

RESOLUTION NO. 2023-26

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SEDONA,
ARIZONA, APPROVING THE SECOND AMENDMENT TO A DEVELOPMENT
AGREEMENT WITH SUNSET LOFTS LLC FOR THE SUNSET LOFTS PROJECT
LOCATED AT 220 SUNSET DRIVE.**

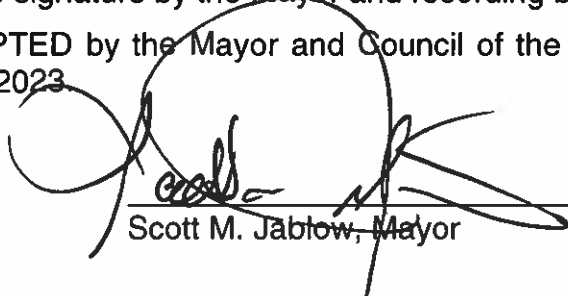
WHEREAS, the City of Sedona ("City") and Sunset Lofts LLC, an Arizona limited liability corporation, entered into a development agreement on July 13, 2021, for forty-six (46) workforce housing units at 220 Sunset Drive in Sedona that will include provisions to ensure the project addresses local affordable housing needs; and

WHEREAS, amendments to the development agreement are necessary provide for certain clarifications and modifications.

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

The City of Sedona, through its Mayor and Council, hereby finds that the Second Amendment to the Development Agreement ("Amendment") with Sunset Lofts LLC for the Sunset Lofts project located at 220 Sunset Drive in Sedona attached hereto as Exhibit A is consistent with the Community Plan pursuant to A.R.S. § 9-500.05, and approves of the Amendment, authorizing the signature by the Mayor and recording by law.

APPROVED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona, this 8th day of August, 2023



Scott M. Jablow, Mayor

ATTEST:



JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:



Kurt W. Christianson, City Attorney

WHEN RECORDED RETURN TO:

City Clerk
City of Sedona
102 Roadrunner Drive
Sedona, AZ 85336

**SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT
(Sedona/Sunset Lofts LLC)**

THIS SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT (the "Amendment") is made as of the 8th day of August, 2023, by and between the CITY OF SEDONA, ARIZONA, an Arizona municipal corporation (the "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

A. On July 13, 2021 the City of Sedona approved that certain Development Agreement by and between the City of Sedona and Sunset Lofts LLC, an Arizona limited liability company, relating to the development of 46 workforce housing units located at 220 Sunset Drive in Sedona (the "Development Agreement"). The Original Development Agreement was recorded in the Official Records of Yavapai County, Arizona on July 22, 2021, as instrument number 2021-0052673.

B. On March 8, 2022, City and Property owner entered into the First Amendment to the Development Agreement to apply certain modifications to the City's Land Development Code (LDC) standards in accordance with the City's Developer Incentives and Guidelines for Affordable Housing (DIGAH). The First Amendment to Development Agreement was recorded in the Official Records of Yavapai County, Arizona on March 17, 2022, as instrument number 2022-0016972.

C. The City and Property Owner wish to further amend the Development Agreement to extend the construction term of the development and to clarify ownership of the development plans.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Property Owner agree as follows:

1. The Development Agreement is hereby amended as follows:
 - a. **Section 1.3.3** is deleted in its entirety and replaced with: "RESERVED."

- b. The second sentence in **Section 2.2** is deleted and replaced with:
"Except as set forth in **Section 3.4** as Amended, the City Loan shall be non-recourse."
- c. **Section 3.4** is deleted in its entirety and replaced with:
"City's Additional Remedies; Right to Enforce Deed of Trust. If Property Owner is in breach under this Agreement for any reason, including but not limited to failing to start construction of the Project by April 1, 2024, Property Owner agrees to assign title to the Property by special warranty deed to the City within thirty (30) days after Property Owner's receipt of such written request from the City, subject to any subordination agreement executed by the City in connection with the HUD loan. If Property Owner is in breach under this Agreement, including but not limited to failing to complete construction of the Project by September 1, 2025, and Property Owner thereafter fails to cure such breach within sixty (60) days after written notice from the City, the City shall have the right to exercise its rights and remedies under the Deed of Trust, subject to any subordination agreement executed by the City in connection with the HUD Loan."
- d. **Section 3.5** is added as follows:
"Ownership of Construction Documents.
Upon an event of default, or any expiration or termination of this Agreement, Property Owner shall promptly assign to and provide the City with all Project architectural drawings with good license to use such drawings, Project building plans, site plans, permits, and all other documents reasonably related to the construction of the Project. This is a material term of the Agreement. If the Property Owner fails to turn over the Construction Documents as required herein, the City may enforce this provision via an action for specific performance or any other availability legal remedy."

2. Except to the extent expressly amended hereby, the Development Agreement shall remain in full force and effect without impairment or modification.

3. This Amendment shall be governed by and construed under Arizona law.

4. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. This Amendment shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, administrators, executors, assigns, and successors in interest. The provisions of this Amendment may not be amended or altered except by a written instrument duly executed by each of the Parties hereto.

5. Each of the Parties shall execute such other and further documents and do such further acts as may be reasonably required to effectuate the intent of the parties and carry out the terms of this Amendment.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

SUNSET LOFTS LLC, an Arizona limited liability company

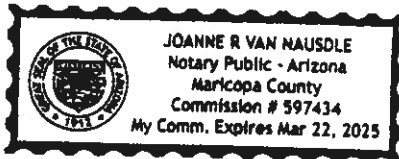
By: M. Keith Holben

Name: M. Keith Holben

Title: Manager

STATE OF Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 16th day of August 2023, by M. Keith Holben, as Manager of Sunset Lofts LLC, an Arizona limited liability company on behalf of Sunset Lofts LLC.

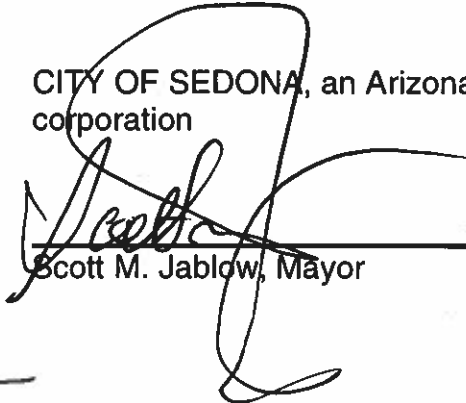


Joanne R. Van Nausdle
Notary Public

My Commission Expires:

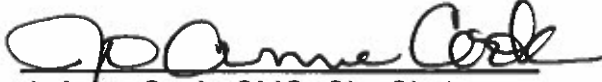
3-22-2025

CITY OF SEDONA, an Arizona municipal corporation




Scott M. Jablow, Mayor

ATTEST:



JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:



Kurt W. Christianson, City Attorney