

RESOLUTION NO. 2021-14

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SEDONA,
ARIZONA, APPROVING A DEVELOPMENT AGREEMENT WITH SUNSET LOFTS,
LLC, FOR THE DEVELOPMENT OF A MULTI-FAMILY AFFORDABLE WORKFORCE
APARTMENT COMPLEX.**

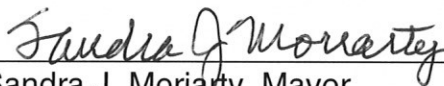
WHEREAS, the City is authorized pursuant to A.R.S. §§ 9-441 et seq. and 9-500.05 to aid housing development projects and to enter into development agreements with businesses or landowners located in the City.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF SEDONA as follows:

Section 1. That it is deemed in the best interest of the City of Sedona and its citizens that the City enter into a Development Agreement with Sunset Lofts, LLC, which provides for a financial contribution from the City towards the construction of an affordable workforce housing apartment complex located at 220 Sunset Drive, Sedona, Arizona, which Agreement is now on file in the office of the City Clerk of the City of Sedona.

Section 2. That the Mayor is authorized and directed to execute and deliver said agreement on behalf of the City of Sedona.

ADOPTED AND APPROVED by the Mayor and Council of the City of Sedona, Arizona, this 13th day of July, 2021.



Sandra J. Moriarty, Mayor

ATTEST:



Susan L. Irvine, CMC, City Clerk

APPROVED AS TO FORM:



Kurt W. Christianson, City Attorney

WHEN RECORDED RETURN TO:
Office of the City Clerk
City of Sedona, Arizona
102 Roadrunner Drive
Sedona, AZ 86336-3710

**DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SEDONA
AND SUNSET LOFTS, LLC**

THIS DEVELOPMENT AGREEMENT ("Agreement") made and entered into this 22ND day of JULY, 2021 ("Effective Date"), by and between the City of Sedona, an Arizona municipal corporation ("City") and Sunset Lofts, LLC, an Arizona limited liability company and its successor or assigns ("Property Owner"). City and Property Owner are sometimes referred to herein collectively as the "Parties," or individually as a "Party."

RECITALS

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

- A. WHEREAS**, the Property Owner owns, or has contracted to own, property located in Sedona, AZ, as more fully described in Exhibit "A" attached hereto and incorporated herein by this reference ("Property") and generally described as 220 Sunset Drive, Sedona, Arizona 86326.
- B. WHEREAS**, Property Owner intends to develop the Property by constructing certain residential improvements consisting of 46 affordable workforce multi-family apartment dwelling units ("Project"). As a condition of, and concurrent with, development of the Project, and subject to and in accordance with the other provisions and requirements of this Agreement, Property Owner intends and has the ability to finance, construct and complete the Project and Public Improvements (as defined below), and to otherwise accomplish all of the Obligations of Property Owner.
- C. WHEREAS**, this Agreement 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.
- D. WHEREAS**, the City has received and is expected to receive additional Coronavirus State and Local Fiscal Recovery Funds from the America Rescue Plan Act and has money available in the City's Affordable Housing Fund provided by City contributions and by developers to the City for the construction of affordable housing. The City intends to use these funding sources for the development of this Project.
- E. WHEREAS**, this Agreement is entered into by authority of A.R.S. § 9-500.05, the City finding that the consideration and commitments herein from and to the Property Owner and the City are proportionate based on other consideration provided hereby, including without limitation the benefits to the community resulting from this Agreement.
- F. 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, generally enhancing the economic welfare of the city's citizens and by constructing public infrastructure improvements; that the City's participation in this Agreement will in fact serve legitimate economic development purposes as authorized by A.R.S. §9-500.11; and that the City's participation authorized by this Agreement is not grossly disproportionate to the benefits the City will receive during the Agreement and that in the absence of the City's participation the affordable housing Project would not be constructed.

- G. WHEREAS**, City is entering into this Agreement to implement and to facilitate development of the Property consistent with the policies of the City. This Agreement is consistent with the Development Incentives and Guidelines for Affordable Housing ("DIGAH"), and the City's Community Plan in effect on the date of this Agreement. The Project, as shown in the Site Plan, meets DIGAH requirements and is eligible for a density bonus.
- H. WHEREAS**, Property Owner agrees to restrict 100% of the Project units for affordable housing for 50 years commencing on the date the Project receives a certificate of occupancy as detailed below.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and 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 Property Development. The Property Owner shall purchase the Property and construct or cause to be constructed the Project, a multi-family residential community with no less than 46 units consisting of one-bedroom and two-bedroom units in general conformance to the Site Plan attached hereto as Exhibit "B" and incorporated herein by this reference, subject to conditions, review and approval of City Community Development staff. One-bedroom units shall not be less than 600 livable square feet and two-bedroom units shall not be less than 900 livable square feet. The Property Owner shall be responsible for the planning, permitting, financing, management and development of the Project and Property in accordance with local, state and federal requirements. The Property Owner shall be responsible for arranging and securing construction and permanent financing for the Project. The Property Owner shall require the contractor to obtain a completion and payment bond in the full amount of the improvements in addition to general liability and course of construction insurance of reasonable limits to protect the interests of the Property. Property Owner warrants that it has adequate financing or financial resources to complete the Project and comply with all of its obligations as contained herein.
- 1.2 Condominium Conversion; Short-Term Rental Use Prohibition. The Property shall not be used for short-term rentals (rental terms of less than 30 days) or conversion to a condominium or otherwise divide the Property during the term of this Agreement.

1.3 Affordable Housing and Rents.

1.3.1 The Property Owner shall cause the Property to be leased exclusively to Income Qualified Tenants (“Income Qualified Tenants”) during the Term of this Agreement. Income Qualified Tenants shall mean a household whose annual income meets the requirements of one of the following categories: 80, 90 or 100 percent of the Area Median Income (“AMI”) as determined by US Department of Housing and Urban Development (“HUD”) for the most current year available, calculated as a weighted average of Yavapai and Coconino Counties (“Weighted Average”). The income of each tenant must be determined prior to a perspective tenant being approved for occupancy and prior to any lease renewal.

1.3.2 A minimum of 14, 16, and 16 units shall be rented to Income Qualified Tenants at income levels, at the time of the initial lease, of no greater than the following ranges: for the 80% AMI category, 80-85%, for the 90% AMI category, 86%-95% and for the 100% AMI category 96-105% AMI, respectively using the Weighted Average. Each housing unit in the Property shall be subject to an annual rental change equal to the greater of 1) the increase in the Consumer Price Index or 2) the amount equal to Income Qualified Tenant’s income multiplied by 30% of said tenant’s current income at the time of lease renewal, less a utility allocation. In no case shall any lease rental rate be less than the previous year monthly rate. Utility allocation amounts are subject to annual adjustment. As an example, using the HUD published AMI data for 2021 monthly rents would be as follows which includes a utility allocation for the 80 and 90 percent AMI rents in the amount of \$100 and \$120 monthly for one- and two-bedroom units respectively:

AMI LEVEL	<u>80 %</u>	<u>90%</u>	<u>100%</u>
Unit Type - One Bedroom	\$ 990.30	\$1,126.09	\$1,362.88
Unit Type - Two Bedroom	\$1,107.09	\$1,259.89	\$1,533.70

1.3.3 Rental Rates shall be adjusted if necessary, to maintain an annual debt service coverage ratio of no less than 1.18 or such level as required by a mortgage lender or HUD.

1.3.4 Land Use Restriction Agreement. Property Owner shall cause to be recorded promptly after purchasing the Property, a deed restriction, limiting the rental of Property units to Income Qualified Tenants in substantially the form provided in Exhibit “D” Land Use Restriction Agreement (“LURA”) which will be effective only during the term of this Agreement. The LURA shall also include a prohibition on any of the Property being used as a short-term rental (rental terms less than 30 days) or converted to condominiums during the 50-year term. The LURA shall automatically expire and terminate 50 years after the issuance of the certificate of occupancy for the Project.

1.4 Tenant Qualification for Occupancy.

1.4.1 Unless otherwise required by this Agreement, when determining Income Qualified Tenant qualifications, Property Owner shall comply with the Internal Revenue

Code Section 42 Low-Income Housing Tax Credit Housing requirements in effect as of the Effective Date. Nothing in this Agreement shall be construed that any prospective tenant, Employed Resident, or an Income Qualified Tenant shall automatically qualify for occupancy in the Project. Tenancy shall be subject to certain background history, financial qualifications and occupancy standards as may be designated from time to time by the Property Owner.

- 1.4.2 Leasing for the Property shall be prioritized for an Employed Resident. Employed Resident means a person who works full-time (at least 30 hours per week) within the City of Sedona. An Employed Resident that provides proof of employment and meets tenant qualifications shall be given priority of tenancy in the Project over a non-Employed Resident unless the Property occupancy rate is less than 95% for more than two weeks in which case rental of Property units shall be prioritized by persons working full-time within 15 driving miles of the City limits. Lease renewals shall be prioritized for tenants that are an Employed Resident.
- 1.4.3 Any Income Qualified Tenant exceeding 115% of the Weighted Average AMI shall not be eligible for lease renewal. To the extent feasible, when the household income of an Income Qualified Tenant in a unit designated for 80% or 90% Weighted Average AMI increases above the thresholds outlined in 1.3.2, upon renewal of the lease, the unit and the Income Qualified Tenant shall count against the appropriate 90% and 100% Weighted Average AMI category, thereby opening a unit for a new, lower Weighted Average AMI tenant.
- 1.4.4 Property Owner shall not discriminate against any applicant because of gender identity, sexual orientation, race, color, gender, religion, national origin, familial status, age, disability or status as a U.S. military veteran.
- 1.5 Lease Term. Property Owner shall not lease any dwelling unit in the Project for an initial lease term of less than 180 days unless the Property occupancy rate is less than 95% in which case the 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. Lease terms shall not exceed 365 days. 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 the balance of the existing lease term.
- 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 Construction Period. Construction of the Project shall commence at the time of the funding of the Bank Loan (as defined below) and Property Owner having obtained all permits necessary to commence construction of the Project. The term of construction is anticipated for a period of 14 months. The construction contract shall include language, acceptable to HUD, that provides for liquid damages payable to the Property Owner to offset and delays in the construction period attributed to the general contractor. Completion of Construction means the first date on which the certificate of occupancy has been issued by the City for the improvements included in the Project.
- 1.8 Annual Audit and Report. The Property Owner shall provide a copy of the annual audit as

required by HUD to the City for the previous 12 months of operation of the Project. Additionally, the Property Owner 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 Property Owner shall provide a copy of any required audit by HUD at the Completion of Construction. The books and records of the Project shall be made available to the City upon written request to the Property Owner with fourteen (14) day advance notice.

- 1.9 Public Improvements. Property Owner, at its sole expense, shall design and construct or caused to be constructed roughly 300' of curb, gutter and sidewalk on the western border of the property along Sunset Drive (the "Public Improvements") in accordance with all applicable City Code and Land Development Code and dedicate the curb, gutter and sidewalk to the City. The exact location and specifications of the Public Improvements shall be determined by the City. The value of the Public Improvements is estimated to be \$45,000. All landscaping and irrigation in adjacent right-of-way areas along Sunset Drive shall be operated and maintained by the Property Owner.
- 1.10 Property Owner Representations. Property Owner represents and warrants that:
 - 1.10.1 Property Owner has the full right, power and authority to enter into and perform this Agreement and each of the obligations and undertakings of Property Owner under this Agreement, and the execution, delivery and performance of this Agreement by Property Owner has been duly authorized and agreed to in compliance with the Property Owner's organizational documents.
 - 1.10.2 As of the date of this Agreement, Property Owner knows of no litigation, proceeding or investigation pending or threatened against or affecting Property Owner contesting the validity or enforceability of this Agreement or Property Owner's performance under this Agreement.
 - 1.10.3 The execution, delivery and performance of this Agreement by Property Owner is not prohibited by, and does not conflict with, Property Owner's organizational documents or any other agreements, instruments, judgments or decrees to which Property Owner is a party or to which Property Owner is otherwise subject.
 - 1.10.4 Property Owner has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, consultants, engineers and attorneys and any licensed real estate broker retained by the Property Owner. Property Owner has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.
- 1.11 Development Standards. The development of the Property and construction of the Project will be governed by the Sedona City Code, Sedona Land Development Code, ordinances, regulations, rules, guidelines, engineering standards, Building Code, Fire Code and policies controlling permitted uses of the Property. Design review standards, the density and intensity of uses, parking spaces requirements, and the maximum and minimum height and size of the buildings in existence as of the Effective Date of this Agreement will apply. Property Owner will comply with all applicable Federal, State, County and City

laws, regulations and policies.

- 1.12 Materials Management. Property Owner agrees to incorporate infrastructure to support recycling activities on-site, including the provision of recycling collection locations near those dedicated for trash.

2. OBLIGATIONS OF CITY

- 2.1 City Plan and Review Fees. City and Property Owner agree that the development of the Project will increase the supply of affordable housing in Sedona for low- and moderate-income persons. For the purposes of maximizing the number of affordable housing units, the City shall waive any plan review and permit fees. Development Impact Fees and Wastewater Capacity Fees shall not be waived. Property Owner shall pay the Development Impact Fees and Wastewater Capacity Fees to the City on the earlier to occur of the release of HUD escrow accounts or 12 months following issuance of certificate of occupancy, whichever occurs first.
- 2.2 City of Sedona Loan. The City shall provide the Property Owner, to purchase the Property and construct the Project, with a loan in an amount not to exceed \$4,200,000, inclusive of wastewater capacity and Development Impact Fees ("City Loan"). The City Loan shall be non-recourse to the Property Owner upon Completion of Construction. 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 Property Owner of even date herewith, substantially in the forms attached hereto as Exhibit "E" and incorporated herein by this reference. The Parties agree to amend the final amount of the Promissory Note in the event the City Loan is in an amount different than \$4,200,000. The term of the City Loan shall be 50 years unless mutually extended by the Property Owner and City.
 - 2.2.1 City Loan Advances. Prior to disbursement of any of the City Loan, Property Owner will execute the Deed of Trust, Promissory Note and LURA. The City Loan shall be advanced according to the preliminary project budget ("Preliminary Budget") attached hereto as Exhibit "C" and incorporated herein by this reference. The Preliminary Budget shall be regularly updated and revised as actual project costs are expended to create a final budget for the development of the Project. The Property Owner shall submit monthly expense draws according to the Preliminary Budget and the City shall advance funds in accordance with actual expenses, however, in no event to exceed the City Loan amount. The Property Owner shall provide a monthly accounting of actual Project costs to the City on or before the 15th of each month until substantial completion of the Project. Any unused contingency escrow accounts shall be returned to the City when released by the lender and/or HUD and shall reduce the City Loan amount.
 - 2.2.2 City Loan Repayment Terms. The City Loan shall be evidenced by this Agreement and the Promissory Note and secured by the Deed of Trust. Property Owner hereby unconditionally acknowledges and promises to repay the City Loan as follows: Property Owner shall pay to City 120 consecutive monthly, equal principal installments on the City Loan, commencing upon the repayment of the Bank Loan or 40 years after receipt of a certificate of occupancy for the Project or 42 years

after the Effective Date of this Agreement, whichever occurs first. The City Loan is absolutely due and payable 50 years after receipt of a certificate of occupancy for the Project or 52 years after the Effective Date of this Agreement, whichever occurs first ("Maturity Date"), at which time Property Owner shall pay City the entire outstanding principal amount of the City Loan together with any outstanding 1% property cash flow principal payments pursuant to Section 2.3. At the City's discretion, repayment of any portions of the City Loan funded by Coronavirus State and Local Fiscal Recovery Funds from the America Rescue Plan Act, if any, may not need to be repaid if not allowed by the U.S. Department of the Treasury regulations and Final Rule.

2.2.3 Rights of Lenders. City is aware that Property Owner will obtain financing for acquisition, development and/or construction of the Property and Project from another lender in the approximate amount of \$8,400,000 and City agrees to a subordinate lien position to the HUD backed mortgage construction and permanent loan (the "Bank Loan"). The City Loan shall have senior priority, in the first position, until such time as Property Owner enters into the Bank Loan. City will not be required to sign any subordination agreement prior to close of the Bank Loan and no subordination agreement shall take effect until Property Owner closes on the Bank Loan. In no event will the City Loan be made further subordinate to any other loans and the City shall remain lender in the second position. The City shall cooperate with Property Owner as may be necessary in connection with the Bank Loan and all other matters relating to the development of the Project.

2.3 Property Cash Flow. Beginning on the one-year anniversary of the issuance of the certificate of occupancy for the Property and terminating on the anniversary after the full repayment of the City Loan, Property Owner shall annually pay the following amounts:

(1) First, the Property Owner shall first receive an annual management fee equal to 5 percent (5.0%) of the gross revenue generated by the Project.

(2) Second, the City shall then receive an amount equal to 1 percent (1%) of the outstanding City Loan amount annually from net operating cash flow. If the net operating cash flow does not provide sufficient cash flow for the 1 percent payment to the City in any given year, any unpaid amount shall be cumulative from year to year and Property Owner shall pay the City the total amount cumulated prior to the Maturity Date or termination of this Agreement. Payments per this paragraph shall not decrease the principal amount of the City Loan.

(3) Third, remaining annual net operating cash flow shall be distributed 50 percent (50%) to the City, which shall decrease the principal amount of the City Loan and 50 percent (50%) to the Property Owner.

3. TERM; DEFAULT

3.1 Term. Notwithstanding anything in this Agreement to the contrary, the term of this Agreement ("**Term**") shall begin on the Effective Date and shall terminate fifty (50) years from the issuance of the certificate of occupancy for the Project unless this Agreement is terminated sooner pursuant to any earlier termination provision of this Agreement.

- 3.2 Survival of Certain Provisions. Notwithstanding the termination of this Agreement as set forth in Section 3.1, the indemnity and hold harmless obligations as found in Section 4.9 shall survive the expiration of this Agreement for a period of one year.
- 3.3 Events Constituting Default. A party shall be in default under this Agreement if it fails to perform, in material respect, any covenants made by it or obligations assumed by it under this Agreement, which failure adversely affects the other party's interest under this Agreement, including failure to construct the Project, and in such an event, each party shall be entitled to all available legal and equitable remedies, including, but not limited to, the right of specific performance, including all costs of enforcement of this Agreement, with reasonable attorneys' fees paid to the prevailing party.
- 3.4 City's Remedies; Right to Foreclose. If Property Owner is in breach under this Agreement by failing to develop the Property or construct the Project within 24 months from the Effective Date, and Property Owner thereafter fails to cure such breach within 90 days after written notice from the City, the City shall have the right to foreclose upon the Deed of Trust.

4. MISCELLANEOUS PROVISIONS

- 4.1 Entire Agreement; Assignment. This Agreement constitutes the entire agreement and understanding of the parties hereto and supersedes all offers, negotiations, and other agreements of any kind. This Agreement may be amended only in writing and signed by both parties. This Agreement and all the covenants, terms and provisions contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated by any party, without the prior written consent of the other party. Such consent may not be unreasonably withheld or delayed. This Agreement is not intended to confer any rights or benefits to any individual or entity other than to the City and to Property Owner, nor shall anything contained herein create any partnership, joint venture or similar arrangement between the Property Owner and the City.
- 4.2 Arizona Law; Venue. This Agreement is and shall constitute a contract under and is to be construed in accordance with the laws of the State of Arizona. Any action brought to interpret, enforce or construe any provision of this Agreement must be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa. The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section.
- 4.3 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall have the force and effect of an original, and all of which shall constitute but one document.
- 4.4 Notices. All notices required to be given under this Agreement shall be deemed given upon the earlier of actual receipt or two (2) days after being mailed by registered or certified mail, return receipt requested, addressed as follows:

Development Agreement between
City of Sedona and Sunset Lofts, LLC
Page 9

If to City: City Manager
102 Roadrunner Drive
Sedona, AZ 86336

With a copy to: City Attorney
102 Roadrunner Drive
Sedona, Arizona 86336

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

- 4.5 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, Zoning 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.
- 4.6 Time of Essence. Time is of the essence and a material provision of this Agreement.
- 4.7 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.
- 4.8 Conflicts of Interest. This Agreement is subject to the provisions of A.R.S. § 38-511, relating to conflicts of interest.
- 4.9 Indemnification. Property Owner, during the term of this Agreement, agrees to indemnify, hold, protect and save harmless the City and any and all of its officers, agents, and employees from and against any and all actions, audits, proceedings, claims and demands, loss liens, costs expense and liability of any kind and nature whatsoever, for injury to or death of persons, or damage to property, imposed upon or sustained by Sedona, its officers, agents, or employees in and arising from or attributable to or caused directly or indirectly by the negligence, wrongful acts, omissions or from operations conducted by Property Owner, its officers, agents or employees or by any person or persons acting on behalf of Property Owner.
- 4.10 Insurance. Property Owner, at Property Owner's own expense, shall purchase and maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 general aggregate limit, Automobile Liability insurance with an individual single limit for bodily injury and property damage of no less than \$1,000,000, each occurrence, and Workers' Compensation insurance to cover obligations imposed by applicable federal and state statutes. All insurance required herein shall be maintained in full force and effect during the term of this agreement. The Property Owner's insurance shall be primary insurance as respects to City and any insurance maintained by City shall not contribute to it. The insurance policies required by this Agreement, except workers' compensation, shall name City as additional insureds. Insurance policies required by this Agreement, except workers' compensation, shall

- contain a waiver of transfer of rights of recovery (subrogation) against Sedona for any claims arising out of Property Owner's performance of this Agreement.
- 4.11 Exhibits. The Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes.
- 4.12 No Agency Created. Nothing contained in this Agreement creates any partnership, joint venture or agency relationship between the City and Property Owner. No term or provision of this Agreement is intended to be for the benefit of any person, firm, organization or corporation not a party hereto, and no other person, firm, organization or corporation may have any right or cause of action hereunder.
- 4.13 Recordation. Within ten (10) days after this Agreement has been executed by the Parties, Property Owner will cause this Agreement to be recorded in the Official Records of Yavapai County.
- 4.14 No Personal Liability. No former or current City Council member, official, representative, agent, attorney or employee of City will be personally liable to the Property Owner, or to any successor in interest, in the event of any Default or breach by City or for any amount which may become due to any of the other Parties or their successors, or with respect to any obligation of City under the terms of this Agreement.
- 4.15 WAIVER OF JURY TRIAL. THE CITY AND PROPERTY OWNER HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING, COUNTERCLAIM OR DEFENSE BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN ANY WAY CONNECTED TO THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO RELATING TO THIS AGREEMENT.
- 4.16 Force Majeure. In no event shall the Parties be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused by a Force Majeure. "Force Majeure" means and shall be limited to: an event which is beyond the reasonable complete control of a Party and which causes a delay or failure to perform obligations hereunder, including without limitation acts of God, earthquake, fire, explosion, war, civil insurrection, acts of the public enemy, acts of civil or military authority, sabotage, terrorism, floods, lightning, hurricanes, tornadoes, severe snow storms, major equipment failure, utility disruption, or pandemics.

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: 7-22-2021

ATTEST:

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

Date: 07/22/2021

APPROVED AS TO FORM:

By: *Kurt W. Christianson*
Kurt W. Christianson, City Attorney

Date: 7-14-21

PROPERTY OWNER:

Sunset Lofts, LLC, an Arizona limited
liability company

By: *M. Keith Holben*
M. Keith Holben, Manager

Date: 7-15-21

Exhibit "A"

PROPERTY

Exhibit A
Legal Description

The Land referred to herein below is situated in the County of Yavapai, State of Arizona, and is described as follows:

The Southwest quarter of the Southwest quarter of the Southwest quarter of the Southwest quarter of Section 12, Township 17 North, Range 5 East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona;

EXCEPTING therefrom any portion lying within Sunset Drive as set forth on map recorded in Book 12 of Maps, Page 34; and

EXCEPTING all uranium, thorium or any other materials which is or may be determined to be peculiarly essential to the production of fissionable materials whether or not of commercial value, as reserved in Patent from United States of America.

APN: 408-26-030C

Exhibit "B"

SITE PLAN

EXHIBIT B



DRAFT

ZONE: RM-3

MULTI-FAMILY DEVELOPMENT:

26 - 900 SF (2) TWO BEDROOM UNITS

20 - 600 SF (1) ONE BEDROOM UNITS

MAX BUILDING LOT COVERAGE = 40%, 43,560 SF

ACTUAL BUILDING LOT COVERAGE = 20,000 SF

MAX TOTAL LOT COVERAGE = 70%, 76,230 SF

ACTUAL LOT COVERAGE = +/- 60,000 SF

ALLOWABLE AREA (VB) = 21,000 SF

TOTAL PROVIDED AREA = +/- 20,000 SF

PARKING REQUIREMENTS: 71 PARKING SPACES

60 STANDARD SPACES

7 COMPACT SPACES

2 MOTORCYCLE SPACES

2 ADA PARKING SPACES

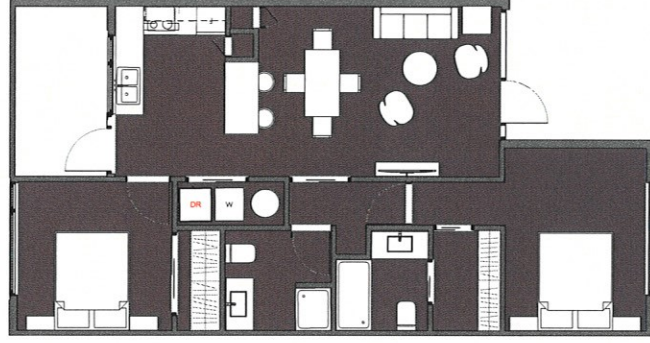
PARKING PROVIDED: 68 PARKING SPACES

56 STANDARDS SPACES

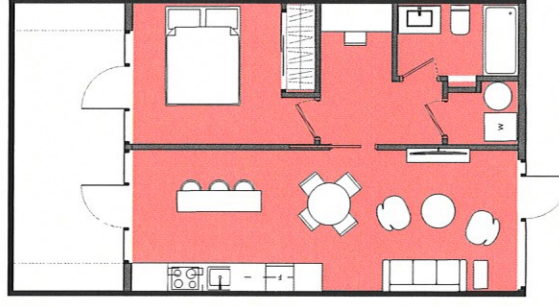
7 COMPACT SPACES

3 MOTORCYCLE SPACES

2 ADA SPACES



900 SQ. FT. TWO BEDROOM UNIT 1/4" = 1'-0"



600 SQ. FT. ONE BEDROOM UNIT 1/4" = 1'-0"

Exhibit "C"

PRELIMINARY BUDGET

SCHEDULE C
SEDONA LOFTS
PRELIMINARY PROJECT BUDGET

PROPERTY INFORMATION			
Property Address	220 Sunset Drive, Sedona, AZ 86336		
Project Type	Multi-family	No. of Units	46
LOAN SIZING CONSTRAINTS (preliminary)			
The mortgage loan will be the least of the following:			
85.00%	of Replacement Cost		\$10,507,800
1.18	Debt Service Coverage		\$8,397,500
270%	of Statutory Unit Limits		\$10,291,800
	Borrower Loan Request		\$9,000,000
Max. Loan Amount			\$8,397,500
LOAN STRUCTURE			
Mortgage Rate (anticipated)	3.00%		
Mortgage Insurance Premium (MIP)	0.25%		
Loan Term/Amortization	40		
DS Constraint	4.30%		
DS Constant w/MIP	4.55%		
Monthly Payment w/MIP	\$33,811.22		
Annual Payment w/MIP	\$381,734.65		
LOAN INFORMATION			
Loan to Mortgageable Cost	67.93%	DSCR	1.18
SOURCES AND USES			
FHA Mortgage (anticipated amount)			\$8,397,500
Loan-City of Sedona			\$4,200,000
Working Capital Escrow			\$335,900
Initial Operating Escrow			\$251,925
Sponsor Profit and Risk Allowance (non-cash)			\$145,160
Borrower Cash Needed to Balance Source			(\$30,501)
Total Sources			\$13,299,984
Total for all Improvements			\$9,322,406
Soft Costs			\$1,244,593
Property Acquisition			\$1,650,000
Sponsor Profit and Risk Allowance (non-cash)			\$145,160
Mortgageable Uses			\$12,362,159
Initial Operating Deficit			\$251,925
Working Capital			\$335,900
Other Non-Mortgageable Uses			\$350,000
Non-mortgageable Uses			\$937,825
Total Uses			\$13,299,984

SCHEDULE C
SUNSET LOFTS
PRELIMINARY PROJECT BUDGET (continued)

LAND IMPROVEMENTS			
1	Land Improvements-Site Retaining		\$242,000
2	Land Improvements-General		\$1,189,900
3	Total Land Improvements		\$1,431,900
STRUCTURES			
4	Main Buildings		\$5,867,525
5	Covered Parking		\$36,500
6	Total Structures		\$5,904,025
7	Subtotal		\$7,335,925
8	General Requirements		\$513,515
9	Subtotal		\$7,849,440
FEES			
10	Builder's General Overhead		\$156,989
11	Builder's Profit		\$313,978
12	Subtotal		\$8,320,406
13	Bond Premium		\$47,000
14	Other Fees (Sums Owner and Contractor Other Fees)		\$748,000
15	Estimated Total Cost of Construction		\$9,115,406
16	Architect's Fee - Design		\$165,600
17	Architect's Fee - Supervisory		\$41,400
18	Total for All Improvements		\$9,322,406
19	Cost per Gross Square Foot		207.16
20	Construction Time		14 Months
CHARGES AND FINANCING DURING CONSTRUCTION			
21	Interest-Construction Period		\$146,956
22	Sales Tax		\$580,607
23	Insurance-Construction Period		\$72,000
24	HUD/FHA Mtg Insurance Premium	0.50%	\$41,988
25	HUD/FHA Exam Fee	0.30%	\$25,193
26	HUD/FHA Inspection Fee	0.50%	\$41,988
27	Financing Fee	1.50%	\$125,963
28	Permanent Placement Fee	0.59%	\$49,400
	(Lender Legal, Proc. Fee, GNMA Fee)		
29	Title and Recording		\$30,000
30	Total Charges and Financing		\$1,114,093
LEGAL, ORGANIZATION AND AUDIT FEE			
31	Legal (Borrower Legal Only)		\$40,000
32	Organization (HUD 3rd Party Reports)		\$65,500
33	Cost Certification Audit Fee		\$25,000
34	Total Legal, Organization & Audit Fee		\$130,500
35	Sponsor Profit and Risk Allowance (non-cash)		\$145,159
36	Total Estimated Development Cost		\$10,712,159
37	Land Costs		\$1,650,000
38	Total Estimated Replacement Cost of Project		\$12,362,159
39	Average Cost per Living Unit		\$268,743

Exhibit "D"

LAND USE RESTRICTION AGREEMENT

WHEN RECORDED RETURN TO:

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

**LAND USE RESTRICTION AGREEMENT
Sunset Lofts, 220 Sunset Drive, Sedona, Arizona 86336**

This Land Use Restriction Agreement ("**LURA**") is made as of July 22, 2021, by and between **SUNSET LOFTS, LLC**, an Arizona limited liability company ("**Owner**") and the **CITY OF SEDONA**, an Arizona municipal corporation ("**City**").

RECITALS

A. Owner 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 220 Sunset 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 ("**Property**").

B. Pursuant to the Development Agreement ("**DA**") entered into by and between Owner and City on July 13, 2021, Owner shall construct 46 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 50 years from the issuance of the certificate of occupancy for the Property ("**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 Owner will be receiving a loan from the City the proceeds from which are to be used by Owner to construct the Affordable Units on the Property pursuant to the terms of the DA.

D. Owner's obligations under the Note and the DA are secured by a City of Sedona Affordable Housing Loan 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 DA, the Deed of Trust and the Note, the Owner and the City are executing and recording this LURA with respect to the Property.

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

(a) be occupied by households where at least one household member works full-time (at least 30-hours per week) within the City of Sedona (“Employed Resident”).

(b) be utilized as long-term rental housing units occupied by low-income and low-asset (For any assets above \$5,000, 2% of the assets shall be imputed as income) households who pay as a contribution toward rent (excluding any federal or state rental subsidy provided on behalf of the household), no more than thirty percent (30%) of the household's monthly Weighted Average AMI as determined by HUD (“Income Qualified Tenants”);

(c) have not less than 14 distinct Affordable Units occupied for low-income households and bearing rents not greater than thirty percent (30%) of the gross income of a household whose income equals eighty to eighty-five percent (80-85%) of the median income for the area, with adjustment for smaller and larger households. In determining the maximum monthly rent that may be charged for a unit that is subject to this limitation, the monthly allowance for any utilities or services (excluding telephone, internet or media) to be paid by tenant, must be subtracted;

(d) have not less than 16 distinct Affordable Units occupied for low-income households and bearing rents not greater than thirty percent (30%) of the gross income of a household whose income equals eighty-six to ninety-five percent (86-95%) of the median income for the area, with adjustment for smaller and larger households. In determining the maximum monthly rent that may be charged for a unit that is subject to this limitation, the monthly allowance for any utilities or services (excluding telephone, internet or media) to be paid by tenant, must be subtracted; and

(e) have not less than 16 distinct Affordable Units occupied for moderate-income households and bearing rents not greater than thirty percent (30%) of the gross income of a household whose income equals ninety-six to one hundred fifteen percent (96-115%) of the median income for the area, with adjustment for smaller and larger households.

(f) Not be used for short-term rentals (rentals of less than 30 days) or converted to a condominium or otherwise divided the Property.

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 Owner or Owner's agent and the tenant. Lease terms shall not exceed twelve (12) months.

(b) The form of lease to be utilized by Owner in renting any Affordable Unit in the Property to Income Qualified Tenants 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 Employed Resident certification, or any material misrepresentation made by such person with respect to the income, assets, or Employed Resident certification, 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 Income Qualified Tenants 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 both Employed Resident certification, unless the Property occupancy rate is less than 95%, and qualification for low-income.

4. Housing Maintenance Standards. Owner shall maintain Affordable Units in good condition, make all repairs in a timely fashion, and provide routine maintenance. The Owner 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. Owner's Obligations and Duties.

(a) Owner agrees to construct 46 Affordable Units consisting of one-bedroom and two-bedroom units. One-bedroom units shall not be less than 600 livable square feet and two-bedroom units shall not be less than 900 livable square feet.

(b) Owner 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 Owner or the Property to non-compliance with the requirements of the Development Agreement or this LURA. Moreover, Owner 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 Owner's obligations affecting the Property.

(c) Owner 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, Owner shall require each applicant for tenancy of an Affordable Unit to certify in writing to the Owner 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 Owner annually. In addition, Owner shall require each applicant for tenancy to provide whatever other information, documentation or certifications deemed necessary by the Owner and/or the City to verify the tenant's eligibility for occupancy of a low-income unit.

(e) During the term of this LURA, Owner 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, Owner 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 DA.

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

(a) Upon execution and delivery by Owner, Owner 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, Owner 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) Owner intends, declares and covenants, on behalf of itself and all Subsequent Owners 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 Owners and operators of the Property, (ii) are not merely personal covenants of Owner, and (iii) shall bind Owner and all Subsequent Owners during the term of this LURA. Owner 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 Owner'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 DA. If the City demonstrates a satisfactory basis for same, the City may charge Owner a reasonable fee for compliance monitoring.

7. Amendments. No amendment to this LURA may be made without the prior written approval of Owner and the City. Owner 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 Owner:

Sunset Lofts, LLC
15010 N. 78th Way, Suite 109
Scottsdale, AZ 85260

To the City:

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

Owner 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. Release. Upon the expiration of the term hereof, the City will promptly execute and deliver to Owner, a release of this LURA duly executed and in recordable form for recording in the Yavapai County Recorder's Office.

12. 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.

13. 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: Sandra J. Moriarty
Sandra J. Moriarty, Mayor

Date: 1-22-2021

ATTEST:

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

APPROVED AS TO FORM:

By: Kurt W. Christianson
Kurt W. Christianson, City Attorney

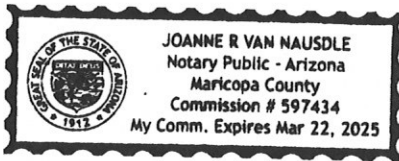
PROPERTY OWNER:
Sunset Lofts, LLC, an Arizona limited liability company

By: M. Keith Holben
M. Keith Holben, Manager

Date: 7.15.21

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 15th day of July, 2021 by M. Keith Holben, the Manager of Sunset Lofts, LLC, an Arizona limited liability company, on behalf of the company.



Joanne R. Van Nausdle
Notary Public

My commission Expires: 3-22-2025

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:

The Southwest quarter of the Southwest quarter of the Southwest quarter of the Southwest quarter of Section 12, Township 17 North, Range 5 East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona;
EXCEPTING therefrom any portion lying within Sunset Drive as set forth on map recorded in Book 12 of Maps, Page 34; and
EXCEPTING all uranium, thorium or any other materials which is or may be determined to be peculiarly essential to the production of fissionable materials whether or not of commercial value, as reserved in Patent from United States of America.

APN: 408-26-030C

Exhibit "E"

PROMISSORY NOTE & DEED OF TRUST

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**

\$4,200,000

July 22, 2021
Sedona, Arizona

FOR VALUE RECEIVED, Sunset Lofts, LLC, an Arizona 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 \$4,200,000.

1. The sums advanced under this City of Sedona Affordable Housing Loan Secured Promissory Note (the “Note”) shall be used to purchase the real property located at 220 Sunset Drive, Sedona, Arizona, as legally described in Exhibit 1 attached to this Note and incorporated herein by this reference (the “Property”) and to construct 46 affordable housing units pursuant to the terms and conditions of the Development Agreement between Maker and Payee dated the 22nd day of July, 2021 (the “DA”). Payment of this Note will be secured by a City of Sedona Affordable Housing Deed of Trust and Assignment of Rents (the “Deed of Trust”) from the Maker to Payee to be recorded against the Property.
2. The term of this Note shall be 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, or in part, without penalty, discount, or premium.
4. 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 Restriction Agreement affecting the Property, dated on or about the date of this Note.
5. 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.
6. 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

4Q2455702

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 6, performance of a cure by an entity or partner of Maker shall have the same effect as would like performance by Maker.

7. 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.
8. 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.
9. 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.
10. 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.
11. This Note shall be binding upon Maker, its successors and assigns.
12. This Note shall be construed in accordance with and be governed by the laws of the State of Arizona.
13. If any provision of this Note shall be invalid or unenforceable, the validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.
14. This Note shall be secured by the Deed of Trust encumbering the Property as set forth in paragraph 1 above.

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

MAKER:

By: Sunset Lofts, LLC, an Arizona limited liability company

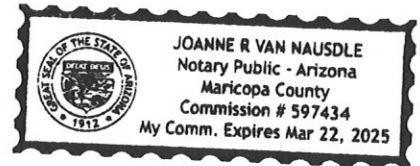
By: M. Keith Holben
M. Keith Holben, Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 15th day of July, 2021, before me, the undersigned Notary Public, personally appeared M. Keith Holben, who acknowledged himself/herself to be the Manager of Sunset Lofts, 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.

Joanne R. Van Nausdle
Notary Public



My Commission Expires: 3-22-2025

EXHIBIT 1

Legal Description of Property

LEGAL DESCRIPTION

The Land referred to herein below is situated in the County of Yavapai, State of Arizona, and is described as follows:

The Southwest quarter of the Southwest quarter of the Southwest quarter of the Southwest quarter of Section 12, Township 17 North, Range 5 East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona.

EXCEPTING therefrom any portion lying within Sunset Drive as set forth on map recorded in Book 12 of Maps, Page 34; and

EXCEPTING all uranium, thorium or any other materials which is or may be determined to be peculiarly essential to the production of fissionable materials whether or not of commercial value, as reserved in Patent from United States of America.

APN: 408-26-030C

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
DEED OF TRUST AND ASSIGNMENT OF RENTS**

DATE: July 22, 2021

PROPERTY ADDRESS: 220 Sunset Drive, Sedona, Arizona 86336

TRUSTOR: Sunset Lofts, LLC, an Arizona limited liability company

TRUSTOR'S MAILING ADDRESS: 15010 N. 78th Way, Suite 109, Scottsdale, Arizona
85260

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

The Land referred to herein below is situated in the County of Yavapai, State of
Arizona, and is described as follows:

The Southwest quarter of the Southwest quarter of the Southwest quarter of the
Southwest quarter of Section 12, Township 17 North, Range 5 East of the Gila and Salt
River Base and Meridian, Yavapai County, Arizona.

EXCEPTING therefrom any portion lying within Sunset Drive as set forth on map
recorded in Book 12 of Maps, Page 34; and

EXCEPTING all uranium, thorium or any other materials which is or may be
determined to be peculiarly essential to the production of fissionable materials whether
or not of commercial value, as reserved in Patent from United States of America.

APN: 408-26-030C

This City of Sedona Affordable Housing Loan 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, the above-described real property and 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");

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 City of Sedona Housing Loan Secured Promissory Note of even date herewith, and any extension or renewal thereof, in the principal sum of \$ 4,200,000 executed by Trustor in favor of Beneficiary ("Note").

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 Development Agreement between the City of Sedona and Sunset Lofts, LLC, dated as of the 22ND day of July, 2021 and recorded on the 22ND day of JULY, 2021 as Yavapai County Recorder instrument number 2021-0052673 AG ("Development Agreement"), including Trustor's obligations under the Development Agreement to construct the Project (as defined in the Development Agreement) pursuant to the terms of the Development Agreement.

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 fire 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.

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 or 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; c) 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. 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.

11. 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.

12. 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.

13. 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. § 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.

14. 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.

15. 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.

16. 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.

17. Time is of the essence of this Deed of Trust and each and every provision hereof.

18. 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. §33-809.A in the county recorder's office of the county where the property encumbered hereby is located, indicating a different address.

19. 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.

TRUSTOR:

Sedona Lofts, LLC, an Arizona limited liability company

By: *MKH*

Title: Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 15th day of July, 2021, before me, the undersigned Notary Public, personally appeared M. Keith Holben, who acknowledged himself/herself to be the Manager of Sunset Lofts, LLC, 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.

Joanne R. Van Nausdlee
Notary Public

My Commission Expires: 3-22-2025

