

**RESOLUTION NO. 2018-06
460 PEACH LANE
DEVELOPMENT AGREEMENT**

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SEDONA,
ARIZONA, APPROVING A DEVELOPMENT AGREEMENT WITH VERDE VALLEY
HABITAT FOR HUMANITY, A PRIVATE NON-PROFIT CORPORATION FOR THE
460 PEACH LANE PROJECT.**

WHEREAS, the City of Sedona ("City") and Verde Valley Habitat for Humanity, a private non-profit corporation, intend to enter into a development agreement for three (3) affordable housing units at 460 Peach Lane in Uptown Sedona that will include provisions to ensure the project addresses local affordable housing needs.

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 13th day of March, 2018.




Sandra J. Moriarty, Mayor

ATTEST:



Susan L. Irvine, CMC, City Clerk

APPROVED AS TO FORM:



Robert L. Pickels, Jr., City Attorney

EXHIBIT A

When recorded mail to:

City Clerk
City of Sedona
102 Roadrunner Drive
Sedona, Arizona 86336

DEVELOPMENT AGREEMENT (Construction of Affordable Housing Units)

THIS DEVELOPMENT AGREEMENT ("Agreement") for the construction of three (3) affordable housing units at 460 Peach Lane in Uptown Sedona ("Project") is entered into and effective this 9th day of MAY, 2018, by and between the CITY OF SEDONA, an Arizona municipal corporation ("City") and the Verde Valley Habitat for Humanity, a private non-profit corporation ("Habitat").

RECITALS

- A. Habitat is the owner of the real property located at 460 Peach Lane in Sedona.
- B. Habitat intends to construct three owner occupied units on the property located at 460 Peach Lane and restrict the use and occupancy of the homes to meet Habitat's affordable housing guidelines for home ownership.
- C. Habitat has asked the City to waive associated building, development impact, and sewer capacity fees for the Project.
- D. Habitat and the City wish to enter into this Agreement to provide for a financial contribution from the City's affordable housing fund to be intended to be used to pay for the development impact and sew capacity fees for the Project.
- E. The addition of affordable housing units is identified as a goal in the City's Community Plan, the 2018 City Council identified priorities, the City's Development Incentives and Guidelines for Affordable Housing policy. Because of the benefit to the City in the Project, the City is willing to contribute towards the cost of constructing these affordable housing units through this Agreement.
- F. Arizona Revised Statutes § 9-500.05 allows a municipality and any other person having an interest in real property located in a municipality to enter into a development agreement pertaining to any matter relating to the development of such real property, including applicable land use including applicable land use rules, regulations and official policies; permitted land use; density and intensity of land use; phasing of the development and duration of the development agreement; and development fees.

NOW THEREFORE, in consideration of the terms and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Accuracy of the Recitals. Each of the parties to the extent such knowledge is within their respective control, hereby acknowledges, to the best of their knowledge, the accuracy of the Recitals, which are incorporated herein by this reference.

2. Term. Once executed by the parties, the term of this Agreement shall be deemed to commence as of the Effective Date and shall continue for twelve (12) months, or until completion of the proposed housing project, whichever occurs first.

3. Additional Covenants of Habitat.

- 3.1 Habitat shall construct (or cause to be constructed) a triplex consisting of three (3) affordable housing units, two (2) three-bedroom units and one (1) two-bedroom units, which will serve the City.
- 3.2 Habitat shall pay all the construction costs, which include the costs associated with the design, engineering, acquisition, and construction of the three (3) units.
- 3.3 Habitat shall commence construction within three hundred and sixty-five (365) days of the issuance of City construction permits and shall continue work until the Project is complete.

4. Additional Covenants of City.

- 4.1 The City will contribute Thirty-Eight Thousand Three Hundred Seventy-Four and No/100 Dollars (\$38,374.00) (the "City Contribution") from City's Affordable Housing Fund towards the cost of the Project.
- 4.2 As consideration for Habitat's construction of the Project, City shall pay the City Contribution to Habitat at the time the fees are due and payable. The City Contribution will not be further adjusted based on actual costs of the Project.

5. Approvals. Habitat shall obtain all necessary approvals, permits, consents and authorizations from the City prior to constructing the Project.

6. Reimbursement. Subject to Force Majeure (as hereinafter defined), and delays caused by the City, should Habitat fail to timely complete the Project pursuant to this Agreement, Habitat shall reimburse City in full the amount of the City Contribution, within thirty (30) days of the expiration of this Agreement.

7. City Representations and Warranties. The City represents and that all representations set forth by City in this Agreement are accurate and truthful to the best of its knowledge and belief.

7.1 That the City is a duly organized, validly existing municipal corporation in the State of Arizona. The transactions contemplated by this Agreement, the execution of this Agreement and the City's performance hereunder have been duly authorized by all requisite action of the City and no other approval or consent is required for this Agreement to be binding upon the City. The individuals executing this Agreement have all necessary authority to enter into this Agreement and to bind the City. The execution of this Agreement and the consummation of the transactions contemplated hereby will not result in any violation of, or default under, any term or provision of any applicable Agreement, instrument, law, rule, regulation or official policy to which the City is a party or by which the City is bound.

8. Habitat Representations and Warranties.

8.1 Habitat represents and warrants that each of their respective representations set forth in this Agreement are accurate and truthful to the best of its knowledge and belief.

8.2 That Habitat is a duly organized, validly existing Arizona non-profit corporation licensed to do business in the State of Arizona. Habitat is not a construction company or a licensed contractor. The transactions contemplated by this Agreement, the execution of this Agreement and Habitat's performance hereunder have been duly authorized by all requisite action of Habitat and no other approval or consent is required for this Agreement to be binding upon Habitat. The individuals executing this Agreement have all necessary authority to enter into this Agreement and to bind Habitat. The execution of this Agreement and the consummation of the transactions contemplated hereby will not, to the best of Habitat's knowledge, result in any violation of, or default under, any term or provision of any applicable agreement, instrument, law, rule, regulation or official policy to which Habitat is a party or by which Habitat is bound.

9. Appointment of Representatives. To further the commitment of the parties to cooperate in the implementation of this Agreement, the City and Habitat each shall designate and appoint a representative to act as a liaison between the City, its various departments and Habitat. The initial representative for the City (the "City Representative") shall be its Community Development Director, Audree Juhlin, the initial representative for Habitat shall be Tania Simms, Executive Director (the "Habitat Representative"). The representatives shall, after reasonable notice, be available at all reasonable available times to discuss and review the performance of the parties' respective obligations under this Agreement.

10. Indemnification.

- 10.1 During the term of this Agreement, Habitat agrees to indemnify and hold harmless the City, their elected officials, appointees, employees, affiliates, agents, assigns and successors from any liability for claims ,suits, losses, damages to persons or property, including investigation and expert witness and reasonable attorney’s fees, arising as a result of Habitat’s breach of this Agreement or for any injury or death resulting from Habitat’s negligence in relation to the construction of the Housing Project.
- 10.2 During the term of this Agreement, City agrees to indemnify and hold harmless Habitat, their officers, employees, affiliates, agents, assigns and successors from any liability for claims, suits, losses, damages to persons or property, including investigation and expert witness and attorney’s fees, arising as a result of City’s negligence or breach of this Agreement. The Parties agree that neither will be liable to the other for consequential damages.

11. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement and no person or entity not a Party or a successor-in-interest to a Party to this Agreement will have any right or cause of action under this Agreement.

12. Conflict of Interest. This Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511.

13. Attorney’s Fees. If it becomes necessary for a Party of this Agreement to bring an action at law or other proceedings to enforce any of the terms or provisions of this Agreement, the successful Party in the action or proceeding is entitled to an award of its reasonable attorney’s fees with the amount to be determined in accordance with A.R.S. § 12-341.01.

14. Amendments. No amendment is authorized under this Agreement except by written document executed by the City and Habitat.

15. Assignment. This Agreement may be assigned, with express written consent of the non-assigning Parties. Consent shall not be unreasonably withheld.

16. Limitation of Liability.

- 16.1 No member, official or employee of the City shall be personally liable to Habitat or any successor in interest to such party for any amount which may become due to Habitat from the City or any obligation under the terms of this Agreement.
- 16.2 No member, manager, or agent or employee of Habitat shall be personally liable to the City, or any successor in interest to such party for any amount which may become due to the City from Habitat or any obligation under the terms of this Agreement.

17. Further Assurances. The parties agree to take such actions including the execution and delivery of such mutually acceptable documents, instruments, petitions and certifications as may be required to carry out the terms, provisions and intent of this Agreement.

18. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

19. Severability. If any provision in this Agreement, or any paragraph, sentence, clause, phrase, word or the application thereof; in any circumstance, is held invalid, this Agreement shall be construed as if such invalid part were never included herein and the remainder of this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

20. Disclaimer. Nothing contained in this Agreement nor any act of the City or Habitat shall be deemed or construed by any of the parties, or by any third person, to create or imply any relationship of third party beneficiary, principal or agent, limited or general partnership or joint venture, or to create or imply any association or relationship involving the City or Habitat.

21. City Development Fees. The City agrees to waive all development fees otherwise imposed by the City for development of the Project. As used herein, "development fees" means all building permit fees, development review fees, subdivision fees, and other customary fees imposed by the City pursuant to ordinance generally applicable to new development in the City.

22. Force Majeure. The time for performance of any obligation or the satisfaction of any contingency under this Agreement shall be extended for the period during which a party is prevented from performing by the action or inaction of the other party, acts of God, government, or other force or event beyond the reasonable control of such party.

23. Right of Termination. Notwithstanding anything to the contrary contained herein, in the event that the Project cannot be constructed, Habitat shall have the right, but not the obligation, to terminate this Agreement by notice to the City. In the event that Habitat shall elect to so terminate this Agreement, and if, at such time the City Contribution has been paid to Habitat, Habitat shall reimburse the City in full for the City Contribution, within thirty (30) days of such termination.

24. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Arizona.

25. Amendments. This Agreement may be amended only by a mutual written agreement fully executed by the Parties.

26. Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties, oral or written, are superseded and merged into this Agreement.

This Agreement is effective as of the date of the last authorized signature affixed below.

Attest:

City of Sedona

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

By Sandra J. Moriarty
Sandra J. Moriarty, Mayor

APPROVED AS TO FORM:

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

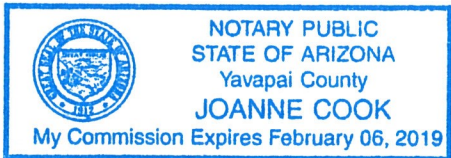
STATE OF ARIZONA)
) ss.
COUNTY OF YAVAPAI)

On this 14 day of March, 2018, before me, the undersigned officer, personally appeared Sandra J. Moriarty who acknowledged herself to be the Mayor of the CITY OF SEDONA, an Arizona municipal corporation whom I know personally, and she, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

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

NOTARY SEAL:

Jo Anne Cook
Notary Public



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Verde Valley Habitat for Humanity

Tania Simms

Tania Simms, Executive Director

STATE OF ARIZONA)
) ss.
COUNTY OF Yavapai)

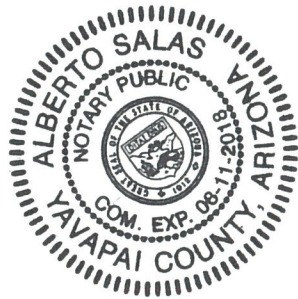
On this 9 day of MAY, 2018, before me, Alberto Salas, Notary Public, personally appeared Tania Simms who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity as Executive Director of Verde Valley Habitat for Humanity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

NOTARY SEAL:

Alberto Salas

Notary Public



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