RESOLUTION NO. 2018-33 MARRIOTT RESIDENCE INN DEVELOPMENT AGREEMENT PZ 16-00009 (DA)

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SEDONA, ARIZONA, APPROVING A DEVELOPMENT AGREEMENT WITH SEDONA HOSPITALITY GROUP LLC, AN ARIZONA LIMITED LIABILITY COMPANY, FOR THE MARRIOTT RESIDENCE INN PROJECT.

WHEREAS;

The City of Sedona ("City") and Sedona Hospitality Group, LLC, an Arizona limited liability corporation, intend to enter into a development agreement for the Marriott Residence Inn project that will include rezoning, description of community benefits, and calculation of development impact and other fees,

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 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 November, 2018.

Sandra J. Moriarty, Mayor

ATTEST:

Susan L. Irvine, CMC, City Clerk

APPROVED AS TO FORM:

Robert L. Pickels, Jr., City Attorney

WHEN RECORDED, RETURN TO:

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

DEVELOPMENT AGREEMENT (Sedona Marriot Residence Inn)

This Development Agreement ("Agreement") is entered into as of the 13th day of November, 2018 (the "Effective Date"), by and between the CITY OF SEDONA, ARIZONA, an Arizona municipal corporation (the "City") and SEDONA HOSPITALITY GROUP, L.L.C, an Arizona limited liability company ("Developer").

RECITALS

- A. City and Developer entered into that certain Development Agreement (Sedona Marriott Courtyard Hotel) dated December 4, 2014 ("Original Agreement"), recorded as Instrument No. 2015-0001623, Records of Yavapai County, Arizona. Unless expressly stated herein to the contrary, this Agreement is intended to stand alone and be enforced independently from the Original Agreement which remains in full force and effect.
- **B.** The site plan attached to the Original Agreement as Exhibit B included a 3.04 acre undeveloped parcel, which is more specifically described on the attached **Exhibit A** ("**Undeveloped Parcel**").
- C. Arizona Revised States ("ARS") Section 9-500.05 allows a municipality and a landowner or 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 rules, regulations and official policies; permitted land uses; density and intensity of land use; phasing of development and duration of the development agreement; and development fees.
- **D**. Pursuant to and in compliance with the Land Development Code ("LDC"), Developer has submitted to the City its zone change application to revise the number of permitted lodging units for the Undeveloped Parcel and for development reviewand conditional use permit approval.

AGREEMENT

NOW, THEREFORE, in consideration of the premises above and the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, covenant and agree, for themselves, and their successors-in-ownership and assigns, as follows:

- 1. <u>Recitals</u>. The Recitals set forth above are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.
- 2. <u>Development of the Undeveloped Parcel</u>. Developer shall be permitted to develop the Undeveloped Parcel as a Marriott Residence Inn with ninety (90) guest units in general accordance with the site plan attached hereto as <u>Exhibit B</u> ("*Residence Inn Site Plan*").
 - **3. Additional Covenants of Developer.** Developer agrees as follows.
 - (a) Developer shall construct, own and operate a Marriott Residence Inn on the Undeveloped Parcel.
 - (b) Developer shall contribute Eight Hundred Twenty Four Thousand Dollars (\$824,000) to the City's Affordable Housing fund as follows. Developer shall pay to the City Six Hundred Twenty Five Thousand Dollars (\$625,000) at the time the City issues the first building permit for the Marriott Residence Inn, and Developer shall pay to the City One Hundred Ninety Nine Thousand Dollars (\$199,000) at the time the City issues the first certificate of occupancy for the Marriott Residence Inn.
 - (c) Developer shall record permanent emergency ingress and egress easements for both Park Place and Foothills South Subdivisions, at the locations depicted on the Residence Inn Site Plan.
 - (d) Developer shall record a permanent access easement to the City for the ingress and egress and for the service and maintenance of the City's odor treatment facility, at the location depicted on the Residence Inn Site Plan.
 - (e) Developer shall connect to the City's Wastewater System, construct any required extensions of sewer lines, and pay the fees described in Section 4(b).
 - (f) Developer shall pay to City a development impact fee per guest unit of Three Thousand Fifty Four Dollars (\$3,054) for a total fee of Two Hundred Seventy Four Thousand Eight Hundred Sixty Dollars (\$274,860). The development impact fees shall be paid by Developer at the time each certificate of occupancy is issued.
 - (g) Developer shall make a contribution to public art through the installation of art valued at Thirty Five Thousand Dollars (\$35,000). The public art

- installed by Developer shall be in compliance with LDC Article 18 and be approved by the Community Development Director.
- (h) Developer shall pay all applicable permit review and building permit fees, in accordance with the adopted City fee schedule.

Covenants of City. City agrees as follows.

- (a) City will approve zoning for the Undeveloped Parcel, as further revised under PZ16-00009 (ZC), which shall be vested upon (i) the approval, execution and recordation of this Agreement, (ii) compliance with conditions of approving PZ16-00009 (ZC), and (iii) completion of the Marriott Residence Inn as approved under PZ16-00009 (DEV, CUP). If Developer is not issued a building permit within two (2) years of City Council approval of PZ16-00009 (ZC) or if the building permit expires prior to completion of construction of the Marriott Residence Inn, the City may initiate proceedings to revoke the zoning approved by PZ16-00009 (ZC), subject to the provisions of LDC Section 400.11 and applicable State statutes.
- (b) City will provide sewer service to the Residence Inn to be constructed for a capacity fee of Seven Thousand Nine Hundred Sixty Two Dollars and Twenty Five Cents (\$7,962.25) per unit for ninety (90) units, for a total capacity fee of Seven Hundred Sixteen Six Hundred Two Dollars and Fifty Cents (\$716,602.50)to be paid by Developer at the time each certificate of occupancy is issued.
- (c) Additional uses not included in the above fee calculation shall be assessed capacity and monthly service fees based on the City's sewer capacity fee schedule in existence at the time of the addition of such uses.

5. Representations.

- 5.1. Developer Representations. Developer represents and warrants that:
 - (a) it is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Arizona;
 - (b) its execution, delivery and performance of this Agreement is duly authorized;
 - (c) it shall execute all documents and take all action necessary to implement and enforce this Agreement; and
 - (d) the representations made by Developer in this Agreement are accurate and truthful to the best of its knowledge and belief.

5.2. <u>City Representations</u>. City represents and warrants that:

- (a) its execution, delivery and performance of this Agreement has been duly authorized and entered into in compliance with all ordinances and codes of City;
- (b) this Agreement is enforceable in accordance with its terms;
- (c) it shall execute all documents and take all action necessary to implement and enforce this Agreement; and
- (d) the representations made by City in this Agreement are accurate and truthful to the best of its knowledge and belief.

6. Default and Remedies.

- 6.1. Events Constituting Developer Default. Developer shall be deemed to be in default of this Agreement if (a) Developer commits a material breach of any obligation required to be performed by Developer, and (b) such breach continues for a period of thirty (30) days after written notice thereof by City, or if not able to be cured within such time period, Developer fails to commence the cure of such breach within such time period and, thereafter, to diligently pursue the same to completion.
- 6.2. Remedies to City. In the event of a Developer default which is not cured within any applicable cure period, City shall have the right to seek and obtain all legal and equitable remedies available to it including, but not limited to, specific performance.
- 6.3. Events Constituting City Default. City shall be deemed to be in default under this Agreement if (a) City commits a material breach of any obligation required to be performed by City, and (b) such breach continues for a period of thirty (30) days after written notice thereof by Developer, or if not able to be cured within such time period, City fails to commence the cure of such breach within such time period and, thereafter, to diligently pursue the same to completion.
- 6.4. Remedies to Developer. In the event of a City default which is not cured within any applicable cure period, Developer shall have the right to seek and obtain legal and equitable remedies available to it, including, but not limited to, specific performance.

7. Miscellaneous.

7.1. <u>Notice</u>. Unless otherwise specifically provided in this Agreement, all notices, demands or other communication to be given shall be in writing

and shall be deemed to have been duly delivered upon personal delivery or email transmission:

To City:

City of Sedona

Attn: Sedona Community Development Director

102 Roadrunner Drive Sedona Arizona 86336

Email: kosburn@sedonaaz.gov

Copy to:

City of Sedona

Attn: City Attorney 102 Roadrunner Drive Sedona, Arizona 86336

Email: rpickels@sedonaaz.gov

To Developer:

Sedona Hospitality Group, L.L.C.

Attn: Paul Welker

7255 East Hampton Avenue, Suite 122

Mesa, Arizona 85209

Email: paul@sunridgeproperties.com

Copy to:

Beus Gilbert PLLC Attn: Jeffrey Blilie 701 N. 44th Street

Phoenix, Arizona 85003

Email: jblilie@beusgilbert.com

Either party may change the notice recipient, address or email by giving written notice to the other party as provided above.

- 7.2. <u>Amendments</u>. This Agreement may be amended only by a mutual written agreement fully executed by the parties.
- 7.3. <u>Governing Law</u>. This Agreement shall be governed by and construed under the laws of the State of Arizona.
- 7.4. <u>Waiver</u>. No waiver by either party of a breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition.

- 7.5. Severability. If any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law, provided that the fundamental purposes of this Agreement are not defeated by such severability.
- 7.6. Exhibits. All exhibits attached to this Agreement are incorporated herein by reference as though fully set forth in this Agreement. The exhibits are as follows:

Exhibit A: Legal description of the Undeveloped Parcel

Exhibit B: Residence Inn Site plan

- 7.7. Entire Agreement. This Agreement and the referenced exhibits constitute 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 in this Agreement.
- 7.8. <u>Counterparts</u>. This Agreement may be executed in multiple counterparts.
- 7.9. <u>Consents and Approvals</u>. City and Developer shall at all times act reasonably and in good faith with respect to any and all matters which require either party to review, consent or approve any act or other matter pertaining to the subject matter of this Agreement.
- 7.10. Mutual Benefits. City and Developer agree that in making the promises contained in this Agreement that certain benefits and advantages will accrue to both parties as a result of the performance of this Agreement, and that this Agreement is entered into in reliance upon the actual benefits afforded each of the parties.
- 7.11. Conflict of Interest. No member, official or employee of City may have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law. All parties acknowledge that this Agreement is subject to cancellation pursuant to the provisions of ARS Section 38-511.
- 7.12. Enforcement by Either Party. This Agreement shall be enforceable by either party notwithstanding any change in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance or building ordinance adopted by City which substantially changes, alters or amends the applicability of said plans or ordinances to the Property.

- 7.13 <u>Cumulative Remedies</u>. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies will not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by such defaulting party.
- 7.14 Attorneys' Fees. In any arbitration, quasi-judicial or administrative proceedings or any other action in any court of competent jurisdiction, brought by either party to enforce any covenant or any of such party's rights or remedies under this Agreement, including any action for declaratory or equitable relief, the prevailing party shall be entitled to reasonable attorneys' fees and all reasonable costs, expenses in connection with such action.
- 7.15. <u>Assignment and Successors</u>. This Agreement shall be binding upon and shall inure to the benefit of the parties and their successor and assigns.
- 7.16 No Third Party Beneficiaries and No Partnership. This Agreement is made and entered into for the sole protection and benefit of the parties. No person other than the parties and their successors in interest shall have any right of action based upon any provision of this Agreement. Nothing contained in this Agreement shall create any partnership, joint venture or agency relationship between the parties.
- 7.17. Effective Date, Term and Recordation. This Agreement will be effective ("Effective Date") upon execution by the undersigned parties and recordation in accordance with ARS Section 9-500.05. The term of this Agreement will commence on the Effective Date and will automatically terminate on the fifth (5th) anniversary of such date if building permits are not obtained.
- 7.18. <u>Time of the Essence</u>. Time is of the essence in this Agreement.
- 7.19. <u>Review Process</u>. City agrees to use its best efforts to expedite all approvals relating to the subject matter of this Agreement.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

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

CITY:

CITY OFSEDONA, ARIZONA, an Arizona municipal corporation

Sandy Moriarty, Mayor

ATTEST:

Susan Irvine, City Clerk

APPROVED AS TO FORM:

Robert Pickels, City Attorney

STATE OF ARIZONA County of Yavapai

On this 5th day of Decomber, 2018, before me personally appeared Sandy Moriarty, the Mayor of the CITY OFSEDONA, ARIZONA, an Arizona municipal corporation, for and on behalf thereof, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above/attached document.

Notary Public Cook

[Affix notary seal here]

NOTARY PUBLIC
STATE OF ARIZONA
Yavapai County
JOANNE COOK
My Commission Expires February 06, 2019

8

DEVELOPER:

SEDONA HOSPITALITY GROUP, L.L.C., an Arizona limited liability company

By: SUNRIDGE PROPERTIES, INC. an Arizona corporation, Manager

Paul Walker CEO

STATE OF ARIZONA County of Maricopa

[Affix notary seal here]

RHONDA F. EMS
Notary Public - Arizona
Maricopa County
My Comm. Expires Oct 12, 2021

EXHIBIT A TO DEVELOPMENT AGREEMENT

[Legal Description of the Undeveloped Parcel]

See following pages

LEGAL DESCRIPTION -

All that portion of land as shown on the ALTA/ACSM Land Title Survey as recorded in Instrument Number 2015-0019153, Yavapai County Recorder's Office, and located in Section 15, Township 17 North, Range 5 East, of the Gila Salt River Base and Meridian. Yavapai County, Arizona, more particularly described as follows:

COMMENCING at the Southwest corner of said Section 15, as marked by a B.L.M. brass capped pipe and from which the West quarter corner of said Section 15, as marked by a G.L.O. stone with chiseled $\frac{1}{4}$, lies North $06^{\circ}55'30"$ West, a distance of 2,726.06 feet;

Thence North 06°55'30" West, a distance of 681.93 feet to the Southwest corner of the parcel described in Book 4306 of Official Records, Page 882, Yavapai County Recorder's Office;

Thence North 89°09'04" East, along the South line of said parcel, a distance of 259.80 feet to the easterly right of way line of Upper Red Rock Loop Road according to the alignment described in Book 796 of Official Records, pages 461-464 and the realignment described in Resolution No. 94-12, recorded in Book 2875 of Official Records, Pages 462-468, Yavapai County Recorder's Office;

Thence along a non-tangent curve, along said easterly right of way line, concave to the southeast, having a radius of 666.20 feet, a central angle of 07°26'28", an arc length of 86.52 feet, a chord bearing of North 22°36'32" East and a chord length of 86.45 feet:

Thence North 26°19'45" East, along said easterly right of way line, a distance of 82.01 feet;

Thence along a tangent curve, along said easterly right of way line, concave to the west, having a radius of 225.00 feet, a central angle of 58°46'30", an arc length of 230.81 feet, a chord bearing of North 03°03'30" West and a chord length of 220.82 feet;

Thence North 32°26'45" West, along said easterly right of way line, a distance of 81.97 feet;

Thence North 12°32'40" East, a distance of 13.74 feet to the southerly line of "Additional Right of Way" of Arizona State Highway 89-A, described as Parcel 1 on Pages 14 and 15 of Exhibit "A" of the Amended Final Order of Condemnation recorded in Book 4122 of Official Records, page 262, Yavapai County Recorder's Office;

Thence along a non-tangent curve, along said "Additional Right of Way" line, concave to the northwest, having a radius of 5817.03 feet, a central angle of 03°28'07", an arc length of 352.16 feet, a chord bearing of North 55°14'50" East and a chord length of 352.10 feet and the TRUE POINT OF BEGINNING;

Thence continuing along said curve, along said "Additional Right of Way" line, concave to the northwest, having a radius of 5817.03 feet, a central angle of 02°36'33", an arc length of 264.90 feet, a chord bearing of North 52°12'30" East and a chord length of 264.88 feet;

Thence North 39°05'47" West, along said "Additional Right of Way" line, a distance of 9.60 feet;

Thence along a non-tangent curve, along said "Additional Right of Way" line, concave to the northwest, having a radius of 5795.58 feet, a central angle of 00°24'23", an arc length of 41.11 feet, a chord bearing of North 50°54'08" East and a chord length of 41.11 feet;

Thence South 39°18'31" East, a distance of 15.00 feet;

Thence along a non-tangent curve, concave to the northwest, having a radius of 5810.58 feet, a central angle of $00^{\circ}26'37''$, an arc length of 45.00 feet, a chord bearing of South $50^{\circ}55'16''$ West and a chord length of 45.00 feet;

Thence South 39°18'29" East, a distance of 39.05 feet;

Thence North 50°41'31" East, a distance of 45.00 feet;

Thence South 39°18'31" East, a distance of 187.13 feet;

Thence South 38°57'07" East, a distance of 60.00 feet;

Thence along a non-tangent curve, concave to the south, having a radius of 25.00 feet, a central angle of 89°32'30", an arc length of 39.07 feet, a chord bearing of South 84°33'03" East and a chord length of 35.21 feet:

Thence South 39°47'06" East, a distance of 31.72 feet;

Thence along a tangent curve, concave to the northeast, having a radius of 225.00 feet, a central angle of 29°40'27", an arc length of 116.53 feet, a chord bearing of South 54°37'19" East and a chord length of 115.23 feet;

Thence South 00°41'52" East, a distance of 175.42 feet;

Thence South 89°12'42" West, a distance of 407.34 feet;

Thence North 00 47'18" West, a distance of 139.53 feet;

Thence North 39°18'33" West, a distance of 12.88 feet;

Thence South 89°12'42" West, a distance of 41.42 feet;

Thence North 35°47'18" West, a distance of 202.14 feet to the TRUE POINT OF BEGINNING.

Containing 166,939.65 sq. ft. or 3.83 Acres more or less.

07 07 16 LE #1000-02 1000-02 East Parcel.doc

JASON O'BRIEN, R.L.S

45477 6 FV2

EXPIRES 6/30/19

MAP TO ACCOMPANY LEGAL DESCRIPTION W 1 4 CORNER SECTION 15 STONE MONUMENT P.0 B.-THIS DESCRIPTION COMMENCING SW CORNER SECTION 15 BLM BRASS CAP MONUMENT

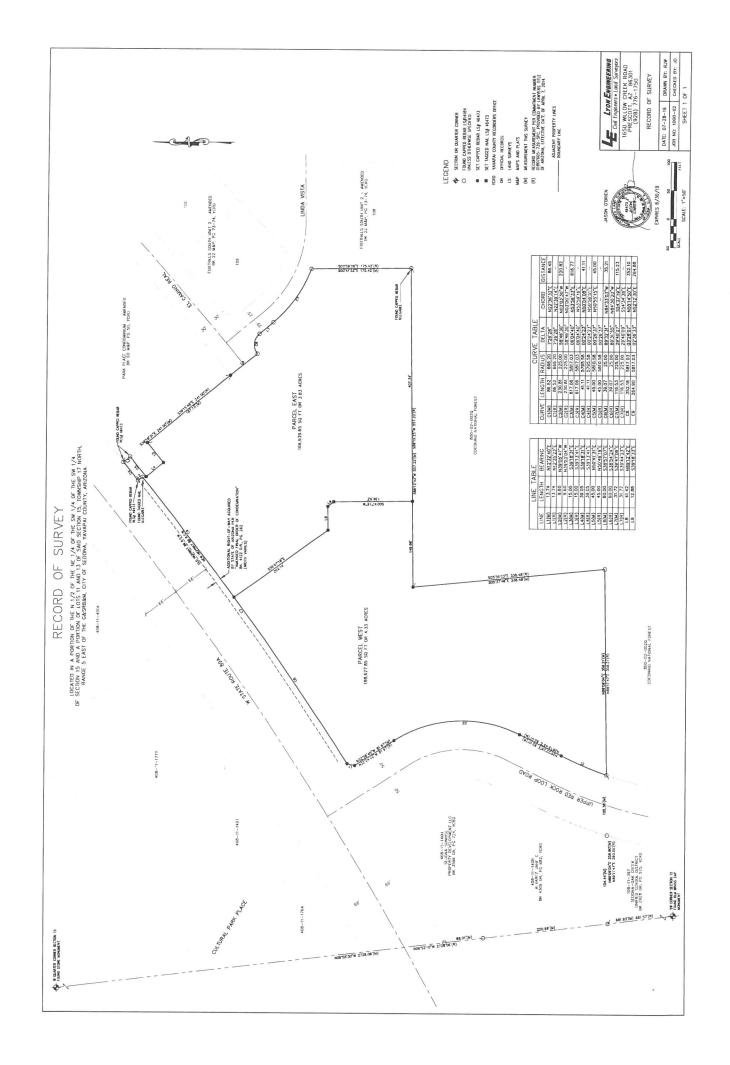


EXHIBIT B TO DEVELOPMENT AGREEMENT

[Residence Inn Site Plan]

See following page

