee shall not assign or sublease any of its interest under this Lease, nor permit any other person to occupy the Property without the prior written consent of the City.
- C. To obtain City's consent, Lessee shall provide the City for its evaluation with written notice at least thirty (30) days prior to the proposed assignment of: the potential assignee's biographical and financial information, including but not limited to: two (2) year profit and loss statement, assignee's credit history, and a history devoid of any illegal or litigious activities, the proposed effective date of the assignment, a description of the portion of the premises to be assigned, all of the material terms of the proposed assignment and the consideration therefor, and any other information reasonably required by the City in order to evaluate the proposed transfer. Any assignment or transfer made without the City's prior written consent shall, at the City's option, be void.
- D. City has the absolute right for any reason or for no reason in its sole discretion to give or

withhold consent to any assignment or to impose any conditions upon any assignment, except as expressly provided in this Lease.

- E. This Lease shall control any conflict between this Lease and the terms of any assignment.

12. FUNDING SOURCES.

- A. Lessee will construct the Project with the proceeds of various funding sources, including some or all of the following:
1. an equity investment with respect to approximately \$1,782,244 of low-income housing tax credit equity ("LIHTC Equity") by Raymond James Affordable Housing Investments, its successors and assigns, or its affiliate ("Investor");
 2. a construction loan in the approximate original principal amount of \$7,300,000 _to Lessee by Red Stone [Additional Information Required_____, ("Construction Loan" or "Approved Loan");
 3. a loan from the Arizona Department of Housing (State Housing Trust Funds), in the amount of \$\$5,000,000 ("ADOH Loan");
 4. General Partner and Special Limited Partner Equity Contribution in the amount of \$100.00 each;
 5. Deferred Developer Fee Note from the Developers in the amount of \$121,128.00; and
 6. The City Loan as described in Section 9.
- B. Lessee may only mortgage, encumber or assign any portion of its right, title and interest in the leasehold estate created by this Lease to those parties and for those purposes as set forth in Exhibit "F" ("Permitted Encumbrance"), incorporated herein by this reference. Any such Permitted Encumbrance shall be subject to all of Lessee's obligations under this Lease. Except for a Permitted Encumbrance, no person or entity shall have the right to place any mortgages, deeds of trusts, liens or encumbrances of any nature on the Property, nor shall any permitted assignment result in a subordination, in whole or in part, of the City's rights under this Lease. After the initial closing, City has the absolute right for any reason or for no reason in its sole discretion to give or withhold approval of any additional Permitted Encumbrance, mortgage, deeds of trusts, liens, or debt of any nature on the Property.

13. SIGNS.

Lessee may install on the Property, subject to the City's sign ordinance, signs identifying its business. The number, general type, size, and location of signs must be approved in writing by the City prior to installation.

14. DEFAULT; TERMINATION BY CITY.

- A. The City may terminate this Lease by giving Lessee thirty (30) days written notice after the happening of any of the following events:

1. The failure of Lessee to perform any of its obligations under this Lease, provided that Lessee fails to cure its default within said 30-day notice period, including failing to construct the Project within the Construction Term or failure to follow the Schedule of Performance;
2. Lessee's failure to make available for rental all units at the Property solely for the purpose of providing affordable housing to families whose annual income does not exceed 60% of the AMI.
3. Lessee's failure to make any payment of principal or interest required under the Note when due, and such failure continues for a period of ten (10) days after receipt of written notice of such failure.
4. The breach of any material representation or warranty set forth in this Agreement or any other Loan Document, or the existence of any material misrepresentation of fact by Lessee in any document submitted to the City in support of the Loan or in connection with any of the Loan Documents and remain uncured for thirty (30) days after written notice.
5. Lessee's failure to obtain and maintain the insurance required under this Agreement and the other Loan Documents, and such failure continues for a period of ten (10) days after written notice.
6. The taking of possession for a period of ten (10) days or more of substantially all of the personal property used on the Property belonging to Lessee by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree or any act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator;
7. Lessee's failure to maintain good and marketable leasehold title to the Property free and clear of all liens, charges, claims, encumbrances, and other matters (other than statutory encumbrances for work being performed on the Property, and for which the Borrower has posted payment and performance bonds), except for the Permitted Encumbrances.

B. The City may place Lessee in default of this Lease by giving Lessee thirty (30) days written notice of Lessee's failure to timely pay the rent provided for in this Lease or any other charges required to be paid by Lessee pursuant to this Lease. During said 30-day notice period, Lessee shall cure said default; otherwise, the City may elect to terminate this Lease or do any of the following:

1. Institute action(s) to enforce this Lease;
2. Take possession of the Property, together with improvements, fixtures, and equipment therein contained without terminating this Lease, and on behalf of Lessee relet the same or any part thereof for a term, shorter, longer, or equal to the then unexpired remainder of the Lease term. The City may at any time after taking possession terminate this Lease by giving notice to Lessee and sue for damages;

3. Terminate this Lease, without further notice to Lessee, re-enter the Property and recover damages, including but not limited to, all costs of repossession and reletting and brokerage commissions for services performed by or for the City;
 4. Exercise the "Remedies of Landlord" as set forth in Arizona Revised Statutes, Title 33;
 5. Exercise any other remedy allowed by law or equity.
- C. If Lessee at any time fails to maintain all insurance coverage required by this Lease, the City shall have the right, upon written notice to Lessee, to immediately terminate this Lease or to secure the required insurance at Lessee's expense.
 - D. Upon the termination of this Lease for any reason, all rights of Lessee shall terminate, including all rights of Lessee's creditors, trustees, and assigns, and all others similarly situated as to the Property.
 - E. Lessee acknowledges Lessee's unconditional obligation to comply with this Lease. No failure by City to demand any performance required of Lessee under this Lease, and no acceptance by City of any imperfect or partial performance under this Lease, shall excuse such performance or impair in any way City's ability to insist, prospectively and retroactively, full compliance with this Lease. Failure by the City to take any authorized action upon default by Lessee of any of its obligations hereunder shall not constitute a waiver of said default nor of any subsequent default by Lessee. Acceptance of rent and other fees by the City under the terms hereof for any period after a default by Lessee of any of its obligations shall not be deemed a waiver or estoppel of the City's right to terminate this Lease for any subsequent failure by Lessee to comply with its obligations. Lessee expressly disclaims and shall not have the right to rely on any supposed waiver or other change or modification, whether by word, or conduct or otherwise, not conforming to this paragraph.
 - F. At any time prior to the initial disbursement of City Loan proceeds, this Lease and any undisbursed portion of the Loan may be terminated for convenience by the City or Lessee, in whole or part.

15. TERMINATION BY LESSEE.

Lessee may terminate this Lease at any time that it is not in default in its obligations by giving the City thirty (30) days' written notice after the happening of any of the following events:

- A. Issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining Lessee's use of any substantial portion of the Property and the remaining in force of such injunction for a period of thirty (30) consecutive days.
- B. The inability of Lessee to use any substantial portion of the Property for a period of

thirty (30) consecutive days, due to the enactment or enforcement of any law or regulation or because of fire, earthquake or similar casualty, or Acts of God or the public enemy.

- C. The lawful assumption by the United States Government of the operation, control, or use of the Property or any substantial part of it for military purposes in time of war or national emergency.

16. INDEMNIFICATION.

Lessee shall defend, indemnify and hold harmless the City and its elected or appointed officials, agents, boards, commissions and employees (hereinafter referred to collectively as the "City" in this Section) from all loss, damages or claims of whatever nature, including attorney's fees, expert witness fees and costs of litigation, which arise out of any act or omission of Lessee or its agents, employees and invitees (hereinafter referred to collectively as "Lessee" in this Section) in connection with Lessee's operations at the Property and which result directly or indirectly in the injury to or death of any persons or the damage to or loss of any property, or arising out of the failure of Lessee to comply with any provisions of this Lease. The City shall in all instances, except for loss, damages or claims resulting from the sole negligence of the City, be indemnified by Lessee against all such loss, damages or claims, regardless of whether the loss, damages or claims are caused in part by the negligence, gross negligence or fault of the City. The City shall give Lessee prompt notice of any claim made or suit instituted which may subject Lessee to liability under this Section, and Lessee shall have the right to compromise and defend the same to the extent of its own interest. The City shall have the right, but not the duty, to participate in the defense of any claim or litigation with attorneys of the City's selection without relieving Lessee of any obligations hereunder. Lessee's obligations hereunder shall survive any termination or expiration of this Lease or Lessee's activities at the Property.

17. INSURANCE.

Lessee shall procure and at all times maintain, at its own cost, the types and amounts of insurance required for the full replacement cost of the Project at the limits required in **Exhibit C**. The City shall be named as an additional insured as required in **Exhibit C**. Insurance policies shall contain a provision that written notice of cancellation thereof shall be given to the City not less than thirty (30) days before such cancellation takes effect. Lessee shall deliver an appropriate certificate of insurance for each policy to the City in a form and from a company acceptable to the City. The City reserves the right to modify insurance requirements at any time. In case any improvements are fifty percent (50%) or more destroyed, then Lessee and City shall agree as to whether or not the building shall be repaired or reconstructed. Should it be agreed not to repair or reconstruct such building the insurance proceeds shall be divided proportionately as follows:

- A. Lessee's share = Time remaining from date of loss to end of Lease term.
- B. City's share = Time elapsed from Effective Date of Lease to date of Loss.

18. QUIET ENJOYMENT.

So long as Lessee shall timely pay the rent required under this Lease and perform all of its other obligations under this Lease and the Loan Documents, Lessee shall peaceably have and enjoy the exclusive use of the Property.

19. SURRENDER OF POSSESSION; REVERSION.

Upon the expiration or termination of this Lease, Lessee's right to occupy the Property and exercise the privileges and rights herein granted shall cease, and it shall surrender the same and leave the Property in good condition, normal wear and tear excepted. All improvements, including the Project, and modifications made by Lessee to the Property shall become the property of the City, at no cost to the City, upon the expiration or termination of this Lease, free of any security interest or claims of any kind from or through Lessee; provided that if Lessee is not in default of any of its obligations under this Lease and can remove any of its trade fixtures or personal property at its own expense without materially damaging the Property, Lessee may remove such fixtures at the termination or expiration of this Lease. None of the improvements hereafter placed on the Property shall be removed there from at any time without City's written consent.

20. NOTICE.

All notices required or permitted to be given under this Lease may be personally delivered or mailed by certified mail, return receipt requested, postage prepaid, to the following addresses:

TO THE CITY: City of Sedona
 City Manager
 102 Roadrunner Road
 Sedona, Arizona 86336

TO LESSEE: TBD

Tel:
Email:

Any notice given by certified mail shall be deemed to be received on the next business day after the date of mailing. Either Party may designate in writing a different address for notice purposes pursuant to this Section.

21. NO BOYCOTT OF ISRAEL OR USE OF FORCED LABOR OF ETHNIC UYGHURS IN PEOPLES REPUBLIC OF CHINA.

As applicable, Lessee certifies and agrees that it is not currently engaged in and for the duration of the Lease will not engage in a boycott of Israel, as that term is defined in A.R.S. §35-393 and will not use forced labor or goods or services produced by forced labor of ethnic Uyghurs in the People's Republic of China (PRC) or any contractors, subcontractors or suppliers that use forced labor or goods or services produced by forced labor of ethnic Uyghurs in the PRC as provided by A.R.S. §35-394.

22. STATUTORY CANCELLATION RIGHT.

This Lease is subject to cancellation for conflicts of interest under the provisions of A.R.S. §38-511.

23. SEVERABILITY.

Should any provision of this Lease be declared invalid by a court of competent jurisdiction, the remaining terms shall remain effective, provided that elimination of the invalid provision does not materially prejudice either Party with regard to its respective rights and obligations.

24. TAXES AND LICENSES.

- A. Lessee shall pay any leasehold tax, possessory interest tax, sales tax, personal property tax, transaction privilege tax or other exaction assessed or assessable as a result of its occupancy of the Property or conduct of business at the Property under authority of this Lease, including any such tax assessable on the City. In the event that laws or judicial decisions result in the imposition of a real property tax on the interest of the City, such tax shall also be paid by Lessee for the period this Lease is in effect.
- B. Lessee acknowledges that any failure by Lessee to pay all taxes due, including under A.R.S., Title 42, Chapter 13, as applicable, after notice and an opportunity to cure shall constitute a default that could result in divesting Lessee of any interest in or right to occupancy of the Property.
- C. Lessee shall, at its own cost, obtain and maintain in full force and effect during the term of this lease all licenses and permits required for the operations authorized by this Lease.

25. LITIGATION

This Lease shall be governed by the laws of the State of Arizona. THE PARTIES HERETO EXPRESSLY COVENANT AND AGREE THAT IN THE EVENT OF LITIGATION ARISING FROM THIS LEASE, NEITHER PARTY SHALL BE ENTITLED TO AN AWARD OF ATTORNEY FEES, EITHER PURSUANT TO CONTRACT, PURSUANT TO A.R.S. §12-341.01 (A) AND (B), OR PURSUANT TO ANY OTHER STATE OR FEDERAL STATUTE, COURT RULE, CASE LAW, OR COMMON LAW. Both Parties hereby waive any right to a jury trial which they may otherwise have in the event of litigation arising under this Lease and consent to a trial to the court.

26. RULES AND REGULATIONS.

Lessee shall at all times comply with all federal, state and local laws, ordinances, rules, rulings, and regulations which are applicable to its operations, the Property (including the Americans with Disabilities Act), or the operation, management, maintenance or administration of the Project, including all laws, ordinances, rules and regulations adopted after the effective date of this Lease. Lessee shall display to the City, upon request, any permits, licenses, or other evidence of compliance with such laws. All rules and regulations, as currently existing or as may be amended or adopted, are hereby incorporated in this Lease. Should a court of competent jurisdiction, the Arizona Attorney General's Office, or any administrative agency with oversight authority determine that any part of this Lease is contrary to established Federal, State and City laws applicable to the respective responsibilities

of the Parties as described herein, this Lease, and any part thereto that is in conflict with said laws, shall be modified upon mutual agreement of the Parties in order to bring the Lease into full legal compliance.

27. RIGHT OF ENTRY RESERVED.

- A. The City shall have the right at all reasonable times and upon reasonable notice to enter upon the Property for any lawful purpose, provided such action does not unreasonably interfere with Lessee's use, occupancy or security of the Property.
- B. If any personal property of Lessee shall obstruct the access of the City or any utility company furnishing utility service to any of the existing utility, mechanical, electrical and other systems, and thus shall interfere with the inspection, maintenance or repair of any such system, Lessee shall move such property, as directed by the City or utility company, in order that access may be had to the system for inspection, maintenance or repair. If Lessee fails to move such property after direction from the City or utility company to do so, the City or the utility company may move it, and Lessee shall pay the cost of such moving upon demand, and Lessee hereby waives any claim for damages as a result therefrom, except for claims for damages arising from the City's sole negligence.
- C. Exercise of any or all of the foregoing rights by the City or others pursuant to the City's rights shall not constitute an eviction of Lessee, nor be made the grounds for any abatement of rent or any claim for damages.

28. SURVIVAL OF LESSEE'S OBLIGATIONS.

If this Lease is terminated by the City in accordance with the provisions herein or if the City reenters or resumes possession of the Property as provided herein, all of Lessee's obligations under this Lease shall survive such termination, re-entry or resumption of possession and shall remain in full force and effect for the full term of this Lease, and the amounts of damages or deficiencies shall become due and payable to the City to the same extent, at the same times, and in the same manner as if no termination, re-entry or resumption of possession had taken place. The City may, at its option and at any time, sue to recover the full deficiency for the entire unexpired term of this Lease. The amount of damages for the period of time subsequent to termination (or re-entry or resumption of possession) shall include all expenses incurred by the City in connection with regaining possession, restoring the Property, acquiring a new lease for the Property, putting the Property in order, maintenance and brokerage fees.

29. REMEDIES TO BE NONEXCLUSIVE.

All remedies provided in this Lease shall be deemed cumulative and additional, not in lieu of or exclusive of, each other, or of any other remedy available to the City or Lessee at law or in equity, and the exercise of any remedy, or the existence herein of other remedies, shall not prevent the exercise of any other remedy.

30. NONLIABILITY OF CITY OFFICIALS AND EMPLOYEES.

No member, official, representative or employee of City shall be personally liable to any Party, or to any successor in interest to any Party, in the event of any default or breach by City or for any amount

which may become due to any Party or successor, or with respect to any obligation of City or otherwise under the terms of this Lease or related to this Lease.

31. TIME IS OF THE ESSENCE.

Time is of the essence with regard to the performance of all of the Parties' obligations under this Lease.

32. MISCELLANEOUS.

- A. This Lease constitutes the entire agreement between the Parties concerning the matters contained herein and supersedes all prior negotiations, understandings and agreements between the parties concerning such matters.
- B. This Lease shall be interpreted, applied and enforced according to the fair meaning of its terms and shall not be construed strictly in favor of or against either Party, regardless of which Party may have drafted any of its provisions. No provision of this Lease may be waived or modified except by a writing signed by the Party against whom such waiver or modification is sought to be enforced. The terms of this Lease shall be binding upon and inure to the benefit of the Parties' successors and assigns.
- C. Nothing contained in this Lease shall create any partnership, joint venture or other agreement between the Parties hereto. Except as expressly provided in this Lease, no term or provision of this Lease is intended or shall be for the benefit of any person or entity not a Party to this Lease, and no such other person or entity shall have any right or cause of action under this Lease.
- D. The City did not acquire the Property from Lessee or any personal or entity affiliated Lessee.

33. EXHIBITS.

The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference:

Exhibit A	Property Legal Description
Exhibit B	Project Description
Exhibit C	Insurance Requirements
Exhibit D	LURA
Exhibit E	Loan Documents (Promissory Note, Deed of Trust)
Exhibit F	Permitted Encumbrances
Exhibit G	Schedule of Performance
Exhibit H	Budget

EXECUTED to be effective on the date specified above.

CITY:

CITY OF SEDONA, an Arizona
municipal corporation

By: Scott M. Jablow
Its: Mayor

ATTEST:

JoAnne Cook
City Clerk

APPROVED AS TO FORM:

Kurt W. Christianson
City Attorney

LESSEE:

By:
Its: Owner/member

STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, in his or her capacity as manager of _____, an _____ limited liability company.

Notary Public

My Commission Expires:

EXHIBIT A

40 Culture Park Place; the PROPERTY
(see attached legal description)

EXHIBIT B
Project Description
(see attached)

EXHIBIT C
(Insurance Requirements)

1. **INSURANCE** Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Lessee, its agents, representatives, employees or contractors.

A. MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

- i. **Commercial General Liability (CGL):** Insurance covering CGL on an “occurrence” basis, including products-completed operations, personal & advertising injury, with limits no less than **\$2,000,000** per occurrence, **\$5,000,000** aggregate. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- ii. **Premises Liability:** Insurance covering premises liability on the Property, with limit no less than **\$2,000,000** per accident for bodily injury and property damage.
- iii. **Workers’ Compensation:** as required by the State of Arizona, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
- iv. **Property Insurance:** Lessee shall obtain and keep in force during the Term of this Lease a policy or policies of commercial property insurance written on ISO form CP 00 10 10 12, or a substitute form providing coverage at least as broad, with all risk or special form coverage, covering the loss or damage to the Property and Project to the full insurable value of the improvements located on the Property (including the full value of the Project, all improvements and fixtures owned by Lessee) at least in the amount of the full replacement cost thereof, and in no event less than the total amount required by any lender holding a security interest.

If the Lessee maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Lessee.

- B. **Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions:

- i. **Additional Insured Status.** The City, its officers, officials, employees, and volunteers are to be covered as additional insured’s on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations.
- ii. **Primary Coverage.** For any claims related to this contract, the Lessee’s insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its

officers, officials, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.

- iii. **Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.
- iv. **Waiver of Subrogation.** Lessee hereby grants to City a waiver of any right to subrogation which any insurer of said Lessee may acquire against the City by virtue of the payment of any loss under such insurance. Lessee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
- v. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.
- vi. **Verification of Coverage.** Lessee shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received by City and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Lessee's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- vii. **Special Risks or Circumstances** City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

EXHIBIT D
LURA
(see attached)

WHEN RECORDED RETURN TO:

CITY OF SEDONA
Office of City Clerk
102 Roadrunner Drive
Sedona, AZ 86336

LAND USE RESTRICTION AGREEMENT
2250 Shelby Drive, Sedona, Arizona 86336

This Land Use Restriction Agreement ("**LURA**") is made as of _____, 202____, by and between **THE VILLAS ON SHELBY, LLC**, an Arizona limited liability company ("**Developer**") and the **CITY OF SEDONA**, an Arizona municipal corporation (the "**City**").

RECITALS

A. City owns certain real property with plans to develop the Property with certain improvements including the construction of the Affordable Units (as defined below). The real property to which this LURA applies is located at 2250 Shelby Drive, Sedona, Arizona 86336 within the City of Sedona, County of Yavapai, State of Arizona and the legal description of such real property is set forth in **Exhibit A** attached hereto and incorporated herein by this reference (the "**Property**").

B. Pursuant to the Land Lease Agreement ("**Lease**") entered into by and between Developer and City on December __, 2023, Developer shall construct thirty (30) affordable workforce multi-family apartment dwelling units ("**Affordable Units**") on the Property. The eligible activities on the Property include solely managing and operating the Affordable Units located on the Property for a period of seventy-five (75) years ("**Period of Affordability**") as affordable workforce housing.

C. Pursuant to the City of Sedona Affordable Housing Loan Secured Promissory Note of even date herewith ("**Note**") the Developer will be receiving a loan from the City the proceeds from which are to be used by Developer to construct the Affordable Units on the Property pursuant to the terms of the Lease.

D. Developer's obligations under the Note and the Lease Agreement are secured by a Deed of Trust and Assignment of Rents of even date herewith recorded in the Yavapai County Recorder's Office as a lien against the Property ("**Deed of Trust**").

E. In connection with the Lease, the Deed of Trust and the Note, the Developer and the City are executing and recording this LURA with respect to the Property.

F. Developer, under the terms of this LURA, intends, declares, acknowledges and covenants for itself, and all of Developer's successors and assigns to the fee ownership or any other interest of title in or to the Property (collectively, "**Subsequent Developers**") that the covenants, obligations and duties set forth herein are covenants running with the Property and are binding upon all Subsequent Developers during the Period of Affordability.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, and such other covenants and conditions herein contained, the Parties do hereby agree for themselves, their heirs, executors, administrators, successors and assigns, that the following real covenants, conditions, and restrictions are created and established:

1. **Incorporation.** The above Recitals are incorporated herein as a substantive portion of this LURA.

2. **Affordability Restrictions.** During the Period of Affordability, the Property and Affordable Units shall have not less than 30 distinct Affordable Units occupied for low-income households whose annual incomes at initial occupancy do not exceed sixty percent (60%) of the median income for the area, as determined by United States Department of Housing and Urban Development from time to time. Rents and resident households incomes shall not exceed the ARIZONA LOW INCOME HOUSING TAX CREDIT PROGRAM - IMPUTED INCOMES/ALLOWABLE RENTS published annually by the Arizona Department of Housing.

3. **Lease Requirements.**

(a) Affordable Units in the Property shall be leased on a non-transient basis. Initial lease terms shall be no shorter than six (6) months unless the Property occupancy rate is less than 95% in which case initial lease terms may be less than six (6) months, but in no event shall any lease terms (initial or any renewals) be shorter than three (3) months. The leases shall be in writing and signed by Developer or Developer's agent and the tenant. Lease terms shall not exceed twelve (12) months.

(b) The form of lease to be utilized by Developer in renting any Affordable Unit in the Property to any person who is intended to be a low-income tenant shall provide for immediate termination of the lease and eviction in accordance with Arizona Revised Statutes for any material misrepresentation made by such person with respect to the income, assets, or any material misrepresentation made by such person with respect to the income, assets, or any material misrepresentation made in conjunction with execution of the lease or the failure by said tenant to execute an income certification at least annually.

(c) Affordable Units in the Property will be rented or available for rental to the public on a continuous basis and no tenant shall be evicted without cause.

(d) To the extent allowed by law, renewal of tenant leases will require proof of qualification for low-income.

4. **Housing Maintenance Standards.** Developer shall maintain Affordable Units

in good condition, make all repairs in a timely fashion, and provide routine maintenance. The Developer shall fully comply with all federal state and local requirements and regulations concerning maintenance of the Affordable Units to specified housing quality standards (the "Maintenance Requirement").

5. Developer's Obligations and Duties.

(a) Developer agrees to construct 30 affordable workforce housing units consisting of one-bedroom and two-bedroom units. One-bedroom units shall not be less than **600** livable square feet and two-or-three-bedroom units shall not be less than **900** livable square feet.

(b) Developer agrees that it will not knowingly take or permit to be taken any action, which would have the effect, either directly or indirectly, of subjecting Developer or the Property to non-compliance with the requirements of the Development Agreement or this LURA. Moreover, Developer agrees to take any lawful action to comply fully with pertinent law and with all applicable rules, rulings, policies, procedures or regulations from time to time pertaining to Developer's obligations affecting the Property.

(c) Developer agrees not to discriminate on the basis of race, creed, color, sex, age, handicap, marital status or national origin in the lease for occupancy of the Property or in conjunction with the employment or application for employment of any person or persons for the operation and management of the Property.

(d) As a condition of occupancy, Developer shall require each applicant for tenancy of an Affordable Unit to certify in writing to the Developer that, to the extent allowed by law, the tenant works full-time within the city limits of the City and that the person's sources and amount of income and assets declared for the purposes of program eligibility are true and correct. Existing tenants of Affordable Units shall be required to certify the same to the Developer annually. In addition, Developer shall require each applicant for tenancy to provide whatever other information, documentation or certifications deemed necessary by the Developer and/or the City to verify the tenant's eligibility for occupancy of a low-income unit.

(e) During the term of this LURA, Developer shall comply with all federal, state and local laws, codes, ordinances, rules and regulations, conditions and assurances and shall keep and maintain in effect at all times any and all licenses, permits, notices and certifications, which may be required with regard to the Property.

(f) During the term of this LURA, Developer shall not:

- (i) Demolish or render uninhabitable any portion of the Affordable Units.
- (ii) Permit the use of the Affordable Units for any purpose other than affordable workforce housing.
- (iii) Convert any of the Affordable Units to short-term rentals, condominium, lodging or non-residential use.
- (iv) Execute any other agreement with provisions contradictory to, or in opposition to, the provisions of the LURA or the Lease.

6. Covenants Run with the Land; Successor Bound Thereby; Documents and Records of Compliance

(a) Upon execution and delivery by Developer, Developer shall cause this LURA and all amendments and exhibits hereto to be recorded and filed in the official records of the recorder's office for the county in which the Property is located, and pay all fees and charges incurred in connection with recording the LURA and all addenda and amendments thereto. Upon recording, Developer shall immediately transmit or cause to be sent directly to the City an executed original of the recorded LURA showing the date of the recording and the Recorder's Number.

(b) Developer intends, declares and covenants, on behalf of itself and all Subsequent Developers and operators of the Property, that during the term of this LURA, all of the covenants and agreements set forth in this LURA regulating and restricting the use, occupancy and transfer of the Property (i) shall be and are covenants running with the Property, encumbering the Property, and are binding upon all Subsequent Developers and operators of the Property, (ii) are not merely personal covenants of Developer, and (iii) shall bind Developer and all Subsequent Developers during the term of this LURA. Developer hereby agrees that any and all requirements of the laws of the State of Arizona to be satisfied in order for the provisions of this LURA to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and any requirements or privities of estate or title are intended to be satisfied hereby, to ensure that these restrictions will run with the land. For the term of this LURA, each and every contract, deed or other instrument hereinafter executed conveying the Property or any portion thereof shall expressly provide that such covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Property or any portion thereof provides that such conveyance is subject to this LURA. The Developer's obligations under this LURA are secured by the Deed of Trust.

(c) City or its designee has the authority to inspect, monitor or otherwise ensure continued compliance with the terms of the LURA and the Lease. If the City demonstrates a satisfactory basis for same, the City may charge Developer a reasonable fee for compliance monitoring.

7. Amendments. No amendment to this LURA may be made without the prior written approval of Developer and the City. Developer hereby expressly agrees to enter into all amendments hereto which, in the opinion of counsel for the City, are reasonably necessary for maintaining compliance under Federal, State and local housing laws.

8. Notices. All notices, requests, demands and consents to be made hereunder to the parties hereto shall be in writing and shall be delivered by hand or sent by registered mail or certified mail, postage prepaid, return receipt requested, through the United States Postal Service to the following addresses:

To Developer:

The Villas on Shelby, LLC

To the City:

City of Sedona

City Manager
102 Roadrunner Drive
Sedona, Arizona 86326

Developer and the City may, by notice given hereunder, designate any further or different address to which subsequent notices, certifications or other communications shall be sent.

9. **Governing Law.** This LURA shall be governed by the laws of the State of Arizona and, where applicable, the laws of the United States of America.

10. **Severability.** If any provision of this LURA is held to be invalid by any court having jurisdiction thereof, the invalidity of such provision shall not affect the validity or enforceability of the remaining portions of this LURA.

11. **Counterparts.** This LURA may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this LURA to physically form one complete original document.

12. **Notice under A.R.S. §38-511.** The City hereby gives notice, as required by Arizona law, of its right pursuant to the terms and requirements of A.R.S. §38-511 to terminate this contract.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

CITY OF SEDONA,
an Arizona municipal corporation

By: _____
Scott M. Jablow, Mayor

ATTEST:

Date: _____

By: _____
JoAnne Cook, City Clerk

APPROVED AS TO FORM:

By: _____
Kurt W. Christianson, City Attorney

PROPERTY DEVELOPER:

Sunset Lofts, LLC, an Arizona limited
liability company

By: _____

Its: _____

Manager

Date: _____

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
20__ by _____, the Manager of The Villas on Shelby, LLC, an Arizona limited liability
company, on behalf of the company.

Notary Public

My commission Expires:

EXHIBIT A

**Legal Description of
Property**

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

EXHIBIT E

Deed of Trust, Promissory Note
(see attached)

When recorded, mail to:

Office of the City Clerk
City of Sedona, Arizona
102 Roadrunner Drive
Sedona, AZ 86336

CITY OF SEDONA
AFFORDABLE HOUSING
LOAN
LEASEHOLD DEED OF TRUST AND ASSIGNMENT OF RENTS

DATE: _____, 2023

PROPERTY ADDRESS: 2250 Shelby Drive, Sedona, Arizona 86336

TRUSTOR: The Villas on Shelby, LLC, an Ohio limited liability company

TRUSTOR'S MAILING ADDRESS: _____

BENEFICIARY: City of Sedona, an Arizona municipal corporation

BENEFICIARY'S ADDRESS: 102 Roadrunner Drive, Sedona, Arizona 86336

TRUSTEE: Kurt W. Christianson, Sedona City Attorney and a member of the State Bar of Arizona, 102 Roadrunner Drive, Sedona, AZ 86336.

WHEREAS, Beneficiary is the owner in fee simple of the land and improvements located thereon as Property in Yavapai County, State of Arizona, legally described as:

XXXXXX

This City of Sedona Affordable Housing Loan Leasehold Deed of Trust and Assignment of Rents ("Deed of Trust") made between Trustor, Trustee and Beneficiary above named, WITNESSETH: That Trustor irrevocably grants, conveys, transfers and assigns to Trustee in Trust, with Power of Sale, all buildings, improvements and fixtures located thereon or hereinafter erected thereon, together with the leases, rents, issues profits or income thereof (all of which are hereinafter called "property income"); TOGETHER WITH all interests, estates or other claims, both in law and in equity, which Trustor now has or may hereafter acquire in the Premises or the Improvements; TOGETHER WITH all right, title and interest of Trustor in (i) the property and interests in property, (ii) all other personal property now or hereafter owned by Trustor that is now or hereafter located on or used in connection with the Premises or the Improvements, (iii) all other rights and interests of Trustor now or hereafter held in personal property that is now or hereafter located on or used in connection with the Premises or the

Improvements, (iv) all personal property and rights and interests in personal property of similar type or kind hereafter acquired by Trustor, and (v) all proceeds thereof (such personal property and proceeds referred to herein collectively as the “**Personal Property**”);

SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such property income; AND SUBJECT TO existing taxes, assessments, liens, encumbrances, covenants, conditions, restrictions, rights of way and easements of record.

FOR THE PURPOSE OF SECURING:

Performance of each agreement of Trustor herein contained:

A. Payment of the indebtedness evidenced by that Promissory Note of even date herewith, and any extension or renewal thereof, in the principal sum of \$2,250,000.00 executed by Trustor in favor of Beneficiary.

B. Payment of additional sums and interest thereon, which may hereafter be loaned to Trustor, or Trustor’s successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

C. Performance of the obligations arising under that certain Land Lease Agreement between the City of Sedona and The Villas on Shelby, LLC, dated as of ____ day of December, 2023 and recorded on ____ day of _____, 2023 as Yavapai County Recorder instrument number _____ (the “Land Lease Agreement”), including Trustor’s obligations under the Land Lease Agreement to construct the Project (as defined in the Land Lease Agreement) pursuant to the terms of the Land Lease Agreement.

D. Payment of all sums advanced by Beneficiary to protect the Trust Estate, with interest thereon equal to the lesser of three and fourteen hundredths percent (3.14%) per annum or the maximum rate per annum permitted by applicable law.

E. For the benefit of Beneficiary, compliance with and performance of each and every provision of any declaration of covenants, conditions and restrictions, any maintenance, easement and party wall agreement, or any other agreement, document, or instrument by which the Trust Estate is bound or may be affected.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

1. To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete and restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefore; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; and, do all other acts which from the character or use of said property may be reasonably

necessary, the specific enumerations herein not excluding the general.

2. To provide, maintain and deliver to Beneficiary insurance policies satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured thereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice. In the event of foreclosure of this Deed of Trust, as a mortgage, a sale under the power of sale, or any other transfer of title or assignment of the Trust Estate in extinguishment, in whole or in part, of the obligations, all right, title and interest of Trustor in and to all policies of insurance required hereof shall inure to the benefit of and pass to the successor in interest to Trustor or the purchaser or grantee of the Trust Estate, to the extent such policies are assignable pursuant to the terms thereof.

3. To appear in and defend any action or proceeding purporting to affect the security thereof or the rights or powers of Beneficiary or Trustee, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear or be named, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

4. To pay before delinquent, all taxes and assessment affecting said property; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust, including, without limited the generality of the foregoing, the fees of Trustee for issuance of any Deed of Partial Release and Partial Reconveyance or Deed of Release and Full Reconveyance, and all lawful charges, costs and expenses in the event of reinstatement of, following default in, this Deed of Trust or the obligations secured hereby.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation to do so and without notice or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security thereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights of powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay its reasonable fees.

5. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, together with interest from date of expenditure at the same rate as is provided for in the note(s) secured by this Deed of Trust or at the highest legal rate, whichever be the greater rate. Any amounts so paid by Beneficiary or Trustee shall become part of the debt secured by this Deed of Trust and a lien on said premises or shall become immediately due and payable at option of Beneficiary or Trustee.

IT IS MUTUALLY AGREED:

6. That any award of damages in connection with condemnation or any such taking, or for injury to the property by reason of public use, or for damages for private trespass or injury thereto, is assigned and shall be paid to Beneficiary as further security for all obligations secured hereby (reserving unto the Trustor; however, the right to sue therefore and ownership thereof subject to this Deed of Trust), and upon receipt of such monies Beneficiary may hold the same as such further security, or apply or release the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

7. That time is of the essence of this Deed of Trust, and by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

8. That at any time or from time-to-time, and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and said note(s) for endorsement and without liability therefore, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, and without affecting the security hereof for the full amount secured hereby on all property remaining subject hereto, and without the necessity that any sum representing the value or any portion thereof of the property affected by the Trustee's action be credited on the indebtedness, the Trustee may: (a) release and reconvey all or part of said property; (b) consent to the making and recording, or either, of any map or plat of the property or any part thereof; 9c) join in granted any easement thereon; (d) join in or consent to any extension agreement subordinating the lien, encumbrance or charge thereof.

9. That upon written request of Beneficiary stating that all sums secured hereby have been paid and upon surrender of the Deed of Trust and said note(s) to Trustee for cancellation, and upon payment of its fees, Trustee shall by Deed of Release and Full Reconveyance release and reconvey, without covenant or warranty, express or implied, the property then held hereunder. The recitals in such Deed of Release and Full Reconveyance of any matters shall be conclusive proof of the truthfulness thereof. The grantee in such Deed of Release and Full Reconveyance may be described as "The Person or Persons Legally Entitled Thereto."

10. Assignment of Rents.

10.1 Trustor hereby absolutely and irrevocably assigns and transfers to Beneficiary, equally and ratably, all the Rents of the Trust Estate and hereby gives to and confers upon Beneficiary, acting collectively, the right, power and authority, to collect the Rents. Trustor irrevocably appoints Beneficiary its true and lawful attorney-in-fact, at their option at any time and from time to time, acting collectively, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Trustor or Beneficiary, for all Rents and apply the same to the payment of the obligations. Trustor hereby authorizes and directs the lessees, tenants and occupants to make all payments under the Leases directly to Beneficiary upon and as directed in written demand by Beneficiary without further consent of Trustor; provided, however, that Trustor shall have the right to collect such Rents (but not more than one (1) month in advance unless the written approval of Beneficiary is first obtained), and to retain and enjoy same, so long as an Event of Default shall not have occurred hereunder or under any of the Loan Documents. The assignment of the Rents of the Trust Estate is intended to be an absolute assignment from Trustor to Beneficiary and not merely the passing of a security

interest.

10.2 Collection Upon an Event of Default.

Upon the occurrence of an Event of Default, Beneficiary may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Obligations, enter upon and take possession of the Trust Estate, or any part thereof, and, with or without such entry or taking possession, in their own name sue for or otherwise collect the Rents (including, without limitation, those past due and unpaid) and apply the same, less costs and expenses of operation and collection (including, without limitation, attorneys' fees) toward payment of the obligations. The collection of such Rents, or the entering upon and taking possession of the Trust Estate, or the application of the Rents as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default. Trustor also hereby authorizes Beneficiary upon such entry, at their option, acting collectively, to take over and assume the management, operation and maintenance of the Trust Estate and to perform all acts they in their sole discretion (as agreed among them) deem necessary and proper and to expend such sums out of Rents as may be needed in connection therewith, in the same manner and to the same extent as Trustor theretofore could do (including without limitation, the right to enter into new leases, to cancel, surrender, alter or amend the terms of and/or renew existing Leases and/or to make concessions to tenants). Trustor hereby releases all claims of any kind or nature against Beneficiary arising out of such management, operation and maintenance, excepting the liability of Beneficiary to account as hereinafter set forth.

10.3 Application of Rents.

Upon such entry, Beneficiary shall, as agreed among them, after payment of all property charges and expenses (including, without limitation, reasonable compensation to such managing agent as they may select and employ) and after the accumulation of a reserve to meet requisite amounts, credit the net amount of the Rents received by them to the Obligations. Beneficiary shall be accountable for more monies than it actually receives from the Trust Estate; nor shall it be liable for failure to collect Rents. Beneficiary shall make reasonable efforts to collect Rents, reserving, however, within their own absolute and sole discretion, as agreed among them, the right to determine the method of collection and the extent to which enforcement of collection of Rents shall be prosecuted and their judgment shall be deemed conclusive and reasonable.

10.4 Mortgagee in Possession.

It is not the intention of the parties hereto that an entry by Beneficiary upon the Premises under the terms of this instrument shall make Beneficiary a party in possession in contemplation of the law, except at the option of Beneficiary as agreed among them.

10.5 Indemnity.

Trustor hereby agrees to indemnify and hold harmless Beneficiary for, from and against any and all losses, liabilities, obligations, claims, demands, damages, penalties, judgments, costs, and expenses, including reasonable legal fees and expenses, howsoever and by whomsoever asserted, arising out of or in any way connected with this assignment of Rents; and all such losses, liabilities, obligations, claims, demands, damages, penalties, judgments, costs and expenses shall be deemed added to the indebtedness secured hereby and shall be secured by any and all other instruments securing said indebtedness.

10.6 No Obligation to Perform.

Nothing contained herein shall operate or be construed to obligate Beneficiary to perform any

obligations of Trustor under any Lease (including, without limitation, any obligation arising out of any covenant of quiet enjoyment therein contained in the event the lessee under any such Lease shall have been joined as a party defendant in any action to foreclose and the estate of such lessee shall have been thereby terminated). Prior to actual entry into and taking possession of the Premises by Beneficiary, this assignment of Rents shall not operate to place upon Beneficiary any responsibility for the operation, control, care, management or repair of the Trust Estate or any portion thereof, and the execution of this Assignment of Rents by Trustor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Trust Estate is and shall be that of Trustor, prior to such actual entry and taking of possession by Beneficiary.

SECURITY AGREEMENT

11.1 Creation of Security Interest.

Trustor hereby grants to Beneficiary a security interest in and to all Personal Property.

11.2 Representations, Warranties and Covenants of Trustor.

Trustor hereby represents, warrants and covenants (which representations, warranties and covenants shall survive creation of any indebtedness of Trustor to Beneficiary and any extension of credit thereunder) as follows:

- (a) The Personal Property is not used or bought for personal, family or household purposes.
- (b) The tangible portion of the Personal Property will be kept on or at the Premises or Improvements and Trustor will not, without the prior written consent of Beneficiary, remove the Personal Property or any portion thereof therefrom except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Trustor with similar items of equal or greater value.
- (c) At the request of Beneficiary, Trustor will permit Beneficiary to prepare and file one or more financing statements and fixture filings pursuant to the Uniform Commercial Code of Arizona as in effect in the State of Arizona, Arizona Revised Statutes (“**A.R.S.**”) Sections 47-1101 through 47-11107, as amended from time to time (“**Uniform Commercial Code of Arizona**”), in form satisfactory to Beneficiary and will pay the cost of recording and filing the same in all public offices wherever recording or filing is deemed by Beneficiary to be necessary or desirable.
- (d) Trustor does not do business under any trade name except as previously disclosed in writing to Beneficiary. Trustor will immediately notify Beneficiary in writing of any change in its responsible individual or the adoption or change of any trade name or fictitious business name, and will upon request of Beneficiary execute any additional financing statements or other certificates necessary to reflect the adoption or change in trade name or fictitious business name.
- (e) Trustor shall immediately notify Beneficiary of any claim against the Personal Property adverse to the interest of Beneficiary therein.

11.3 Use of Personal Property by Trustor.

Until the occurrence of an Event of Default hereunder or under any Loan Document, Trustor may have possession of the Personal Property and use it in any lawful manner not inconsistent with this Deed of Trust and not inconsistent with any policy of insurance thereon.

11.4 Remedies Upon an Event of Default.

(a) In addition to the remedies provided in this Deed of Trust, upon the occurrence of an Event of Default hereunder, Beneficiary may, at its option, do any one or more of the following:

(i) Either personally, or by means of a court appointed receiver, take possession of all or any of the Personal Property and exclude therefrom Trustor and all others claiming under Trustor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Trustor with respect to the Personal Property or any part thereof. In the event Beneficiary demands, or attempts to take possession of the Personal Property in the exercise of any rights under this Deed of Trust, Trustor agrees to promptly turn over and deliver possession thereof to Beneficiary.

(ii) Without notice to or demand upon Trustor, make such payments and do such acts as Beneficiary may deem necessary to protect their security interest in the Personal Property (including, without limitation, paying, purchasing, contesting or compromising any Lien or Encumbrance, whether superior or inferior to such security interest) and in exercising any such powers or authority to pay all expenses (including, without limitation, litigation costs and reasonable attorneys' fees) incurred in connection therewith;

(iii) Require Trustor from time to time to assemble the Personal Property, or any portion thereof, at the Premises. Beneficiary and its agents and representatives, shall have the right to enter upon any or all of Trustor's premises and property to exercise Beneficiary's rights hereunder;

(iv) Realize upon the Personal Property or any part thereof as herein provided or in any manner permitted by law and exercise any and all of the other rights and remedies conferred upon Beneficiary by this Deed of Trust or any other Loan Document, or by law, either concurrently or in such order as Beneficiary may determine;

(v) Sell or cause to be sold in such order as Beneficiary may determine, as a whole or in such parcels as Beneficiary may determine, the Personal Property and the remainder of the Trust Estate;

(vi) Sell, lease or otherwise dispose of the Personal Property at public sale, upon terms and in such manner as Beneficiary may determine. Beneficiary may be a purchaser at any sale; and

(vii) Exercise any remedies of a secured party under the Uniform Commercial Code of Arizona or any other applicable law.

(b) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Beneficiary shall give Trustor at least 5 days prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof to be made. Such notice may be mailed to Trustor at the address set forth in Section 5.5 hereof.

(c) The proceeds of any sale under Section 3.4(a)(vi) hereof shall be applied as follows:

(i) To the repayment of the reasonable costs and expenses of taking, holding, and preparing for the sale and selling the Personal Property (including, without limitation, costs of litigation and reasonable attorneys' fees) and the discharge of all Impositions, Liens and Encumbrances, and claims thereof, if any, on the Personal Property prior to the security interest granted herein (except any Impositions or Liens and Encumbrances subject to which such sale shall have been made);

(ii) To the payment of the obligations hereof; and

(iii) The surplus, if any, shall be paid to the Trustor or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

Beneficiary shall have the right to enforce one or more remedies hereunder, successively or concurrently, and such action shall not operate to estop or prevent Beneficiary from pursuing any further remedy that it may have. Any repossession or retaking or sale of the Personal Property pursuant to the terms hereof shall not operate to release Trustor until full payment of any deficiency has been made in cash.

11.5 Security Agreement.

This Deed of Trust constitutes and shall be deemed to be a "security agreement" for all purposes of the Uniform Commercial Code of Arizona and Beneficiary shall be entitled to all the rights and remedies of a "secured party" under such Uniform Commercial Code of Arizona. This Deed of Trust shall be recorded and filed in the real property records accordingly.

12. That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of this Trust, to collect the property income, reserving to Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such property income as it becomes due and payable. Upon any such default Beneficiary may at any time without notice, either in person, by agent or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in its own name sue for or otherwise collect such property income, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such property income and the application thereof as aforesaid, shall not cure or waive any default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice.

13. That upon default by Trustor the payment of any indebtedness hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written notice thereof, setting forth the nature thereof and of election to cause to be sold said property under this Deed of Trust. Beneficiary also shall deposit with Trustee this Deed of Trust, said note(s) and all documents evidencing expenditures secured hereby.

14. Trustee shall record and give notice of Trustee's sale in a manner required by law, and after the lapse of such time as may then be required by law, Trustee shall sell, in the manner required by law, said property at public auction at the time and place affixed by it in said notice of Trustee's sale to the highest bidder for cash in lawful money of the United States of America, payable at time of sale. Trustee may postpone or continue the sale by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee shall deliver to such purchaser its Deed conveying the property so sold, but without any covenant or warranty, expressed or implied. Any persons, including Trustor, Trustee or Beneficiary, may purchase at such sale.

15. After deducting all costs, fees and expenses of Trustee and of this Trust, including cost

of evidence of title in connection with sale and reasonable attorney's fees, Trustee shall apply the proceeds of the sale to payment of all sums then secured hereby and all other sums due, under the terms hereof, with accrued interest, and, the remainder, if any, to the person or persons legally entitled thereto, or as provided in A.R.S. Sec. 33-812. To the extent permitted by law, an action may be maintained by Beneficiary to recover a deficiency judgment for any balance due hereunder.

The purchaser at the Trustee's sale shall be entitled to immediate possession of the property against Trustor and shall have a right to the summary proceedings to obtain possession provided in Title 12, Chapter 8, Article 4, Arizona Revised Statutes, together with costs and reasonable attorney's fees. In lieu of sale pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary shall also have all other rights and remedies available to it hereunder and at law or in equity. All rights and remedies shall be cumulative.

16. That Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee here shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, right, powers and duties. Trustee may resign by mailing or delivering notice thereof to Beneficiary and Trustor.
17. That this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder of the note(s) secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.
18. That Trustee accepts this Trust when this Deed of Trust duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee. In the event Trustee is made a party in any legal or court proceeding as a result of litigation between Trustor and Beneficiary or between a third party and either or both of Trustor and/or Beneficiary, the attorney's fees and costs of Trustee shall be paid by either Trustor or Beneficiary, whichever is the non-prevailing party.
19. Time is of the essence of the Deed of Trust and each and every provision hereof.
20. Trustor requests that a copy of any notice of Trustee's sale hereunder be mailed to Trustor at Trustor's mailing address hereinbefore set forth. All notices required hereby shall be sent to the addresses indicated above unless such party shall have recorded a Request for Notice pursuant to A.R.S. Sec. 33-809.A in the county recorder's office of the county where the property encumbered hereby is located, indicating a different address.
21. In the event that Trustor shall sell, convey, or alienate or otherwise transfer the subject

property, or any part thereof, or any interest therein, or shall be divested of title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the written consent of Beneficiary being first obtained, said Beneficiary, to the fullest extent provided by law, shall have the right at its option to declare any indebtedness or obligation secured by this Deed of Trust, irrespective of the maturity date specified in the Note evidencing the same, immediately due and payable.

22. Trustor waives, to the extent permitted by law, (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisal before sale of any portion of the Trust Estate, and (b) all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the obligations and marshaling in the event of foreclosure of the liens hereby created and (c) all rights and remedies that Trustor may have or be able to assert by reason of the laws of the State of Arizona pertaining to the rights and remedies of sureties including, without limitation, A.R.S. §§ 12-1641 through 12-1646, and Arizona Rules of Civil Procedure 17(f).
23. All obligations of Trustor herein shall be the joint and several obligations of each party executing this Deed of Trust as Trustor.
24. If any provision of this Deed of Trust is unenforceable, the enforceability of the other provisions shall not be affected and they shall remain in full force and effect. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any of the Trust Estate, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Deed of Trust.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

TRUSTOR:

The Villas on Shelby, LLC, an Ohio limited liability company

By: _____

Title: _____

STATE OF ARIZONA)
) ss.
County of Yavapai)

On this ____ day of _____, 2023, before me, the undersigned Notary Public, personally appeared _____, who acknowledged himself/herself to be the _____ of _____, and that as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

When recorded, mail to:

Office of the City Clerk
City of Sedona, Arizona
102 Roadrunner Drive
Sedona, AZ 86336

CITY OF SEDONA AFFORDABLE HOUSING
LOAN SECURED PROMISSORY NOTE

\$2,250,000.00

_____, 2023
Sedona, Arizona

FOR VALUE RECEIVED, The Villas on Shelby, LLC, an Ohio limited liability company (“Maker”) promises to pay to the City of Sedona, an Arizona municipal corporation (“Payee”), at 102 Roadrunner Drive, Sedona, AZ 86336, or at such other place as the Payee may designate pursuant to paragraph 10 below, in lawful money of the United States of America, the principal sum of TWO MILLION TWO HUNDRED FIFTY THOUSAND (\$2,250,000.00) (the “City Loan”) advanced under the Land Lease Agreement between Maker and Payee dated 12 day of December 2023 (the “Land Lease”).

1. The sums advanced under this City of Sedona Affordable Housing Loan Secured Promissory Note (the “Note”) shall be used to construct thirty (30) affordable housing units on Payee property located at 2250 Shelby Drive, Sedona, Arizona, as legally described in Exhibit 1 attached to this Note and incorporated herein by this reference (the “Property”). Payment of this Note will be secured by a Deed of Trust and Assignment of Rents (the “Deed of Trust”) from the Maker to Payee to be recorded against the Property.
2. Subject to Section 4 below, the Maker shall pay the Payee monthly installments of principal and interest at the rate of the 5.3% (the long-term AFR) per annum, beginning on the expiration of the Construction Term in the Land Lease or upon completion of the Project as defined in the Land Lease, and continuing on the 1st day of each month thereafter, together with all outstanding and accrued interest on the City Loan amount. The term of this Note shall be thirty (30) years from the date written above, provided however, that no event of default under this Note shall have occurred during said term. If an event of default occurs during the term of this Note, said term shall not expire unless the default is cured as provided herein or until this Note is paid in full. Upon payment in full of the obligations under this Note, the debt evidenced by this Note shall be forgiven.
3. Maker shall have the right to prepay this Note, in whole, without penalty, discount, or premium.
4. Notwithstanding any other Section hereof, so long as no Event of Default under this Note, the Land Lease, Land Use Restriction Agreement, or Deed of Trust and Assignment of Rents, each executed by the Parties of even date herein, has occurred, the Maker shall not

be required to pay the Annual Payments prior to the Maturity Date, and the Payee shall not be entitled to be paid on the Note prior to the Maturity Date, except to the extent the Surplus Cash (as defined in Section 9 of the Land Lease) is available, such amount to be no less than twenty-five percent (25%) of such amount. Upon the occurrence of any default, after the applicable notice and cure period, the outstanding balance of all previous City Loan payments become immediately due and payable, in addition to the other remedies provided hereby.

5. The occurrence of any of the following shall constitute an event of default under this Note:
Maker fails to pay any amount due hereunder within fifteen (15) days of written demand; (ii) any sale, lease, exchange, conveyance, assignment, refinance or other transfer of the Property without the prior written consent of Payee; or (iii) any violation of the covenants or restrictions set forth in that certain Land Use Restrictive Agreement affecting the Property, dated on or about the date of this Note.
6. Upon the occurrence of any event of default, or at any time thereafter, at the option of the Payee, the entire unpaid principal sum of this Note shall become immediately due and payable, after the expiration of any applicable notice and cure periods. This option may be exercised at any time following any such event. The failure to exercise this option shall not constitute a waiver of the right to exercise such option in any subsequent event of default. Payee's failure in the exercise of any other right or remedy hereunder or under any agreement which secures the indebtedness or is related thereto shall not affect any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof.
7. Payee shall not exercise any right or remedy provided for herein because of any default of maker unless, in the event of a monetary default, Maker shall have failed to pay the outstanding sums within a period of thirty (30) calendar days after the date of the notice that payment was due, or in the event of a nonmonetary default, Payee shall have first given written notice thereof to Maker, and Maker shall have failed to cure the nonmonetary default within a period of thirty (30) calendar days after the date of such notice; provided that if the nonmonetary default cannot be cured within thirty (30) calendar days and Maker proceeds diligently with effort to cure such default until it shall be fully cured within no more than ninety (90) calendar days after the giving of such notice, Payee shall not exercise any right or remedy provided for herein until such ninety (90) day period shall expire. Notwithstanding the foregoing, Payee shall not be required to give any notice or allow any part of the grace period if Maker shall have filed a petition in bankruptcy or for reorganization or a bill in equity or otherwise initiated proceedings for the appointment of a receiver of its assets, or if Maker shall have made an assignment for the benefit of creditors, or if a receiver or trustee is appointed for Maker and such appointment or such receivership is not terminated within sixty (60) days of such appointment. With respect to any right to cure or cure period provided in this paragraph 7, performance of a cure by an entity or partner of Maker shall have the same effect as would like performance by Maker.
8. Maker and any endorsers hereof and all others who may become liable for all or any part of this obligation, severally waive presentment for payment, demand and protest and notice of protest, and of dishonor and nonpayment of this Note, and expressly consent to any extension of the time of payment hereof, or of any installment hereof, to the release of any party liable for this obligation. Any such extension or release may be made without notice to any of said parties and

without in any way affecting or discharging this liability.

9. Maker shall pay immediately, upon demand, all costs and expenses of Payee, including without limitation reasonable attorney fees, for the collection of this Note upon default. Maker shall pay immediately, upon demand, all costs and expenses of Payee, including without limitation reasonable attorney's fees, if Payee seeks to have the Property abandoned by or reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection of the Note or prohibiting the enforcement of the Deed of Trust or any other agreement evidencing or securing this Note lifted by any bankruptcy or other court.
10. If Payee shall be made a party to or shall reasonably intervene in any action or proceeding, whether in court or before any governmental agency, affecting the Property or the title thereto or the interest of the Payee under the Deed of Trust, including without limitation, any form of condemnation or eminent domain proceeding, Maker shall reimburse Payee immediately upon demand for all costs, charges, and attorneys' fees incurred by payee in any such case, and the same shall be secured by the Deed of Trust as a further charge and lien upon the Property.
11. All payments required under this Note shall be delivered to the Payee at the City of Sedona, 102 Roadrunner Drive, Sedona, AZ, 86336 or such other place as the Payee notifies Maker in writing.
12. This Note shall be binding upon Maker, its successors and assigns and shall inure to the benefit of Holder and any subsequent holder of all or any portion of this Note, and their respective successors and assigns. Holder may from time to time transfer all or any part of its interest in this Note and the Loan Documents, without notice to Maker.
13. This Note shall be construed in accordance with and be governed by the laws of the State of Arizona.
14. If any provision of this Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.
15. This Note shall be secured by the Deed of Trust encumbering the Property as set forth in paragraph 1 above.
16. No amendment, modification, change, waiver, release, or discharge hereof and hereunder shall be effective unless evidenced by an instrument in writing and signed by the party against whom enforcement is sought.

Remainder of Page Intentionally Blank.

IN WITNESS WHEREOF, the undersigned Maker has executed this Note on the date first written above.

MAKER:

By: The Villas on Shelby, an Ohio limited liability company

Title: _____

Date: _____

STATE OF ARIZONA)
) ss.
County of Yavapai)

On this ____ day of _____, 2023, before me, the undersigned Notary Public, personally appeared _____, who acknowledged himself/herself to be the Manager of The Villas on Shelby, LLC, an Arizona limited liability company, and that as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

EXHIBIT 1

Legal Description of Property

EXHIBIT F
Permitted Encumbrance
(see attached)

EXHIBIT G
Schedule of Performance

<u>Performance Item</u>	<u>Performance Date</u>
1. Execution of Agreement.....	<u>Month DD, 20XX</u>
2. Commence Construction Work on Project	<u>Month DD, 20XX</u>
3. 25% Construction Completion.....	<u>Month DD, 20XX</u>
4. 50% Construction Completion.....	<u>Month DD, 20XX</u>
5. 75% Construction Completion.....	<u>Month DD, 20XX</u>
6. Construction of Project Complete	<u>Month DD, 20XX</u>
7. First City Loan Payment Due (if applicable).....	<u>Month DD, 20XX</u>
8. First Project Cash Flow Analysis Report.....	<u>Month DD, 20XX</u>
9. First Annual Cash Flow Payment Due	<u>Month DD, 20XX</u>

EXHIBIT H

Budget
(see attached)



CITY COUNCIL AGENDA BILL

AB 2995
December 12, 2023
Regular Business

Agenda Item: 8e

Proposed Action & Subject: Discussion/possible action regarding adoption of a fare policy for the city's MicroTransit (Sedona Shuttle Connect) service.

Department	Public Transit
Time to Present	15 Minutes
Total Time for Item	45 Minutes
Other Council Meetings	1/25/22 – Sedona In Motion Update 10/25/22 – Regular Meeting
Exhibits	A- Public Comment Received

Finance Approval	CRW 12/4/2023		
City Attorney Approval	Reviewed 12/4/23 KWC	Expenditure Required	
City Manager's Recommendation	Lower the initial fare to \$2 full and \$1 discount and eliminate the multi trip pass as proposed by the STAC.	\$ N/A	
		Amount Budgeted	
		\$	N/A
		Account Number	
		Description	

SUMMARY STATEMENT**BACKGROUND:**

During the January 25, 2022, Sedona In Motion council workshop, staff sought direction from council to develop a framework for a passenger fare structure and fare policy for the city's new MicroTransit (Sedona Shuttle Connect) service. Staff provided general examples for proposed one-way fares, monthly/ day pass(s), and other options that could be considered in developing the fare policy.

Staff also provided council with the regulatory requirements as set forth Under 49 U.S.C. Section 5307(d)(1)(D) of the Federal Transit Act, requiring federally subsidized transit providers to not charge more than half of the peak fare for fixed route transit during off-peak hours for seniors, people with disabilities, and Medicare cardholders.

During the January 25th meeting, Council provided staff with the following direction:

- 1) Increase the one-way regular fare to \$6.00 and the discounted fare to \$3.00.
- 2) Remove the monthly pass fare option and develop a discounted multi-ride pass for 10-12 one-way trips;
- 3) Offer a 50% discount for AZ residents with a valid ACCCHS card;
- 4) Add a free fare provision for children ages five and under,
- 5) Bring back to Council for further consideration.

On October 25, 2022, regular City Council meeting, staff returned with the following proposed fare and fare policy which included the following options:

A. PASSENGER FARES:

- 1) One-Way Fare:
 - i. Regular one-way fare: \$6.00
 - ii. Discount one-way fare: \$3.00

B. DISCOUNT / FREE FARE POLICY:

- 1) Discount Fare Policy: 50% Discount on all fares for:
 - i. 60+ Years of age (Proof of age may be required)
 - ii. Medicare Cardholders
 - iii. Veterans (With ID)
 - iv. Persons with Disabilities
 - v. AZ Residents with a valid ACCCHS card

- 2) Free Fare:
 - i. Children under five years of age

C. MULTI-RIDE PASS OPTIONS:

- 1) In response to Council's direction staff developed the two options listed below for both the regular and discounted MicroTransit Multiple-Ride Pass:

Regular Pass				
Option	Pass Cost	1-Way Trips	Retail Value	Discount
A	\$50.00	10	\$60.00	16.67%
B	\$50.00	12	\$72.00	30.56%

Discount Pass				
Option	Pass Cost	1-Way Trips	Retail Value	Discount
A	\$25.00	10	\$30.00	16.67%
B	\$25.00	12	\$36.00	30.56%

Additionally, staff included the following summary of the Sedona Transit Advisory Committee's (STAC) recommendations during that meeting:

On July 20, 2022, the STAC reviewed the proposed MicroTransit fare structure during its regular meeting. After reviewing all of the information above, the STAC recommended the following:

1. By unanimous vote, the STAC did not support option A for the Multi Ride Pass.
2. 50% of the TAC members were in favor of the passenger and discount fares as proposed, and Option B for the Multi Ride Pass.
3. 50% of the TAC members were not in favor of charging any fare on the MicroTransit service for a period of six months and reevaluate the service at that time to determine what if any passenger fares will be charged.

Committee Member	Affiliation
Kent Ellsworth (Chair)	Executive Director VVCG
Tara Golden	Citizen of Sedona
David K. O'Donnell	Citizen of Sedona
Lars Romig	Verde Valley Cyclist Coalition
Steve Segner (Vice Chair)	President Lodging Council
Mark TenBroek	Citizen of Sedona

At the October 25, 2022 Council Meeting, the City Council unanimously recommended the **Option B** as the proposed fare structure for the multi ride pass city's Microtransit (*Sedona Shuttle Connect*) service, directed staff to seek public comment on the proposed fare structure, and bring the matter back to council for final action. Staff commenced the mandatory public comment period for fare adoptions.

DISCUSSION:

Public Notice Requirements:

New fares, like new fees or taxes, must be published for a minimum of 60 days prior to Council adoption pursuant to A.R.S. 9-499.15. Additionally, Federal Transit Administration public notice regulations require that a public meeting be held to elicit public comment on any proposed fare change.

City /State Public Notice Requirements:

1. Any new fees that are being imposed must be posted on the website at least 60 days before the Council can act to approve them. Staff must post a Notice of Intention, along with a report justifying the fees. Such fees would take effect 30 days after the council approves them.

Federal Transit Administration (FTA) Public Notice Requirements:

1. Public notice shall be sufficiently early for the public to participate in the decision-making process. Any fare or significant route changes shall be subject to the following public notice process:

- a) Public notices shall be published in the newspaper(s) having general circulation in the vicinity of the Sedona area and on the main page of the city's transit website for a minimum of 2 weeks. Additional notices may be posted throughout the community (libraries, grocery stores, post offices, etc.) and published through other city social media accounts, radio announcements, and community list serve(s). The city shall publish two notices of public meetings, at least one week apart. The date of the final meeting shall be at least five days after the second notice has been published.

Based upon the aforementioned processes, staff completed the following actions to solicit public comments on this item:

Public Notice and Meeting Schedule		
1 st Public Notice	Posted: 11/2/2022 File: 01/09/2023	City website and Sedoanshuttle.com
2 nd Public Notice	Posted 12/5/2022 File 01/09/2023	City Website, Sedonashuttle.com
3 rd Public Notice	Posted: 12/21/22	Red Rock News, City Clerk's Office, SedonaShuttle.com
4 th Public Notice	Posted: 1/4/2023	Red Rock News
Public Meeting	January 9, 2023	Virtual via ZOOM

PUBLIC COMMENT:

No public comment was received during the January 9, 2023, public meeting, which was held virtually.

Three written comments were received between January 9, 2023 – March 2, 2023 public comment period. They are attached as Exhibit A.

Amended STAC Recommendation:

During their July 2023 regular meeting, the STAC reviewed the public comments and requested to amend their original recommendation as follows:

1. City to begin the service with a 6-month free policy to provide an incentive for residents and visitors to use the service.
2. Evaluate ridership at the end of the six-month free fare period to determine if charging a fare is practicable.
3. If a fare is to be considered at that time, set the initial fare at \$2.00 per ride with a 50% discount to eligible passengers and eliminate the multi trip discounted pass.

FISCAL IMPACT:

The revenues derived from passenger fares are predicated upon the average passenger fare collected for the service. The average fare is determined by the overall volume of ridership and the percentage of regular and discounted fares collected.

Should the proposed fare structure be ultimately adopted, staff can better forecast the fiscal impact based upon actual revenues collected from passenger fares.

AMENDED STAFF RECOMMENDATION:

Based on public comment received and discussions with STAC, Staff recommends the following MicroTransit fare structure for final adoption:

A. PASSENGER FARES:**One-Way Fare:**

Regular one-way fare: \$2.00

Discount one-way fare: \$1.00

B. DISCOUNT / FREE FARE POLICY:**a. Discount Fare Policy: 50% Discount on all fares for:**

- i. 60+ Years of age (Proof of age may be required)
- ii. Medicare Cardholders
- iii. Veterans (With ID)
- iv. Persons with Disabilities
- v. AZ Residents with a valid ACCCHS card

b. Free Fare:

- i. Children under five years of age

This would eliminate the multi trip pass as proposed by the STAC.

Climate Action Plan/Sustainability Consistent: ☒Yes - ☐No - ☐Not Applicable

The city's Climate Action Plan (CAP) sites the second largest source of CO₂ emissions in Sedona is from the use of fossil fuels in vehicles and other motorized equipment. A mode shift to public transit reduces the number of passenger vehicle miles traveled, which results in the displacement of CO₂ emissions. One of the specific CAP strategies is to improve and increase transit ridership. Related strategies include a sustained commitment for a transition to electric and other low-carbon fuels and a shift to alternative modes of transportation such as ride sharing, public transit, biking, and walking.

Board/Commission Recommendation: ☐Applicable - ☒Not Applicable

Alternative(s):

Council may approve any fare policy / structure that it deems appropriate as long as the policy observes the regulatory requirements as set forth Under 49 U.S.C. Section 5307(d)(1)(D) of the Federal Transit Act, requiring federally subsidized transit providers to not charge more than half of the peak fare for transit services during off-peak hours for seniors, people with disabilities, and Medicare cardholders.

Additionally, the city is subject to the aforementioned public notice requirements prior to adopting, implementing, or modifying its future passenger fare policy.

MOTION

I move to:
(option 1)

approve the original proposed fare of \$6 regular one-way and \$3 discount one-way with option (B) for the multiple ride pass for the city's MicroTransit service with the following persons eligible for the discount fare: 60+ Years of age (Proof of age may be required), Medicare Cardholders, Veterans (With ID), Persons with Disabilities, and AZ Residents with a valid ACCCHS card and free fare for children under the age of five.

(option 2)

approve an initial fare of \$2 regular one-way and \$1 discount one-way with the following persons eligible for the discount fare: 60+ Years of age (Proof of age may be required), Medicare Cardholders, Veterans (With ID), Persons with Disabilities, and AZ Residents with a valid ACCCHS card and free fare for children under the age of five.

(option 3)

approve - other:

EXHIBIT A
PUBLIC COMMENT PERIOD

Comments received between January 9, 2023 – March 2, 2023.

Date Received	Comment	Submitted by
January 9, 2023	My suggestion is to find a way to offer the Sedona Shuttle Connect ride free to city residents during the limited hours of operation currently proposed. If this Shuttle Connect were available all through the week, I could see charging city residents a fee. But as the proposed service hours are limited to the same times that all vehicles are stuck in increased traffic anyway, there seems to be little incentive for city residents to choose the Shuttle Connect over the autonomy of using their own vehicles. If the Sedona Shuttle Connect is an effort to service the clients of the many STRs in town, I can see assessing a charge per ride. This way the visitors to our city can be encouraged to leave their vehicles at the STR. And in that case, extended hours for daylight during summer months might also be considered. But, during times of increased traffic, a city resident has already been restricted from quick easy travel throughout the city due to high volume of visitor's vehicles; providing a city resident (and the resident's guest) a Shuttle ride free of charge would be a good trade-off.	Maria West Sedona Resident
January 16, 2023	Hello, I hope this email finds you well. I apologize for not attending the public input session for the proposed transit rates, but I did see the article in the newspaper. If I'm reading it correctly, the proposed rates are \$6 one way for City transit. From a Public Health perspective, I am very concerned this rate is too high for the following reasons:	Heather Klomparens Section Manager- Community Health Education Yavapai County Community Health Services

1. Most of the user groups that will be taking advantage of public transit cannot afford this rate. I work for Public Health and those seeking our services cannot currently pay the \$1-\$2 rate that Cottonwood requires. Whether it's under-housed individuals or individuals that cannot afford gas or a car, \$6 is a hefty fee for this service. Additionally, \$3 for seniors living on a fixed income or students using public transit is also too much money for this income bracket.
2. If we are encouraging folks to use public transit rather than using their own vehicles, there is not much incentive to take public transit with fees this high. For individuals that have access to a vehicle, \$6 is a high price to pay for the inconvenience of discarding a vehicle.

From a citizen perspective-

I use the Verde Shuttle to Cottonwood for various reasons- either for work, my children use it to get to Yavapai College or to get a haircut, my husband uses it to meet me in Cottonwood for trips to Phoenix, and my children's friends use to meet us for bicycle rides. The \$2 fare for adults and \$1 fare for children is a reasonable rate to forgo an extra vehicle or the inconvenience of adding travel time to and from the bus stop. I'm not sure how you can charge a different rate in the city vs. the Cottonwood/Sedona connection, could you please explain this further?

I am aware that public transit is challenging both in ridership and losing money. However, with grants, city sales tax, and the bed tax, there should be more than enough to supplement fares to encourage ridership and assist those who cannot afford a personal vehicle or cannot drive for whatever reason.

	I have not paid attention to Council meetings but if it would be beneficial to reach out to our current City Council, please let me know.	
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March 2, 2023	I missed the meeting for feedback about proposed fees for the microtransit and have read (in Red Rock News) I can send input to you. I would like fares for the city microtransit for residents to be the same as the fees for the shuttles for tourists. Charge the tourists or let residents ride for free - this is a fairness principle.	Guy Lamunyon Sedona Resident
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