

WHEN RECORDED RETURN TO:

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

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "**Agreement**") is made as of the ___ day of _____, 2024, by and between the CITY OF SEDONA, ARIZONA, an Arizona municipal corporation (the "**City**") and BANEY CORPORATION, an Oregon domestic business corporation (the "Owner"). The City and the Owner are sometimes referred to in this Agreement collectively as the "**Parties**," or individually as a "**Party**."

RECITALS

A. BANEY CORPORATION (the "Owner") owns that certain real property located south of the intersection of State Route 89A and Soldiers Pass Road in Sedona, Arizona, which consists of approximately 6.36 acres and is more particularly described on **Exhibit A** (the "**Property**").

B. It is the desire and current intention of the Owner to improve and develop the Property by constructing certain improvements consisting of a hotel with 100 lodging units, a restaurant, and a rooftop lounge (the "Hotel") and 46 multi-family apartment units as contemplated in Sedona case number PZ19-00005 (ZC, DEV) (the "Project").

C. Arizona Revised Statutes Section 9-500.05 allows a municipality and a landowner or any other person having an interest in real property located in the municipality to enter into a development agreement pertaining to any matter relating to the development of such real property, including applicable land use rules, regulation and official policies, permitted land uses, density and intensity of land use, phasing of the development and duration of the development agreement, and development fees.

D. The Parties desire to enter into this Agreement in order, among other things, to facilitate development of the Property by providing for and establishing the community character of the Property, the type of land uses and the location, density, and intensity of such land uses, designating forty-six (46) residential units for affordable rental housing, and other matters relating to the development of the Property as depicted in the preliminary site plan for the Project (the "**Site Plan**"), a copy of which is attached as **Exhibit B** and incorporated by reference in this Agreement.

E. The City believes that the development of the Property pursuant to this Agreement would provide certain benefits to the City, and the Owner believes that the development of the Property pursuant to this Agreement would be beneficial and advantageous to the Owner.

AGREEMENT

Now, therefore, in consideration of the foregoing recitals and representations and the mutual promises contained in this Agreement, the Parties agree as follows:

1. Definitions.

In this Agreement, unless a different meaning clearly appears from the context:

1.1 "**Agreement**" means this Agreement, as amended and restated or supplemented in writing from time to time, and includes all attached exhibits and schedules. References to Sections or Exhibits are to this Agreement unless otherwise qualified. The Recitals set forth in Paragraphs A through E, inclusive, are incorporated by reference and form a part of this Agreement but are not intended to expand the scope, number or nature of the City's or Owner's obligations beyond those expressly set forth in the numbered Sections of this Agreement.

1.2 "**Applicable Laws**" means as defined in Section 8.1.

1.3 "**Application**" means as defined in Section 3.1.

1.4 "**Approvals**" means all approvals, consents and permits necessary pursuant to Applicable Laws and encumbrances recorded against the Property for the development of the Project, with only such conditions and stipulations approved by Owner in its sole and absolute discretion (including, without limitation, the Applications).

1.5 "**City**" means the Party designated as City on the first page of this Agreement.

1.6 "**City Representative**" means as defined in Section 13.1.

1.7 "**Default**" or "**Event of Default**" means one or more of the events described in Section 10.1 or 10.2; provided, however, that such events shall not give rise to any remedy until effect has been given to all grace periods, cure periods and/or periods of Force Majeure provided for in this Agreement and that in any event the available remedies shall be limited to those set forth in Section 10.4.

1.8 "**Owner Representative**" means as defined in Section 13.1.

1.9 "**Effective Date**" means the date first set forth above as of which this Agreement has been adopted and approved by the City Council and executed by duly authorized representatives of the City and the Owner.

1.10 "**Force Majeure**" means as defined in Section 12.6.

1.11 "**Lender**" or "**Lenders**" means as defined in Section 14.21.

1.12 "**Party**" or "**Parties**" means as designated on the first page of this Agreement.

1.13 "Project" means as defined in Recital B.

1.14 "Property" means as defined in Recital A.

1.15 "Term" shall mean ten (10) years from the Effective Date.

1.16 "Third Party" means any person other than a Party or an Affiliate of any Party

2. **Recitals.** The recitals above, A through F are incorporated into this Agreement.

3. **Zone Change and Development Review Application.** The Owner has submitted an application for a zone change to rezone the Property from Commercial (CO) and Medium-High Density Multifamily (RM-12) to Lodging (L) in accordance with the Site Plan in zoning case PZ19-00005 (ZC, DEV) (the "Application"). The Owner and the City shall work together using reasonable efforts throughout the development stages to resolve any City comments regarding implementation of the Applications. Subject to Applicable Laws, the City and the Owner will cooperate reasonably in processing the approval or issuance of any permits, plans, specifications, plats or other development approvals requested by the Owner in connection with development of the Project. All decisions by the City regarding Owner's compliance with this Development Agreement and the Applications shall be made by the City Representative (as designated in Section 8.1), provided that the Owner shall have the right to appeal any such decision to the City Council.

4. **Development Standards.** Unless otherwise modified by this Agreement, the development of the Property shall be governed by the City's ordinances, rules, guidelines, and policies controlling permitted uses of the Property, the density and intensity of uses, the maximum height and size of the buildings within the Property, as well as the standards for off-site and on-site public improvements in existence as of the effective date of this Agreement as well as any Rezoning Conditions and requirements set forth in this Agreement.

5. **Project Description.** The Project contemplated by this Agreement shall consist of a 100-guestroom hotel (the "Hotel") and a 46-unit multi-family housing development (the "Apartments") as set forth in the Site Plan. The multi-family housing development will consist of twenty-four (24) studio units, sixteen (16) one-bedroom units and six (6) two-bedroom units. All rental units will be permanently affordable and subject to the Housing Plan, which is described in **Section 6** below. The Owner may request subsequent amendments to the Site Plan in accordance with the Sedona Land Development Code ("LDC").

6. **Covenants of Owner.** Owner agrees as follows:

6.1 **Sustainability Commitments.**

a. **Green Hotel Measures:** As part of the Project, the Owner has identified several "Green Hotel Measures" that will be incorporated into the Hotel to enhance the long-term environmental sustainability of the Project. Consequently, the following items shall be incorporated into the development and operations of the Hotel:

- i. In-room recycling program.
 - ii. Recycling receptacles in public areas and back-office areas.
 - iii. Composting of food waste.
 - iv. Low-flow bathroom fixtures in Hotel guest rooms and common areas.
 - v. Dual-flushing toilets in Hotel guest rooms.
 - vi. Energy Star appliances throughout the Hotel.
 - vii. Thermostat occupancy sensors in guest rooms.
 - viii. Automatic light sensors in Hotel guest rooms, bathrooms, and hallways.
 - ix. LED lighting for all ceiling and wall fixtures.
 - x. Five (5) tankless filtered water coolers and water bottle fill stations.
 - xi. Non-chemical-based Ozone cleaning system.
 - xii. Saline-based pool and spa sanitation system.
 - xiii. Bulk soap amenities in Hotel guest room showers.
 - xiv. Cold water hotel laundry system.
 - xv. Prohibition of single-use plastic water bottles at Hotel.
- b. APS Green Choice: The Owner shall enroll in Arizona Public Service's ("APS") Green Choice program or an equivalent renewable energy program offered/available once the Project is completed and operational.
- c. Construction Materials Management: The Owner and its general contractor shall utilize a Construction and Demolition Waste Management Plan to identify different types of construction waste, collection locations on site, disposal methods, handling procedures, and recycling/disposal location(s). This plan will be provided to the City of Sedona prior to the commencement of construction.

6.2 Parking. The Project utilizes a shared parking model due to the overlap of several related land uses that will occur on the Property, particularly the Hotel's meeting space, restaurant, and rooftop lounge. Parking for these areas will be managed as follows:

- a. Restaurant and Rooftop Lounge: A minimum fifty percent (50%) of the seating capacity for both the ground-floor restaurant and rooftop lounge as identified on the Site Plan shall be reserved for registered guests of the Hotel at all times. The remaining seating capacity for both the ground floor restaurant and rooftop lounge shall be available to the general public by reservation only. The Hotel shall not accept walk-in guests for the restaurant or rooftop lounge who are not registered guests of the Hotel. Reservations shall be managed by the Hotel's digital point-of-sale reservation system.

For the purposes of Section 6.2(a), the owners of lots in the Saddlerock Homes subdivision, as recorded in Book 20, Page 58 of the Yavapai

County Recorder's Office ("Saddlerock Residents"), shall be treated the same as registered guests of the Hotel. Upon demonstrating proof of ownership to the Hotel, Saddlerock Residents shall be permitted as walk-in guests at both the ground floor restaurant and rooftop lounge so long as seating capacity is available.

- b. Hotel Meeting Space: The meeting space in the basement level of the Hotel as identified in the Site Plan (the "Meeting Space") shall be used only by registered guests of the Hotel. The Meeting Space shall not be leased or rented out to the general public.
- c. Review: The Owner shall conduct a parking demand survey no earlier than twelve (12) months after a final certificate of occupancy has been issued for the Project. The survey shall count the number of vacant parking spaces on the Property during the afternoon peak traffic hour for a period of fourteen (14) consecutive days (the "Parking Survey"). The Survey shall be submitted to the City for review no later than eighteen (18) months after a final certificate of occupancy has been issued for the Project .
- d. Remedies: If, during the Parking Survey, there are no less than two (2) days in which there are no available parking spaces on the Property at the time of the survey count, the Parties shall proceed with the following steps:
 - i. The Owner shall be provided with a 180-day period to cure the parking deficiency. During this period, the Owner may pursue mitigation measures including, but not limited to:
 1. Expansion of mandatory valet services
 2. Off-site parking agreement(s)
 3. Hiring a designated parking manager
 4. Expansion of shuttle services to include transportation of general public guests with reservations at the restaurant and rooftop lounge
 - ii. At the end of the 180-day cure period, the Owner shall conduct a Parking Survey and submit it to the City for review (the "Second Parking Survey").
 - iii. If, during the Second Parking Survey, there are no less than (2) days in which there are no parking spaces available on the Property at the time of the survey count, the Owner shall immediately reserve seventy-five percent (75%) of Hotel

restaurant and rooftop lounge seating capacity for registered Hotel guests at all times (the “Intermediate Restriction”).

- iv. Ninety (90) days after the Intermediate Restriction is instituted, the Owner shall conduct a Parking Survey and submit it to the City for review (the “Third Parking Survey”).
- v. If, during the Third Parking Survey, there are no less than (2) days in which there are no parking spaces available on the Property at the time of the Parking Survey count, the Owner shall immediately reserve one hundred percent (100%) of Hotel restaurant and rooftop lounge seating capacity for registered Hotel guests at all times (the “Final Restriction”).
- e. Reversion: The Owner may continue to pursue parking mitigation measures at any point in the Remedies process outlined in Section 6.2. If the Owner demonstrates, to the satisfaction of the Community Development Director (the “Director”), that adequate parking capacity exists to support the desired percentage of public seating capacity in the Hotel restaurant and rooftop lounge, the Director may modify the percentage of seating capacity reserved for registered Hotel guests accordingly.
- f. Apartments: Parking for tenants of the Apartments shall be reserved parking only. Tenants shall be limited to a maximum of one space/vehicle per studio unit or one-bedroom unit and a maximum of two spaces/vehicles per two-bedroom unit.

6.3 Workforce Housing. Owner agrees to provide a workforce housing contribution of one hundred percent (100%) of the forty-six (46) residential units proposed for the Apartments. Owner shall provide for the long-term management of the Apartments at the following Area Median Income (“AMI”) levels, as defined by the US Department of Housing and Urban Development (HUD), or its successors:

Table 6.3

	Studio	1 Bedroom	2 Bedroom
80% AMI Rent	12 Units	8 Units	N/A
100% AMI Rent	12 Units	8 Units	3 Units
120% AMI Rent	N/A	N/A	3 Units

Owner agrees to maintain the Apartments at the income and rent levels identified in Table 6.3 for fifty (50) years after the units are placed into service. Owner will comply with the affordable housing requirements set forth in the Housing Plan attached as Exhibit C, attached hereto and incorporated by reference. The Housing Plan may be modified only with the express written consent of the City of Sedona Housing Manager.

Owner's property manager shall not discriminate against an applicant's source of income and will accept HUD Housing Choice Vouchers and Veterans Affairs Supportive Housing ("VASH") Vouchers. No limits will be set on the number of vouchers accepted at the Project. Standards for applicant income shall be waived for voucher holders, as the rent affordability is reviewed and determined by the Sedona Housing Department.

The provisions of **Section 6.3** shall survive the termination of this Agreement.

6.4 Lease Terms. Lease agreements for the Apartments shall include the following terms and conditions:

- a. The minimum lease term shall be thirty (30) days.
- b. Tenants and guests of tenants shall not park in the Saddlerock Homes neighborhood.
- c. Tenant(s) must keep the balcony or patio free from garbage and debris. No personal property may be kept or stored on the balcony or patio, including barbeque grills. Only outdoor furniture is permitted on the balcony or patio. Nothing may be hung on or from the balcony or patio, including but not limited to clothing, towels, rugs, flags, and banners.
- d. Quiet hours will be observed from 9:00 pm to 8:00 am daily, and shall be in effect 7 days a week, 365 days a year. During these times, tenants agree not to:
 - i. Operate stereos, radios, televisions, and musical instruments in a manner that disturbs other tenants or neighbors
 - ii. Create or allow any noise or activity that disturbs other tenants or neighbors.
 - iii. Allow loud talking or other noise emanating from the unit that can be heard outside of the unit.
- e. No amplified music/audio source is permitted on balconies or patios at any time.
- f. Except for service animals or approved support animals for persons with disabilities, no dogs are permitted (even temporarily) in or about the Apartments.

6.5 Deliveries and Trash Pickup. Deliveries and trash pickup for the Project shall occur no earlier than 7:00 am and no later than 9:00 pm.

6.6 Cut-Through Traffic Mitigation. The Owner shall install a “No Left Turn – Neighborhood Residents Only” sign at the Saddlerock Circle exit, and a “No Right Turn – Not a Through Street” sign at the Elk Road exit.

6.7 Historical Society Contribution. The Owner will provide the Sedona Historical Society and Sedona Heritage Museum with a one-time contribution of twenty-five thousand dollars (\$25,000.00) for future improvements to Cook’s Cemetery. The contribution shall be provided no later than six (6) months after the Application is approved by the Sedona City Council.

7. Covenants of City.

7.1 Rezoning Approval. If the City does not approve the rezoning of the portion of the Property described on Exhibit A to “PD” as described in the application submitted by Developer to City on November 17, 2014, as the same may be amended from time to time upon the mutual agreement of Developer and City, then upon written notice from Developer to the City, this Agreement shall be immediately terminated and of no further force and effect (except any provision which expressly survives expiration or earlier termination of this Agreement). Development of the Property shall be deemed “vested” upon issuance of building permits in accordance with the approved Zone Change and Development Review Applications (the “Applications”), which shall set forth the basic land uses, heights, densities and intensities for development of the Property, as such may be amended from time to time. City shall not initiate any amendments to the approved Applications.

7.2 No Further Legislative Action. The City agrees that no further legislative action by the City shall be required for the Developer and/or its successors and assigns to develop the Project in accordance with the PD rezone application;

7.3 Expedited Plan Review for Project. The City shall review plans for private development within the Property, including new and renovated buildings, within three (3) weeks of submission by Developer of complete plans, but approval of such plans shall be granted or withheld on the basis of the most current standards and requirements.

7.4 No Other Dedications or Exactions. Except as expressly set forth herein (or on final Application documents), the City shall not require any other dedications or exactions in connection with the development of the Project in accordance with the Application approvals. Without limiting the generality of the foregoing, the Project shall not be included in any special improvement district or community facilities district, or similar special taxing district without the Developer’s consent.

8. Development Regulation.

8.1 Applicable Laws. The City agrees that, in order to allow Owner and its successors and assigns to rely upon the continued validity of the provisions of the City's land use and development ordinances ("the **Applicable Laws**") in effect upon the date of this Agreement regulating the development of the Property, Owner has the right to develop the Property in accordance with the approved PD application.

8.2 Restricted Period. The Parties acknowledge and agree that the anticipated development of the Property will likely occur over a period of years. Except as otherwise permitted pursuant to Arizona Revised Statutes Section 9-462.01(E), until the twentieth (20th) anniversary of the Effective Date (the "**Restricted Period**"), no City moratorium, or future ordinance, resolution or other land use rule or regulation imposing a limitation to the rate, timing or sequencing of the development of the Property and affecting all or any portion of the Property shall apply to or govern the development of the Property.

9. **Indemnity; Risk of Loss.**

9.1 Indemnity by the Owner. The Owner shall pay, defend, indemnify and hold harmless the City and its City Council members, officers and employees for, from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorney's fees, experts' fees and court costs associated) which arise from or relate in any way to any act or omission by the Owner, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of the Owner's obligations under this Agreement; provided however, that the provisions of this Section 9.1 shall not apply to loss or damage or claims which are attributable solely to acts or omissions of the City, its agents, employees, contractors, subcontractors or representatives, and the Owner shall have no defense obligation in any instance in which a claim is asserted based solely upon an act or omissions of the City, its employees, contractors, subcontractors, agents or representatives. The foregoing indemnity obligations of the Owner shall survive the expiration or termination of this Agreement for a period equal to the applicable statute of limitations period.

9.2 Indemnity by the City. The City shall pay, defend, indemnify and hold harmless the Owner and its officers, members and employees for, from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorney's fees, experts' fees and court costs associated) which arise from or relate in any way to any act or omission by the City, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of the City's obligations under this Agreement; provided however, that the provisions of this Section 9.2 shall not apply to loss or damage or claims which are attributable solely to acts or omissions of the Owner, its agents, employees, contractors, subcontractors or representatives, and the Owner shall have no defense obligation in any instance in which a claim is asserted based solely upon an act or omissions of the Owner, its employees, contractors, subcontractors, agents or representatives. The foregoing indemnity obligations of the City shall survive the expiration or termination of this Agreement for a period equal to the applicable statute of limitations period.

10. **City Representations.** The City represents and warrants to the Owner that:

10.1 The City's execution and delivery of this Agreement have been duly authorized and agreed to in compliance with the requirements of the Sedona City Code.

10.2 All consents and approvals necessary to the execution and delivery of this Agreement by the City have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

10.3 The City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to evidence and implement this Agreement.

10.4 The execution and delivery of this Agreement by the City is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which the City is a party or is otherwise subject.

10.5 The City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

11. **Owner Representations.** The Owner represents and warrants to the City that:

11.1 The Owner has the full right, power and authorization to enter into this Agreement and to perform its obligations and undertakings under this Agreement, and the execution, delivery and performance of this Agreement by the Owner has been duly authorized and agreed to in compliance with the organizational documents of Owner.

11.2 All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

11.3 The Owner will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

11.4 As of the Effective Date, the Owner knows of no litigation, proceeding or investigation pending or threatened against or affecting the Owner, which could have a material adverse effect on the Owner's performance under this Agreement that has not been disclosed in writing to the City.

11.5 This Agreement (and each undertaking of the Owner contained herein) constitutes a valid, binding and enforceable obligation of the Owner, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. The Owner will, at its sole cost and expense, defend the validity and enforceability of this Agreement and each of its terms in the event of any proceeding or litigation which challenges the validity or enforceability of any provision of this Agreement or the authority of the Owner or the City to enter into or perform any provision under this Agreement and shall indemnify the City against any cost, expense, liability or judgment (including attorney's fees, court costs and expert witnesses) incurred by the City in connection with any such litigation or proceeding. The severability and reformation provisions of Section 14.2 shall apply in the event of any successful challenge to this Agreement.

11.6 The execution, delivery and performance of this Agreement by the Owner is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which the Owner is a party or to which the Owner is otherwise subject.

11.7 The Owner has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

11.8 The Owner has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

12. **Default and Remedies.**

12.1 Events of Default by the Owner. Default or an Event of Default by the Owner under this Agreement shall mean one or more of the following:

- a. Any representation or warranty made in this Agreement by the Owner was materially inaccurate when made or shall prove to be materially inaccurate during the Term;
- b. The Owner fails to observe or perform any other material covenant, obligation or agreement required of it under this Agreement.

12.2 Events of Default by the City. Default or an Event of Default by the City under this Agreement shall mean one or more of the following:

- a. Any representation or warranty made in this Agreement by the City was materially inaccurate when made or shall prove to be materially inaccurate during the Term;
- b. The City fails to observe or perform any other material covenant, obligation or agreement required of it under this Agreement.

12.3 Grace Periods; Notice and Cure. Upon the occurrence of an Event of Default by any Party, such Party shall, upon written notice from a non-defaulting Party, proceed immediately to cure or remedy such Default and, in any event, such Default shall be cured within thirty (30) days (or twenty (20) days in the event of a monetary default) after receipt of such notice, or, if such Default is of a nature that is not capable of being cured within thirty (30) days shall be commenced within such period and diligently pursued to completion.

12.4 Remedies on Default. Whenever any Event of Default occurs and is not cured (or cure undertaken) in accordance with Section 12.3 of this Agreement, the non-defaulting Party has all remedies available at law or equity.

12.5 Delays; Waivers. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any Default by the other Party shall not be considered as a waiver of rights with respect to any other Default by the non-defaulting Party or with respect to the particular Default except to the extent specifically waived in writing. It is the intent of the

Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise at a time when it may still hope to resolve the problems created by the Default involved.

12.6 Force Majeure. Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.

12.7 Rights and Remedies Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights shall not preclude the exercise by it, at the same or different times, of any other right or remedy for any other Default by the other Party.

13. Cooperation and Alternative Dispute Resolution.

13.1 Representatives. To further the cooperation of the Parties in implementing this Agreement, the City and the Owner each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Owner. The initial representative for the City shall be its Director of Community Development as designated by the City Manager from time to time (the "**City Representative**") and the initial representative for the Owner shall be its Project Manager, as identified by the Owner from time to time (the "**Owner Representative**"). The City and the Owner Representatives shall be available at all reasonable times to discuss and review the performance of the Parties and the development of the Property.

13.2 Impasse. If at any time the Owner believes an impasse has been reached with the City staff on any issue affecting the Property which is not an Event of Default, the Owner shall have the right to immediately appeal to the City Representative for an expedited decision pursuant to this Section 13.2. If the issue on which an impasse is reached is an issue where a final decision can be reached by the City staff, the City Representative shall give the Owner a final administrative decision within seven (7) days after the Owner's request for an expedited decision. If the issue on which an impasse has been reached is one where a final decision requires action by the City Council, the City Representative shall request a City Council hearing on the issue to take place within sixty (60) days after the Owner's request for an expedited decision; provided, however, that if the issue is appropriate for review by the City's Planning and Zoning Commission, the matter shall be submitted to the Planning and Zoning Commission within thirty (30) days, and then to the City Council at its first meeting following the Planning and Zoning Commission hearing and the applicable public notice period. Both the City and the Owner agree to continue to use reasonable good faith efforts to resolve any impasse pending such expedited decision.

14. Miscellaneous Provisions.

14.1 Governing Law; Choice of Forum. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of

Bend, OR 97701

With Copies To:

City Attorney
City of Sedona
102 Roadrunner Drive
Sedona, AZ 86336

Withey Morris Baugh, PLC
2525 E. Arizona Biltmore Cir. Ste. A-212
Phoenix, AZ 85016
Attn: Benjamin Tate

- b. Effective Date of Notices. Any notice sent by United States Postal Service certified or registered mail shall be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service shall be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service shall be deemed effective upon its receipt or refusal to accept receipt by the addressee. Any notice sent by telecopy facsimile machine shall be deemed effective upon confirmation of the successful transmission by the sender's telecopy facsimile machine. Any Party may designate a different person or entity or change the place to which any notice shall be given as provided in this Section 14.4.

14.5 Development Rights. Except as otherwise permitted pursuant to Arizona Revised Statutes Section 9-462.01(E), the City agrees that, without limiting any other deemed or vested development rights, for a period of twenty (20) years from the effective date of this Agreement, the Owner and its successors and assigns shall be deemed to have the right to develop the Property in accordance with the approved application .

14.6 Time of Essence. Time is of the essence of this Agreement and each of its provisions.

14.7 Section Headings. The Section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

14.8 Attorneys' Fees and Costs. In the event of a breach by any Party and commencement of a subsequent legal action in an appropriate forum, the prevailing Party in any such dispute shall be entitled to reimbursement of its reasonable attorney's fees and court costs, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

14.9 Waiver. Without limiting the provisions of Section 14.5, the Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver of such right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

14.10 Third Party Beneficiaries. No person or entity shall be a third party beneficiary to this Agreement, except for permitted transferees, assignees, or Lenders under Section 14.21 to the extent that they assume or succeed to the rights and/or obligations of the Owner under this Agreement, and except that the indemnified persons referred to in the indemnification provisions of this Agreement shall be third party beneficiaries of such indemnification provisions.

14.11 Exhibits. Without limiting the provisions of Section 14.12, 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.

14.12 Integration. Except as expressly provided herein, this Agreement constitutes the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement.

14.13 Further Assurances. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of: (a) this Agreement as in full force and effect; and (b) the performance of the obligations under this Agreement at any time during its Term.

14.14 Business Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

14.15 Consents and Approvals. Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, use or other matter, such consent or approval shall be given or denied by such Party in its reasonable discretion, unless this Agreement expressly provides otherwise.

14.16 Covenants Running With Land; Inurement; Assignment. The covenants, conditions, terms and provisions of this Agreement relating to use of the Property shall run with the Property and shall be binding upon, and shall inure to the benefit of the Parties and their respective permitted successors and assigns with respect to the Property. Wherever the term "Party" or the name of any particular Party is used in this Agreement such term shall include any such Party's permitted successors and assigns. Owner may assign all of its rights, obligations and benefits under this Agreement to another party pursuant to written agreement with assignee; provided that Owner shall provide the City written notice of such assignment.

14.17 Recordation. Within ten (10) days after this Agreement has been approved by the City and executed by the Parties, the City shall cause this Agreement or a Memorandum of this Agreement to be recorded in the Official Records of Yavapai County, Arizona.

14.18 Amendment. No change or addition is to be made to this Agreement except by written amendment executed by the City and the Owner. Within ten (10) days after any amendment to this Agreement, such amendment shall be recorded in the Official Records of Yavapai County, Arizona.

14.19 Good Faith of Parties. Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily or capriciously and will not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

14.20 Survival. The indemnifications provisions of this Agreement shall survive the execution and delivery of this Agreement, the closing of any transaction contemplated herein, and the rescission, cancellation, expiration or termination of this Agreement upon the terms and for the period set forth in each respective Section.

14.21 Rights of Lenders. The City is aware that financing for improvements to be constructed on the Property may be provided, in whole or in part, from time to time, by one or more Third Parties (individually a "Lender", and collectively the "Lenders"). In the event of an Event of Default by the Owner, Owner may provide notices to its Lenders. Upon request by a Lender, the City will enter into a separate nondisturbance agreement with Lenders, consistent with the provisions of this Section 14.21. If a Lender is permitted, under the terms of its nondisturbance agreement with the City to cure the Event of Default and/or to assume the Owner's position with respect to this Agreement, the City agrees to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the benefits, rights and obligations of the Owner under this Agreement. The City shall, at any time upon reasonable request by the Owner, provide to any Lender an estoppel certificate or other document evidencing that this Agreement is in full force and effect and that no Event of Default by the Owner exists (or, if appropriate, specifying the nature and duration of any existing Event of Default).

14.22 Nonliability of City Officials. No City Council member, official, representative, agent, attorney or employee of the City shall be personally liable to the Owner, or to any successor in interest to the Owner, in the event of any Default or breach by the City or for

any amount which may become due to the Owner or its successors, or with respect to any obligation of the City under the terms of this Agreement.

14.23 Conflict of Interest Statute. This Agreement is subject to, and may be terminated by the City in accordance with, the provisions of A.R.S. §38-511.

14.24 Expiration of this Agreement. This Agreement shall expire at the end of the Term or as otherwise provided in this Agreement.

[Signatures on Following Pages]

DRAFT

CITY OF SEDONA, an Arizona municipal corporation

By: _____
_____, Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by _____, the Mayor of the City of Sedona, an Arizona municipal corporation.

Notary Public

My Commission Expires:
