

**RESOLUTION NO. 2017-32
PINON/89A APARTMENTS
DEVELOPMENT AGREEMENT
PZ 17-00009 (DA)**

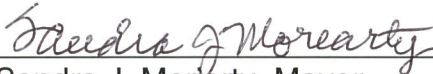
**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SEDONA,
ARIZONA, APPROVING A DEVELOPMENT AGREEMENT WITH PINON LOFTS
LLC, AN ARIZONA LIMITED LIABILITY COMPANY, FOR THE PINON/89A
APARTMENTS PROJECT.**

WHEREAS, the City of Sedona ("City") and Pinon Lofts, LLC, an Arizona limited liability corporation, intend to enter into a development agreement for the Pinon/89A Apartments project that will include provisions to ensure the project addresses local housing needs and development impact fee credits for streets improvements.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE COUNCIL OF THE CITY OF SEDONA, ARIZONA, THAT:

The City of Sedona, through its Mayor and Council, hereby finds that the development agreement attached hereto as Exhibit A is consistent with the Community Plan pursuant to A.R.S. § 9-500.05, and approves of the agreement, authorizing the signature by the Mayor and recording by law.

APPROVED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona, this 12th day of December, 2017.



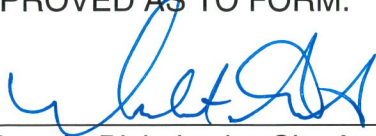
Sandra J. Moriarty, Mayor

ATTEST:



Susan L. Irvine, CMC, City Clerk

APPROVED AS TO FORM:



Robert L. Pickels, Jr., City Attorney

EXHIBIT A

DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SEDONA AND PINON LOFTS, LLC.

THIS DEVELOPMENT AGREEMENT ("Agreement") made and entered into this day 29 of December, 2017, by and between the City of Sedona, an Arizona municipal corporation ("City"), and Pinon Lofts, LLC, an Arizona limited liability company, and its successor or assigns ("Property Owner").

RECITALS

The following recitals are incorporated by reference into and constitute an integral part of this Agreement.

- A. **WHEREAS**, the Property Owner owns property located in Sedona, AZ, as more fully described in Exhibit "A", attached hereto and made a part hereof ("Property").
- B. **WHEREAS**, the Property Owner intends to develop the Property by constructing certain residential improvements consisting of 45 multi-family market rate rental apartment dwelling units ("Project").
- C. **WHEREAS**, this Agreement is entered into by authority of A.R.S. § 9-500.5, the City finding that the consideration and commitments herein from and to the Property Owner and the City are justified based on other consideration provided hereby, including without limitation the economic benefits to the community resulting from this Agreement.

DEFINITIONS

In this Agreement, unless a different meaning clearly appears from the context:

Area Median Income (AMI): The Area Median Incomes (AMI) for the portion of the two counties comprising the City of Sedona are determined by the United States Department of Housing and Urban Development and are updated yearly. AMIs are established for a range of household sizes, from one-person households to eight-person households. The current AMIs are available from the City of Sedona Department of Community Development.

Market Rate: Rental costs that are based on current market prices, without income limits or special requirements.

NOW, THEREFORE, in consideration of the promises and mutual obligations contained herein, City and Property Owner agree to proceed under the following terms and conditions.

1. OBLIGATIONS OF PROPERTY OWNER

- 1.1 Condominium Conversion. Property Owner, or lessees, for a period of no less than 30 years from certificate of occupancy, shall not file an application for a condominium plat or otherwise divide the Property into separate ownership dwelling units.
- 1.2 Leasing Priority for Occupancy in the Project. The Property Owner, during the first fifteen (15) days of the initial preleasing period for the Project ("Priority Period") shall first offer for lease no less than twenty-five (25) dwelling units on a first come first served

EXHIBIT A

basis to those who are employed by a business within Sedona City limits or otherwise have a written offer of employment by an employer located within the City ("Employed Resident"). Further priority during the Priority Period shall be given to Employed Residents that earn at or below the current published "Area Median Income" as established by the Secretary of Housing and Urban Development ("HUD") for the metropolitan statistical area most applicable to the City ("AMI Qualified Occupant") for the first 12 (twelve) dwelling units available in the Project.

- 1.3 Leasing Priority for Occupancy in the Project after expiration of the Priority Period. After the Priority Period, in the event of a wait list for occupancy in the Project, an Employed Resident shall be given priority for occupancy in the Project with respect to every second (2nd) dwelling unit that is or becomes vacant and is available for lease in the Project. After expiration of the Priority Period, in the case of a wait list for occupancy in the Project, every fourth (4th) dwelling unit that is or becomes vacant and is available for lease in the Project shall be offered first to an AMI Qualified Occupant. Nothing in this paragraph or Agreement shall be construed to prevent the renewal of any existing tenant lease in the Project by the Property Owner at the time of lease expiration or as otherwise determined in the Property Owner's sole discretion.
- 1.4 Market Rent and Tenant Qualification for Occupancy. Nothing in this Agreement shall be construed to mean that any prospective tenant, Employed Resident, or an AMI Qualified Occupant shall automatically qualify for occupancy in the Project. Every prospective tenant, Employed Resident, and AMI Qualified Occupant shall be subject to certain background history, financial qualifications and occupancy standards as may be designated from time to time by the Property Owner. The City and Property Owner acknowledge and represent that the Project is "Market Rate" and neither party shall subsidize the rent of any tenant occupying the Project.
- 1.5 Lease Term. Property Owner shall not lease any dwelling unit in the Project for an initial lease term of less than 90 days. During the entirety of the lease term, tenants shall not be allowed to assign a lease or sublease a dwelling unit without the express prior written consent of the Property Owner. If an assignment or sublease is approved by the Property Owner such assignment or sublease shall not be for a term less than 90 days or the balance of the existing lease term, whichever is less.
- 1.6 Recording/Filing Fees. Property Owner shall be responsible for payment of any fees associated with the recording/filing of this document in the records of Yavapai County, Arizona.
- 1.7 Annual Report. The property owner will submit an annual report to the City of Sedona certifying to the best of their ability and knowledge that the units are being rented in accordance with the Development Agreement.

2. OBLIGATIONS OF CITY

- 2.1 Public Sidewalk. The City agrees to credit the Property Owner a Streets Development Impact Fee credit, for the cost to design, engineer, install and construct the public improvements required and requested by the City for the installation and construction of an improved public sidewalk along Pinon Drive to Highway 89A. The exact location and specifications of the public sidewalk shall be determined by the City.

EXHIBIT A

If to Property Owner: Pinon Lofts, LLC
15010 N. 78th Way, Suite 109
Scottsdale, AZ 85260

- 4.7 Authority. This Agreement is not intended to supersede the authority granted by law to any regulatory board or agency of the City. Therefore, nothing in this Agreement shall be construed or implied to require the City's Planning and Zoning Commission or other regulatory boards or agencies (however designated) to approve the plans for any aspect of the Project or other action required under this Agreement.
- 4.8 Time of Essence. Time is of the essence and a material provision of this Agreement.
- 4.9 Tax Consequences. City makes no representation concerning the tax consequences or liability resulting from this Agreement. The parties have each had an opportunity to consult with legal counsel concerning the terms and effects of this Agreement and either party's failure to do so is at its own choosing.
- 4.10 Conflicts of Interest. This Agreement is subject to the provisions of A.R.S. § 38-511, relating to conflicts of interest.

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: Sandra J. Moriarty
Sandra J. Moriarty, Mayor

Date: 12/13/17

ATTEST:

By: Susan L. Irvine
Susan L. Irvine, CMC, City Clerk

Date: 12/13/17


APPROVED AS TO FORM:

By: Robert L. Pickels, Jr.
Robert L. Pickels, Jr., City Attorney

Date: 12/13/17

EXHIBIT A

PINON LOFTS, LLC, an Arizona limited liability company

By: 
M. Keith Holben

Its: Managing Member
Managing Member

Date: 12/29/17

EXHIBIT A

Exhibit "A" Legal Description

A tract of land in the Northeast quarter of the Northeast quarter of Section 15, Township 17 North, Range 5 East, Gila and Salt River Base and Meridian, Yavapai County, Arizona, described as follows:

BEGINNING at the point of intersection of the West line of said Northeast quarter of the Northeast quarter of Section 15 and the Southerly right of way line of State Highway U.S. 89A (132 feet wide right-of-way), as marked by a found one inch iron pipe from which, the Northwest corner of the Northeast quarter of the Northeast quarter as marked by a one inch iron pipe lies North 00 degrees, 12 minutes, 27 seconds East 542.83 feet (North 00 degrees, 11 minutes East 541.7 feet per Deed recorded in Book 2720 of Official Records, Pages 606-607 hereafter referred to as "record"), said Point of Beginning being a non-tangent point of curvature, the central point of which lies South 32 degrees, 57 minutes, 23 seconds East, 3753.72 feet;

Thence through a central angle of 01 degrees, 47 minutes, 42 seconds on a curve to the right in a Northeasterly direction an arc length of 117.59 feet (record arc length 118.20 feet) to a found 5/8 inch rebar with obliterated cap on the aforementioned Southerly right-of-way line;

Thence South 27 degrees, 52 minutes, 11 seconds East, 207.22 feet (record South 27 degrees, 50 minutes East 207.0 feet) to a found 1/2 inch rebar, no tag or cap;

Thence North 70 degrees, 56 minutes, 03 seconds East 187.59 feet (record North 70 degrees, 50 minutes East, 188.5 feet) to a found 1/2 inch rebar with plastic cap stamped "Landmark LS 14184";

Thence South 19 degrees, 18 minutes, 02 seconds East 159.95 feet (record South 19 degrees, 05 minutes East 160.00 feet) to a found 1/2 inch iron pipe;

Thence South 68 degrees, 04 minutes, 31 seconds West 283.29 feet (record South 68 degrees, 00 minutes West 284.0 feet) to a set 5/8 inch rebar with plastic cap stamped "SEC RLS 13015";

Thence South 89 degrees, 50 minutes, 42 seconds West 164.68 feet (record North 89 degrees, 59 minutes West 165.0 feet) to a found 1/2 inch rebar with plastic cap stamped "LANDMARK LS 14184" from which, the found one inch iron pipe marking the Northwest corner of the Northeast quarter of the Northeast quarter lies North 00 degrees, 11 minutes, 00 seconds East (record and basis of bearings) a distance of 859.51 feet;

Thence North 00 degrees, 08 minutes, 32 seconds East 316.68 feet (record North 00 degrees, 11 minutes East 316.2 feet) to the TRUE POINT OF BEGINNING.