

RESOLUTION NO. 2023-10
**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SEDONA,
ARIZONA, APPROVING AN OPTION AGREEMENT WITH THE VILLAS ON SHELBY,
LLC FOR THE OPTION TO LEASE 2250 SHELBY DRIVE TO CONSTRUCT
AFFORDABLE APARTMENTS AND APPROVING A \$300,000 LOAN TO THE
PROJECT.**

WHEREAS, the City of Sedona wishes to encourage development and maintenance of affordable housing in the City; and

WHEREAS, Section 42 of the Internal Revenue Code provides the private market with an incentive to invest in affordable rental housing called the LIHTC Program; and

WHEREAS, the Sedona City Council by Resolution No. 2012-21 dated October 23, 2012, designated a Housing Development Area that includes the 2250 Shelby Drive; and

WHEREAS, The Villas on Shelby, LLC, intends to apply for the 2023 LIHTC allocation to construct affordable apartments on 2250 Shelby Drive; and

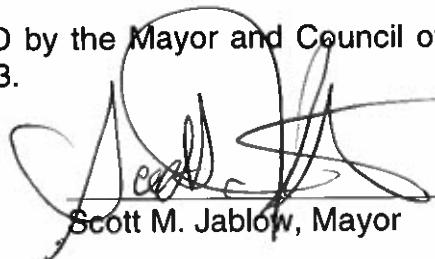
WHEREAS, the City of Sedona desires to lease 2250 Shelby Drive to The Villas on Shelby, LLC for the construction of affordable apartments.

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 the Option Agreement with The Villas on Shelby, LLC and approve a \$300,000 loan to the Project contingent upon The Villas on Shelby, LLC being awarded the LIHTC allocation and the execution of a mutually acceptable land lease agreement for the Property by December 1, 2023.

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 28th day of March, 2023.



Scott M. Jablow, Mayor

ATTEST:



JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:

A handwritten signature in blue ink, appearing to be 'Kurt W. Christianson', written over a horizontal line.

Kurt W. Christianson, City Attorney

OPTION AGREEMENT

This option agreement (the "Agreement") is entered into this 28 day of March, 2023, by and between City of Sedona, an Arizona municipal corporation ("Optionor") and The Villas on Shelby, LLC, an Ohio limited liability company ("Optionee").

RECITALS:

- A. Optionor is the owner certain real property located in Sedona, Yavapai County, Arizona, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (such parcel hereinafter referred to as the "Option Property").
- B. Optionor desires to lease to Optionee and Optionee desires to lease from Optionee the Option Property for the purpose of developing and operating an affordable housing apartment project on the Option Property.
- C. Optionor has agreed to grant Optionee the option to lease the Option Property on the terms and conditions hereinafter set forth.

Now, therefore, in consideration of the foregoing and the mutual promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both parties, the parties agree as follows:

AGREEMENTS:

1. **Grant of Option.** In consideration of the payment of One Hundred Dollars (\$100), Optionor hereby grants Optionee the exclusive option to lease the Option Property on the terms and conditions hereinafter described and upon execution of a mutually acceptable lease agreement. If Optionor satisfies the conditions imposed upon Optionor by this Option Agreement and Optionee does not exercise this option, the payment made pursuant to this paragraph shall be retained by Optionor, free and clear of all claims by Optionee.
2. **Method of Exercise of Option.** Optionee may exercise its option to lease the Option Property, at any time after the date hereof and prior to the expiration of the Term (as hereinafter defined), by written notice to Optionor. The date that notice is given shall be referred to in the Agreement as the "Option Exercise Date."
3. **Rent and Terms of Lease.** The rent and terms of the lease shall be substantially as set forth in Exhibit "B" attached hereto and incorporated herein by this reference. If Optionee exercises its option to lease the Option Property, the lease provides that Optionee will pay Optionor the amount of \$50,000 at the

effective date of the lease and will pay annual base rent for the Option Property of \$1,200 for the term of the lease.

4. **Term of Option.** Except to the extent previously exercised or unless extended in writing by mutual agreement of the parties, the option granted hereunder shall expire upon the earlier of the execution of a mutually acceptable lease agreement for the Option Property or December 1, 2023.

5. **Notices.** All notices required or permitted to be given hereunder shall be in writing and shall become effective upon personal service or seventy-two (72) hours after being deposited in the United States mail, certified or registered mail, postage prepaid and addressed as shown below or to such other address as the parties may, from time to time, designate in writing.

Optionor: City of Sedona
 City Manager
 102 Roadrunner Drive
 Sedona, AZ 86336

Optionee: The Villas on Shelby, LLC
 30 S. Oak Street
 London, OH 43140

6. **Time.** Time is of the essence for all periods specified in this Agreement.

7. **Attorneys' Fees.** In the event of any litigation or other proceeding concerning the Option Agreement, the prevailing party shall be entitled to recover its costs, reasonable attorneys' fees, and other reasonable expenses.

8. **Successors.** This Agreement will run with the land and be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. No assignment hereunder will be valid without the prior written consent of the other party hereto, which consent will not be unreasonably withheld or delayed, provided, however, that Optionor consents to the assignment of this Option to The Villas on Shelby, LLC without its prior written consent.

9. **Additional Documents.** Optionor and Optionee shall each execute and deliver any and all additional documents that may be reasonably requested by the other party in order to document and perform properly under this Agreement.

10. **Interpretation.** This Agreement and the rights, duties and obligations of the parties hereto will be governed by and construed in accordance with the laws of the State of Arizona. This Agreement has been reached by negotiation between the parties and will therefore not be construed against the drafter of this Agreement.

11. Brokers. The parties each warrant and represent that they have not taken and will not take any action which would cause a broker's or finder's fee to be payable on any of the transactions described herein. Each party shall indemnify and hold the other harmless for, from and against any breach of this paragraph.

12. Property Ownership. Optionor represents that it did not acquire ownership of the Option Property from Optionee or any affiliate of Optionee.


13. Counterparts. This Agreement may be executed in one or more counterparts, each of which will constitute an original and all of which will constitute one and the same instrument.

14. Memorandum of Option. Simultaneously with the execution of this Agreement, the parties will execute a Memorandum of Option in the form attached hereto as Exhibit C. Neither party shall record this Agreement, and any recordation will be limited to the memorandum described above.

In witness whereof, the parties have executed this Agreement as of the date first above written.


OPTIONOR:

City of Sedona


By: Scott Jablow
Its: Mayor

OPTIONEE:

The Villas on Shelby, LLC

By: 
Its: Managing Member
Matthew A. Shoemaker

**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:

PARCEL 1:

Lot 1, AAA INDUSTRIAL PARK, according to the plat of record in Book 20 of Maps, page 18, records of Yavapai County, Arizona.

EXCEPT that portion described as follows:

A parcel of land lying within a portion of Section 14, Township 17 North, Range 5 East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

(The Basis of Bearings for this description is the City of Sedona Control Survey as stated on the Record of Survey recorded in Book 193 of Land Surveys, Page 47, on file in the office of the Yavapai County Recorder, Yavapai County, Arizona.)

COMMENCING at the East quarter corner of Section 14, from which point the Northeast Corner of said Section 14 bears North 00° 03' 03" East, a distance of 2,547.64 feet;

Thence South 89° 26' 08" West, along the Northerly line of AAA Industrial Park as recorded in Book 20 of Maps and Plats, page 18, Yavapai County Recorder's Office, a distance of 1,323.00 feet to the Northwest corner of the North 1/2 of the Northeast 1/4 of the Southeast 1/4, said Section 14;

Thence continuing South 89° 26' 08" West a distance of 82.77 feet to the Northwest corner of Small Tracts Act Survey AZ No. 42 as recorded in Book 16 of Land Surveys, page 78, Yavapai County Recorder's Office;

Thence South 00° 02' 23" East, a distance of 445.81 feet;

Thence North 41° 01' 02" East, a distance of 159.07 feet;

Thence North 32° 10' 57" East, a distance of 136.11 feet to a point in the Southern boundary line of Lot 1 of AAA Industrial Park as recorded in Book 20 of Maps and Plats, page 18, Yavapai County Recorder's Office and the TRUE POINT OF BEGINNING;

Thence North 51° 04' 59" West, a distance of 30.77 feet;

Thence North 89° 14' 01" East, a distance of 113.89 feet;

Thence South 32° 10' 57" West, a distance of 73.22 feet;

Thence North 51° 04' 59" West, a distance of 65.45 feet to the TRUE POINT OF BEGINNING.

**EXHIBIT A
(Continued)**

PARCEL 2:

A parcel of land lying within a portion of Section 14, Township 17 North, Range 5 East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

(The Basis of Bearings for this description is the City of Sedona Control survey as stated on the Record of Survey recorded in Book 193 of Land Surveys, page 47, on file in the office of the Yavapai County Recorder Yavapai County, Arizona.)

COMMENCING at the East quarter corner of Section 14, from which point the Northeast Corner of said Section 14 bears North 00° 03' 03" East, a distance of 2,547.64 feet;

Thence South 89° 26' 08" West, along the Northerly line of AAA Industrial Park as recorded in Book 20 of Maps and Plats, page 18, Yavapai County Recorder's Office, a distance of 1,323.00 feet to the Northwest corner of the North 1/2 of the Northeast 1/4 of the Southeast 1/4, said Section 14;

Thence continuing South 89° 26' 08" West, a distance of 82.77 feet to the Northwest corner of Small Tracts Act Survey AZ No. 42 as recorded in Book 16 of Land Surveys, page 78, Yavapai County Recorder's Office;

Thence South 00° 02' 23" East, a distance of 445.81 feet;

Thence North 41° 01' 02" East, a distance of 159.07 feet;

Thence North 32° 10' 57" East, a distance of 136.11 feet;

Thence North 51° 04' 59" West, a distance of 30.77 feet;

Thence North 89° 14' 01" East, a distance of 107.16 feet to the TRUE POINT OF BEGINNING;

Thence North 20° 02' 58" East, a distance of 178.44 feet to a point in the West boundary line of Lot 1 of AAA Industrial Park as recorded in Book 20 of Maps and Plats, page 18, Yavapai County Recorder's Office;

Thence South 00° 59' 59" East, a distance of 166.80 feet;

Thence South 89° 14' 01" West, a distance of 64.09 feet to the TRUE POINT OF BEGINNING.

Exhibit B

Form of Lease Agreement

CITY OF SEDONA, ARIZONA
LAND LEASE AGREEMENT -
2250 SHELBY ROAD FOR THE CONSTRUCTION OF AFFORDABLE APARTMENTS
(THE VILLAS ON SHELBY, LLC)

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

LAND LEASE AGREEMENT

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

RECITALS

WHEREAS, the City is the owner of the vacant land located at 2250 Shelby Road, Yavapai County APN 408-28-103C, containing approximately 1.13 acres and being more particularly described on **Exhibit A** attached to this Lease (the "Property").

WHEREAS, Lessee desires to lease the Property on which to construct an affordable, multi-family, rental housing project comprised of 30 residential rental units and being more particularly described in **Exhibit B** attached to this Lease (the "Project");

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

WHEREAS, The Parties acknowledge that the Project qualifies as an economic development activity; that the Project will assist in the creation and retention of jobs and will otherwise improve and enhance the economic welfare of the residents of the City by increasing access to affordable housing, stimulating further economic development in the City, generally enhancing the economic welfare of the city's citizens and by constructing public infrastructure improvements; that the City's participation in this Lease 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 Lease is not grossly disproportionate to the benefits the City will receive during the Lease and that in the absence of the City's participation the affordable housing Project would not be constructed.

WHEREAS, City is entering into this Lease to implement and to facilitate development of the Arizona Department of Housing Low Income Housing Tax Credit Program and Lessee agrees to restrict 100% of the Project units for affordable housing for the duration of this Lease. This Lease is consistent with the City's Development Incentives and Guidelines for Affordable Housing ("DIGAH"), and the City's Community Plan in effect on the date of this Lease. The Project, as shown in the Site Plan, meets DIGAH requirements and is eligible for a density bonus, if applicable.

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

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

AGREEMENT

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

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

for a maximum period of twenty-four (24) months or when the Certificate of Occupancy is issued, whichever comes first (the "Construction Term"). In no event shall the Construction Term last longer than twenty-four months. The original term of this Lease shall be for a period of 75 years commencing on the expiration of the Effective Date and expiring on the same date 75 years later, unless sooner terminated pursuant to the provisions contained in this Lease.

4. RENT.

- A. At the Effective Date of this Lease, Lessee will pay the City the sum of \$50,000. Annually thereafter, Lessee shall pay, without notice and free from all claims, deductions or set-offs against the City, annual rent in the amount of \$1,200 per year, which rent shall be paid without notice and free from all claims, deductions or set-offs against the City.
- B. If Lessee fails to pay any rent in full on or before the due date, Lessee shall be responsible for interest on the unpaid principal balance at the rate of 18% per annum from the due date until payment in full is made.

5. UTILITIES.

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

6. IMPROVEMENTS.

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

that Lessee's improvements shall include construction of related curbs, gutters, pavement, landscaping, and other improvements City determines to be appropriate.

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

- I. In the event the Property consists of more or less than any stated acreage or square feet, this Lease shall nevertheless continue and Lessee's obligations hereunder shall not be increased or diminished.

7. ACCEPTANCE; MAINTENANCE; REPAIRS.

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

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

8. ADDITIONAL OBLIGATIONS OF LESSEE.

- A. Except as expressly set forth herein, City will not be called upon to make any expenditure in connection with the Property or the Project, and all costs, expenses and obligations of every kind relating to the Property and the Project which may arise or come due during the Lease term will be paid by Lessee.
- B. Lessee agrees to pay during the Lease term, all real estate taxes and special assessments assessed with respect to the Property, Project, and improvements and all personal property taxes assessed with respect to Lessee's personal property.
- C. Lessee shall comply with all written instructions of the City in disposing of its trash and refuse and shall use a system of recycling and refuse disposal approved by the City.
- D. Lessee shall not commit nor permit to be done anything which may result in the commission of a nuisance, waste or injury on the Property.
- E. Lessee shall not do, nor permit to be done, anything which may interfere with the effectiveness or accessibility of the drainage system, sewerage system, fire protection system, sprinkler system, alarm system and fire hydrants and hoses, if any, installed or located on the Property.
- F. Lessee shall not do, nor permit to be done, any act or thing upon the Property which may constitute a hazardous condition so as to increase the risks attendant upon the operations permitted by this Lease.
- G. Land Use Restriction Agreement. The Property or Project shall not be used for short-term rentals (rental terms of less than 30 days) or conversion to a condominium or otherwise divide the Property during the term of this Lease. Lessee shall cause to be recorded, a deed restriction, limiting the rental of Property units in substantially the form provided in **Exhibit "D"** Land Use Restriction Agreement ("LURA") which will be effective only during the term of this Lease. Upon the expiration of the Affordability Period (as defined in the LURA) and for the remainder of the Lease Term, the parties agree that the Project will continue to be affordable housing units with income restrictions to serve households earning at or below 100% of Yavapai County Area Median Income.

H. Annual Audit and Report. Lessee shall provide a copy of an annual audit to the City for the previous 12 months of operation of the Project. Additionally, the Lessee shall provide an annual occupancy report to the City providing income amounts of tenant occupied units, unit rent, employer, unit type and AMI bracket of each tenant. The Lessee shall provide a copy of any required audit by HUD or LIHTC funding to City. The books and records of the Lessee shall be made available to the City upon written request to the Lessee with fourteen (14) day advance notice.

I. Lessee Representations. Lessee represents and warrants that:

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

9. CITY LOAN.

A. City of Sedona Loan. The City shall provide the Lessee, to reimburse Lessee for costs of construction of the Project, with a loan in an amount not to exceed \$300,000 ("City Loan"). The City Loan shall be evidenced by the City of Sedona Affordable Housing Loan Secured Promissory Note ("Promissory Note") and secured by the City of Sedona Affordable Housing Loan Deed of Trust and Assignment of Rents ("Deed of Trust") both executed by the Lessee of even date herewith, substantially in the forms attached hereto as **Exhibit "E"** and incorporated herein by this reference. The term of the City Loan shall be 30 years. Prior to disbursement of the City Loan, Property Owner will execute the Deed of Trust, Promissory Note and LURA. The City Loan shall be evidenced by this Lease and the Promissory Note and secured by the Deed of Trust.

1. City Loan Repayment Terms. Lessee hereby unconditionally acknowledges and

promises to repay the City Loan as follows: Lessee shall pay to City 360 consecutive monthly, equal principal installments and interest payments, interest rate shall be the long term AFR (currently February 2023 – 3.86%), on the City Loan, commencing upon Lessee's conversion from construction loan financing to permanent loan financing for the Project; provided, however, that payment of monthly installments of the City Loan will be determined by the Lessee's cash flow for the prior year as provided for in Lessee's amended and restated operating agreement, provided further that any such payment not so paid will accrue and be payable from Lessee's future cash flow and any such missed payments will not be considered a default under the City Loan . The City Loan is absolutely due and payable 30 years after the Effective Date of this Lease, whichever occurs first ("Maturity Date"), at which time Lessee shall pay City the entire outstanding principal amount and interest payments of the City Loan.

10. ASSIGNMENT AND SUBLETTING.

- A. Other than in the normal course of its business, Lessee shall not assign or sublease any of its interest under this Lease, nor permit any other person to occupy the Property without the prior written consent of the City, such consent not to be unreasonably withheld.
- B. To obtain City's consent, Lessee shall provide the City with written notice at least 30 days prior to the proposed assignment of: the potential assignee's biographical and financial information—which may include but is not limited to: has the assignee turned a profit for the last two years, does the assignee have a positive credit history and a history devoid of any illegal or litigious activities—the proposed effective date of the assignment, a description of the portion of the premises to be assigned, all of the material terms of the proposed assignment and the consideration therefor, and any other information reasonably required by the City in order to evaluate the proposed transfer. Any assignment or transfer made without the City's prior written consent shall, at the City's option, be void.
- C. No assignments of this Lease are contemplated or bargained for except for those to which the City has given consent in this Lease. City has the absolute right for any reason or for no reason in its sole discretion to give or withhold consent to any assignment or to impose any conditions upon any assignment, except as expressly provided in this Lease.
- D. At the initial closing, Lessee may only mortgage, encumber or assign any portion of its right, title and interest in the leasehold estate created by this Lease to those parties and for those purposes as set forth in Exhibit "F" ("Permitted Encumbrance"), incorporated herein by this reference. Any such Permitted Encumbrance shall be subject to all of Lessee's obligations under this Lease. Except for a Permitted Encumbrance, no person or entity shall have the right to place any mortgages, deeds of trusts, liens or encumbrances of any nature on the Property, nor shall any permitted assignment result in a subordination, in whole or in part, of the City's rights under this Lease. After the initial closing, City has the absolute right for any reason or for no reason in its sole discretion to give or withhold approval of any additional Permitted Encumbrance, mortgage, deeds of trusts, liens, or debt of any nature on the Property.

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

11. SIGNS.

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

12. DEFAULT; TERMINATION BY CITY.

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

1. The failure of Lessee to perform any of its obligations under this Lease, provided that Lessee fails to cure its default within said 30-day notice period;
2. The taking of possession for a period of ten (10) days or more of substantially all of the personal property used on the Property belonging to Lessee by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree or any act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator;
3. The filing of any lien against the Property because of any act or omission of Lessee which is not discharged within thirty (30) days of receipt of notice by Lessee.

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

1. Institute action(s) to enforce this Lease;
2. Take possession of the Property, together with improvements, fixtures, and equipment therein contained without terminating this Lease, and on behalf of Lessee relet the same or any part thereof for a term, shorter, longer, or equal to the then unexpired remainder of the Lease term. The City may at any time after taking possession terminate this Lease by giving notice to Lessee and sue for damages;
3. Terminate this Lease, without further notice to Lessee, re-enter the Property and recover damages, including but not limited to, all costs of repossession

and reletting and brokerage commissions for services performed by or for the City;

4. Exercise the "Remedies of Landlord" as set forth in Arizona Revised Statutes, Title 33;
 5. Exercise any other remedy allowed by law or equity.
- C. If Lessee at any time fails to maintain all insurance coverage required by this Lease, the City shall have the right, upon written notice to Lessee, to immediately terminate this Lease or to secure the required insurance at Lessee's expense.
- D. Upon the termination of this Lease for any reason, all rights of Lessee shall terminate, including all rights of Lessee's creditors, trustees, and assigns, and all others similarly situated as to the Property.
- E. Lessee acknowledges Lessee's unconditional obligation to comply with this Lease. No failure by City to demand any performance required of Lessee under this Lease, and no acceptance by City of any imperfect or partial performance under this Lease, shall excuse such performance or impair in any way City's ability to insist, prospectively and retroactively, full compliance with this Lease. Failure by the City to take any authorized action upon default by Lessee of any of its obligations hereunder shall not constitute a waiver of said default nor of any subsequent default by Lessee. Acceptance of rent and other fees by the City under the terms hereof for any period after a default by Lessee of any of its obligations shall not be deemed a waiver or estoppel of the City's right to terminate this Lease for any subsequent failure by Lessee to comply with its obligations. Lessee expressly disclaims and shall not have the right to rely on any supposed waiver or other change or modification, whether by word, or conduct or otherwise, not conforming to this paragraph.

13. TERMINATION BY LESSEE.

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

- A. Issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining Lessee's use of any substantial portion of the Property and the remaining in force of such injunction for a period of thirty (30) consecutive days.
- B. The inability of Lessee to use any substantial portion of the Property for a period of thirty (30) consecutive days, due to the enactment or enforcement of any law or regulation or because of fire, earthquake or similar casualty, or Acts of God or the public enemy.
- C. The lawful assumption by the United States Government of the operation, control, or use of the Property or any substantial part of it for military purposes in time of war or national emergency.

14. INDEMNIFICATION.

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

15. INSURANCE.

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

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

16. QUIET ENJOYMENT.

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

17. SURRENDER OF POSSESSION; REVERSION.

- A. Upon the expiration or termination of this Lease, Lessee's right to occupy the Property and exercise the privileges and rights herein granted shall cease, and it shall surrender the same and leave the Property in good condition, normal wear and tear excepted. All improvements, including the Project, and modifications made by Lessee which become

fixtures to the Property shall become the property of the City, at no cost to the City, upon the expiration or termination of this Lease, free of any security interest or claims of any kind from or through Lessee; provided that if Lessee is not in default of any of its obligations under this Lease and can remove any of its trade fixtures or personal property at its own expense without materially damaging the Property, Lessee may remove such fixtures at the termination or expiration of this Lease. None of the improvements hereafter placed on the Property shall be removed there from at any time without City's written consent.

18. NOTICE.

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

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

TO LESSEE: The Villas on Shelby

 Tel:
 Email:

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

19. NO BOYCOTT OF ISRAEL.

The Parties agree that they are not currently engaged in, and agree that for the duration of the Lease they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.

20. STATUTORY CANCELLATION RIGHT.

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

21. SEVERABILITY.

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

22. TAXES AND LICENSES.

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

23. LITIGATION

This Lease shall be governed by the laws of the State of Arizona. In the event of any litigation or arbitration between the City and Lessee arising under this Lease, the successful party shall be entitled to recover its attorney's fees, expert witness fees and other costs incurred in connection with such litigation or arbitration. Both parties hereby waive any right to a jury trial which they may otherwise have in the event of litigation arising under this Lease and consent to a trial to the court.

24. RULES AND REGULATIONS.

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

25. RIGHT OF ENTRY RESERVED.

- A. The City shall have the right at all reasonable times and upon reasonable notice to enter upon the Property for any lawful purpose, provided such action does not unreasonably interfere with Lessee's use, occupancy or security of the Property.
- B. If any personal property of Lessee shall obstruct the access of the City or any utility company furnishing utility service to any of the existing utility, mechanical, electrical and other systems, and thus shall interfere with the inspection, maintenance or repair of any such system, Lessee shall move such property, as directed by the City or utility

company, in order that access may be had to the system for inspection, maintenance or repair. If Lessee fails to move such property after direction from the City or utility company to do so, the City or the utility company may move it, and Lessee shall pay the cost of such moving upon demand, and Lessee hereby waives any claim for damages as a result therefrom, except for claims for damages arising from the City's sole negligence.

- C. Exercise of any or all of the foregoing rights by the City or others pursuant to the City's rights shall not constitute an eviction of Lessee, nor be made the grounds for any abatement of rent or any claim for damages.

26. SURVIVAL OF LESSEE'S OBLIGATIONS.

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

27. REMEDIES TO BE NONEXCLUSIVE.

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

28. NONLIABILITY OF CITY OFFICIALS AND EMPLOYEES.

No member, official, representative or employee of City shall be personally liable to any party, or to any successor in interest to any party, in the event of any default or breach by City or for any amount which may become due to any party or successor, or with respect to any obligation of City or otherwise under the terms of this Lease or related to this Lease.

29. TIME IS OF THE ESSENCE.

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

30. MISCELLANEOUS.

- A. This Lease constitutes the entire agreement between the parties concerning the matters contained herein and supersedes all prior negotiations, understandings and agreements between the parties concerning such matters.
- B. This Lease shall be interpreted, applied and enforced according to the fair meaning

of its terms and shall not be construed strictly in favor of or against either party, regardless of which party may have drafted any of its provisions. No provision of this Lease may be waived or modified except by a writing signed by the party against whom such waiver or modification is sought to be enforced. The terms of this Lease shall be binding upon and inure to the benefit of the parties' successors and assigns.

- C. Nothing contained in this Lease shall create any partnership, joint venture or other agreement between the Parties hereto. Except as expressly provided in this Lease, no term or provision of this Lease is intended or shall be for the benefit of any person or entity not a party to this Lease, and no such other person or entity shall have any right or cause of action under this Lease.
- D. The City did not acquire the Property from Lessee or any personal or entity affiliated Lessee.

31. CITY'S OPTION TO PURCHASE.

Commencing with the date that is 30 years from the Effective Date and ending one year thereafter, City shall have the option to purchase the Project from Lessee for the sum of \$1, the principal amount of outstanding debt secured by the Project and all expenses of sale. The exercise of the City's option to purchase shall cause this Lease to terminate.

32. EXHIBITS.

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

Exhibit A	Property Description, Legal Description
Exhibit B	Project Description
Exhibit C	Insurance Requirements
Exhibit D	LURA
Exhibit E	Promissory Note, Deed of Trust
Exhibit F	Permitted Encumbrance

EXECUTED to be effective on the date specified above.

"City".

CITY OF SEDONA, an Arizona
municipal corporation

By: Scott Jablow
Its: Mayor

ATTEST:

JoAnne Cook
City Clerk

APPROVED AS TO FORM:

Kurt W. Christianson
City Attorney

LESSEE:

The Villas on Shelby, LLC

By:
Its: Owner/member

STATE OF _____)
)ss.
County of _____)

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

Notary Public

My Commission Expires:

EXHIBIT A
2250 Shelby Road; the PROPERTY
(see attached legal description)

EXHIBIT B
Project Description
(see attached)

EXHIBIT C
(Insurance Requirements)

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

A. MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

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

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

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

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

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

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

EXHIBIT D
LURA
(see attached)

EXHIBIT E
Deed of Trust, Promissory Note
(see attached)

EXHIBIT F
Permitted Encumbrance
(see attached)

Exhibit C

Memorandum of Option

This Memorandum is entered into this 28th day of March, 2023, between City of Sedona, an Arizona municipal corporation ("Optionor") and The Villas on Shelby, LLC, an Ohio limited liability company ("Optionee").

Optionor and Optionee have entered into that certain Option Agreement, dated as of March 28, 2023 (the "Option Agreement"), whereby Optionee was granted an exclusive option (the "Option") to lease from Optionor that certain real property described on Exhibit A attached hereto and incorporated herein by this reference (the "Property") pursuant to the provisions of the Option Agreement.

Optionor and Optionee desire to give actual and constructive notice to all persons dealing with the Property that Optionee has a vested and binding Option to lease the Property pursuant to the terms of the Option Agreement.

The Option will continue in full force and effect until the earlier of (i) the final exercise date determined in accordance with the terms and conditions of the Option Agreement (as such date may be specified in an instrument executed by Optionor and Optionee and recorded after the date hereof), or (ii) the date that the Option is terminated in accordance with the terms and conditions of the Option Agreement.

A copy of the Option Agreement is in the possession of both Optionor and Optionee. In the event of any conflict between this Memorandum of Option Agreement and the Option Agreement, the Option Agreement will control.

In witness whereof, the parties have executed this Memorandum of Option Agreement as of the date first set forth above.

[signatures and notarial acknowledgements appear on following pages]

Signatures for Memorandum of Option Agreement:

OPTIONOR:

City of Sedona

By:
Its:

Scott M. Jablow
Mayor

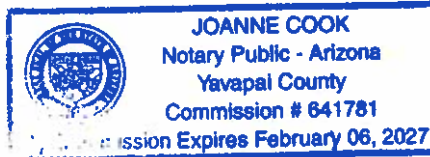
STATE OF ARIZONA)
)ss.
County of Yavapai)

The foregoing Memorandum of Option Agreement was acknowledged before me this 28 day of March, 2023 by Scott M. Jablow as Mayor on behalf of City of Sedona.

My commission expires:

Notary Public

Joanne Cook



OPTIONEE:

The Villas on Shelby, LLC

By:
Its:

Matthew A. Shoemaker
Managing Member

STATE OF OHIO)
)ss.
County of Madison)

The foregoing Memorandum of Option Agreement was acknowledged before me this 21st day of March, 2023 by Matthew A. Shoemaker, Manager of The Villas on Shelby, LLC.

My commission expires:

Notary Public

Ruth E. Brown



RUTH E BROWN
Notary Public, State of Ohio
My Comm. Expires 9/16/2026