

RESOLUTION NO. 2024-11

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SEDONA, ARIZONA, APPROVING THE DEVELOPMENT AGREEMENT WITH THE VILLAS ON SHELBY, LLC TO CONSTRUCT AFFORDABLE APARTMENTS AT 2250 SHELBY DRIVE.

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

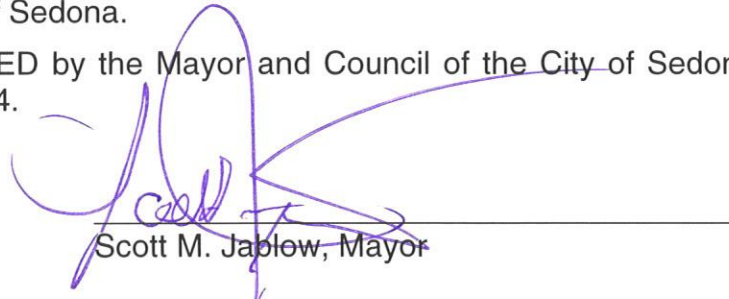
WHEREAS, the City of Sedona desires to construct 30 affordable apartments on 2250 Shelby Drive pursuant to the Land Lease Agreement with The Villas on Shelby LLC.

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 Development Agreement with The Villas on Shelby, LLC.

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 May, 2024.



Scott M. Jablow, Mayor

ATTEST:



JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:



Kurt W. Christianson, City Attorney

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

**DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SEDONA
AND VILLAS ON SHELBY, LLC**

THIS DEVELOPMENT AGREEMENT ("Agreement") made and entered into this 28th day of May, 2024 ("Effective Date"), by and between the City of Sedona, an Arizona municipal corporation ("City") and The Villas on Shelby, LLC, an Ohio limited liability company and its successor or assigns ("Developer"). City and Developer are sometimes referred to herein collectively as the "Parties," or individually as a "Party."

RECITALS

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

- A. WHEREAS**, City is the owner of property generally described as 2250 Shelby Drive located in Sedona, AZ, as more fully described in Exhibit "A" attached hereto and incorporated herein by this reference ("Property") to the City of Sedona.
- B. WHEREAS**, City and Developer have entered into the related Land Lease Agreement, Promissory Note, Leasehold Deed of Trust, and Land Use Restriction Agreement to develop the 30 units of affordable workforce housing on the Property.
- C. WHEREAS**, Developer intends to develop the Property by constructing certain residential improvements consisting of 30 affordable workforce multi-family apartment dwelling units ("Project"). As a condition of, and concurrent with, development of the Project, and subject to and in accordance with the other provisions and requirements of this Agreement, Developer intends and has the ability to finance, construct and complete the Project and Public Improvements (as defined below), and to otherwise accomplish all of the Obligations of Developer.
- D. WHEREAS**, this Agreement is entered into under the authority of A.R.S. §9-441 et. seq. which declares municipal assistance in providing for the acquisition, construction or rehabilitation of housing a valid public purpose and authorizes municipalities to use its monies to aid the planning, undertaking and carrying out of housing development projects.
- E. WHEREAS**, this Agreement is entered into by authority of A.R.S. §9-500.05, the City

finding that the consideration and commitments herein from and to the Developer and the City are justified based on other consideration provided hereby, including without limitation the benefits to the community resulting from this Agreement.

- F. WHEREAS,** The Parties acknowledge that the Project qualifies as an economic development activity; that the Project will assist in the creation and retention of jobs and will otherwise improve and enhance the economic welfare of the residents of the City by increasing access to affordable housing, stimulating further economic development in the City, generally enhancing the economic welfare of the city's citizens and by constructing public infrastructure improvements; that the City's participation in this Agreement will in fact serve legitimate economic development purposes as authorized by A.R.S. §9-500.11; and that the City's participation authorized by this Agreement is not grossly disproportionate to the benefits the City will receive during the Agreement and that in the absence of the City's participation the affordable housing Project would not be constructed.
- G. WHEREAS,** City is entering into this Agreement to implement and to facilitate development of the Property consistent with the policies of the City. This Agreement is consistent with the Development Incentives and Guidelines for Affordable Housing ("DIGAH"), and the City's Community Plan in effect on the date of this Agreement. The Project, as shown in the Site Plan, meets DIGAH requirements and is eligible for a density bonus.
- H. WHEREAS,** Developer agrees to restrict 100% of the Project units for affordable housing for 75 years commencing on the date the Project receives a certificate of occupancy as detailed below.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the promises and mutual obligations contained herein, City and Developer agree to proceed under the following terms and conditions:

1. OBLIGATIONS OF DEVELOPER

- 1.1 Property Development. The Developer shall construct or cause to be constructed the Project, a multi-family residential community with no less than 30 units in general conformance to the Site Plan attached hereto as Exhibit "B" and incorporated herein by this reference, subject to conditions, review and approval of City Community Development staff and the Planning and Zoning Commission. The Developer shall be responsible for the planning, permitting, financing, management and development of the Project and Property in accordance with local, state and federal requirements. The Developer shall be responsible for arranging and securing construction and permanent financing for the Project. The Developer shall require the contractor to obtain a performance and payment bond in the full amount of the improvements in addition to general liability and course of construction insurance of reasonable limits to protect the interests of the Property. Developer warrants that it has adequate financing or financial

resources to complete the Project and comply with all of its obligations as contained herein.

- 1.2 Condominium Conversion; Short-Term Rental Use Prohibition. The Property shall not be used for short-term rentals (rental terms of less than 30 days) or conversion to a condominium or otherwise divide the Property during the term of the Land Use Restriction Agreement signed in connection with this Agreement.
- 1.3 Developer Representations. Developer represents and warrants that:
 - 1.3.1 Developer has the full right, power and authority to enter into and perform this Agreement and each of the obligations and undertakings of Developer under this Agreement, and the execution, delivery and performance of this Agreement by Developer has been duly authorized and agreed to in compliance with the Developer's organizational documents.
 - 1.3.2 As of the date of this Agreement, Developer knows of no litigation, proceeding or investigation pending or threatened against or affecting Developer contesting the validity or enforceability of this Agreement or Developer's performance under this Agreement.
 - 1.3.3 The execution, delivery and performance of this Agreement by Developer is not prohibited by, and does not conflict with, Developer's organizational documents or any other agreements, instruments, judgments or decrees to which Developer is a party or to which Developer is otherwise subject.
 - 1.3.4 Developer has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, consultants, engineers and attorneys and any licensed real estate broker retained by the Developer. Developer has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.
- 1.4 Development Standards. The development of the Property and construction of the Project will be governed by the Sedona City Code, Sedona Land Development Code ("LDC:), ordinances, regulations, rules, guidelines, engineering standards, Building Code, Fire Code and policies controlling permitted uses of the Property. Design review standards, the density and intensity of uses, parking spaces requirements, and the maximum and minimum height and size of the buildings in existence as of the Effective Date of this Agreement will apply, except as modified by this Agreement. Developer will comply with all applicable Federal, State, County and City laws, regulations and policies.
- 1.5 Materials Management. Developer agrees to incorporate infrastructure to support recycling activities on-site, including the provision of recycling collection locations near those dedicated for trash.

2. OBLIGATIONS OF CITY

2.1 LDC, DIGAH, and CFA Allowances.

2.1.1 Pursuant to LDC Section 8. 8 and the DIGAH, to maximize the number of affordable housing units and for consistent design and layout of the site, the City agrees to permit a building height of up to 40 feet without requiring the largest unrelieved building plane to be reduced to a maximum of 400 square feet, as required by the Sunset Live/Work Community Focus Area Plan.

2.1.2. Pursuant to LDC Section 8. 8 and the DIGAH, to maximize the number of affordable housing units, the City agrees to modify LDC Section 5.7.F(2)d.1. (Building Length — Multifamily Residential and Lodging Uses) to allow the entirety of the building, exceeding 150 feet, to be subject to the maximum height allowed by the Land Development Code, CFA, and this Agreement, and not require 25% of the building to be limited to 16 feet in height.

3. TERM; DEFAULT

3.1 Term. Notwithstanding anything in this Agreement to the contrary, the term of this Agreement (“**Term**”) shall begin on the Effective Date and shall terminate seventy-five (75) years from the issuance of the certificate of occupancy for the Project unless this Agreement is terminated sooner pursuant to any earlier termination provision of this Agreement.

3.2 Survival of Certain Provisions. Notwithstanding the termination of this Agreement as set forth in Section 3.1, the indemnity and hold harmless obligations as found in Section 4.9 shall survive the expiration of this Agreement for a period of one year.

3.3 Events Constituting Default. A party shall be in default under this Agreement if it fails to perform, in material respect, any covenants made by it or obligations assumed by it under this Agreement, which failure adversely affects the other party's interest under this Agreement, including failure to begin construction by December 31, 2024 or failure to complete construction of the Project by June 30, 2026, and in such an event, each party shall be entitled to all available legal and equitable remedies, including, but not limited to, termination of leasehold tenancy, foreclosure upon the Leasehold Deed of Trust, the right of specific performance, including all costs of enforcement of this Agreement.

3.4 This Agreement is conditioned upon compliance with the Land Lease and Loan Agreement, Promissory Note, Leasehold Deed of Trust and Land Use Restriction Agreement signed in connection with this Agreement. Developer's failure to execute or comply, in material respect, with the terms of any those connected agreements will result in termination of this Agreement, subject to expiration of respective cure periods as provided in said connected agreements

4. MISCELLANEOUS PROVISIONS

4.1 Entire Agreement; Assignment. This Agreement constitutes the entire agreement and understanding of the parties hereto and supersedes all offers, negotiations, and other agreements of any kind. This Agreement may be amended only in writing and signed by both parties. This Agreement and all the covenants, terms and provisions contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated by any party, without the prior written consent of the other party. Such consent may not be unreasonably withheld or delayed. This Agreement is not intended to confer any rights or benefits to any individual or entity other than to the City and to Developer, nor shall anything contained herein create any partnership, joint venture or similar arrangement between the Developer and the City.

4.2 Arizona Law; Venue. This Agreement is and shall constitute a contract under and is to be construed in accordance with the laws of the State of Arizona. Any action brought to interpret, enforce or construe any provision of this Agreement must be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Yavapai. The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section.

4.3 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall have the force and effect of an original, and all of which shall constitute but one document.

4.4 Notices. All notices required to be given under this Agreement shall be deemed given upon the earlier of actual receipt or two (2) days after being mailed by registered or certified mail, return receipt requested, addressed as follows:

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

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

If to Developer: Villas on Shelby, LLC
 c/o HS Development Partners, LLC
 30 S. Oak Street
 London, Ohio 43140

4.5 Authority. This Agreement is not intended to supersede the authority granted by law to

any regulatory board or agency of the City. Therefore, nothing in this Agreement shall be construed or implied to require the City's Planning, Zoning or other regulatory boards or agencies (however designated) to approve the plans for any aspect of the Project or other action required under this Agreement.

- 4.6 Time of Essence. Time is of the essence and a material provision of this Agreement.
- 4.7 Tax Consequences. City makes no representation concerning the tax consequences or liability resulting from this Agreement. The parties have each had an opportunity to consult with legal counsel concerning the terms and effects of this Agreement and either party's failure to do so is at its own choosing.
- 4.8 Conflicts of Interest. This Agreement is subject to the provisions of A.R.S. §38-511, relating to conflicts of interest.
- 4.9 Indemnification. Developer, during the term of this Agreement, agrees to indemnify, hold, protect and save harmless the City and any and all of its officers, agents, and employees from and against any and all actions, audits, proceedings, claims and demands, loss liens, costs expense and liability of any kind and nature whatsoever, for injury to or death of persons, or damage to property, imposed upon or sustained by Sedona, its officers, agents, or employees in and arising from or attributable to or caused directly or indirectly by the gross negligence, wrongful acts, material omissions or from operations conducted by Developer, its officers, agents or employees or by any person or persons acting on behalf of Developer.
- 4.10 Insurance. Developer, at Developer's own expense, shall purchase and maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 general aggregate limit, Automobile Liability insurance with an individual single limit for bodily injury and property damage of no less than \$1,000,000, each occurrence, and Workers' Compensation insurance to cover obligations imposed by applicable federal and state statutes. Additionally, Developer shall maintain property insurance coverage sufficient to cover the full replacement cost value of the Project and all improvements on the Property. All insurance required herein shall be maintained in full force and effect during the term of this agreement. The Developer's insurance shall be primary insurance as respects to City and any insurance maintained by City shall not contribute to it. The insurance policies required by this Agreement, except workers' compensation, shall name City as additional insureds. Insurance policies required by this Agreement, except workers' compensation, shall contain a waiver of transfer of rights of recovery (subrogation) against Sedona for any claims arising out of Developer's performance of this Agreement.
- 4.11 Exhibits. The Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes.
- 4.12 No Agency Created. Nothing contained in this Agreement creates any partnership, joint venture or agency relationship between the City and Developer. No term or provision of

this Agreement is intended to be for the benefit of any person, firm, organization or corporation not a party hereto, and no other person, firm, organization or corporation may have any right or cause of action hereunder.

- 4.13 Recordation. Within ten (10) days after this Agreement has been executed by the Parties, Developer will cause this Agreement to be recorded in the Official Records of Yavapai County.
- 4.14 No Personal Liability. No former or current City Council member, official, representative, agent, attorney or employee of City will be personally liable to the Developer, or to any successor in interest, in the event of any Default or breach by City or for any amount which may become due to any of the other Parties or their successors, or with respect to any obligation of City under the terms of this Agreement.
- 4.15 WAIVER OF JURY TRIAL. THE CITY AND DEVELOPER HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING, COUNTERCLAIM OR DEFENSE BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN ANY WAY CONNECTED TO THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO RELATING TO THIS AGREEMENT.
- 4.16 Force Majeure. In no event shall the Parties be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused by a Force Majeure. "Force Majeure" means and shall be limited to: an event which is beyond the reasonable complete control of a Party and which causes a delay or failure to perform obligations hereunder, including without limitation acts of God, earthquake, fire, explosion, war, civil insurrection, acts of the public enemy, acts of civil or military authority, sabotage, terrorism, floods, lightning, hurricanes, tornadoes, severe snow storms, major equipment failure, utility disruption, or pandemics.

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

CITY OF SEDONA
an Arizona municipal corporation

By: 

Scott M. Jablow, Mayor

ATTEST:

Date: 6/4/24

Development Agreement between
City of Sedona and Villas on Shelby, LLC
Page 9

This Development Agreement was acknowledged before me this 5th day of June, 2024
by Bonnie J. Demmy, Manager of HSDP Holdings, LLC, Manager of HSDP The Villas on
Shelby, LLC, Manager of The Villas on Shelby, LLC.

JoAnne Cook
Notary Public

My commission expires: 02/06/2027

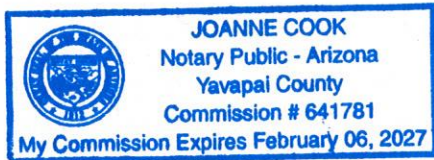


Exhibit "A"

PROPERTY

EXHIBIT "A"
LEGAL DESCRIPTION

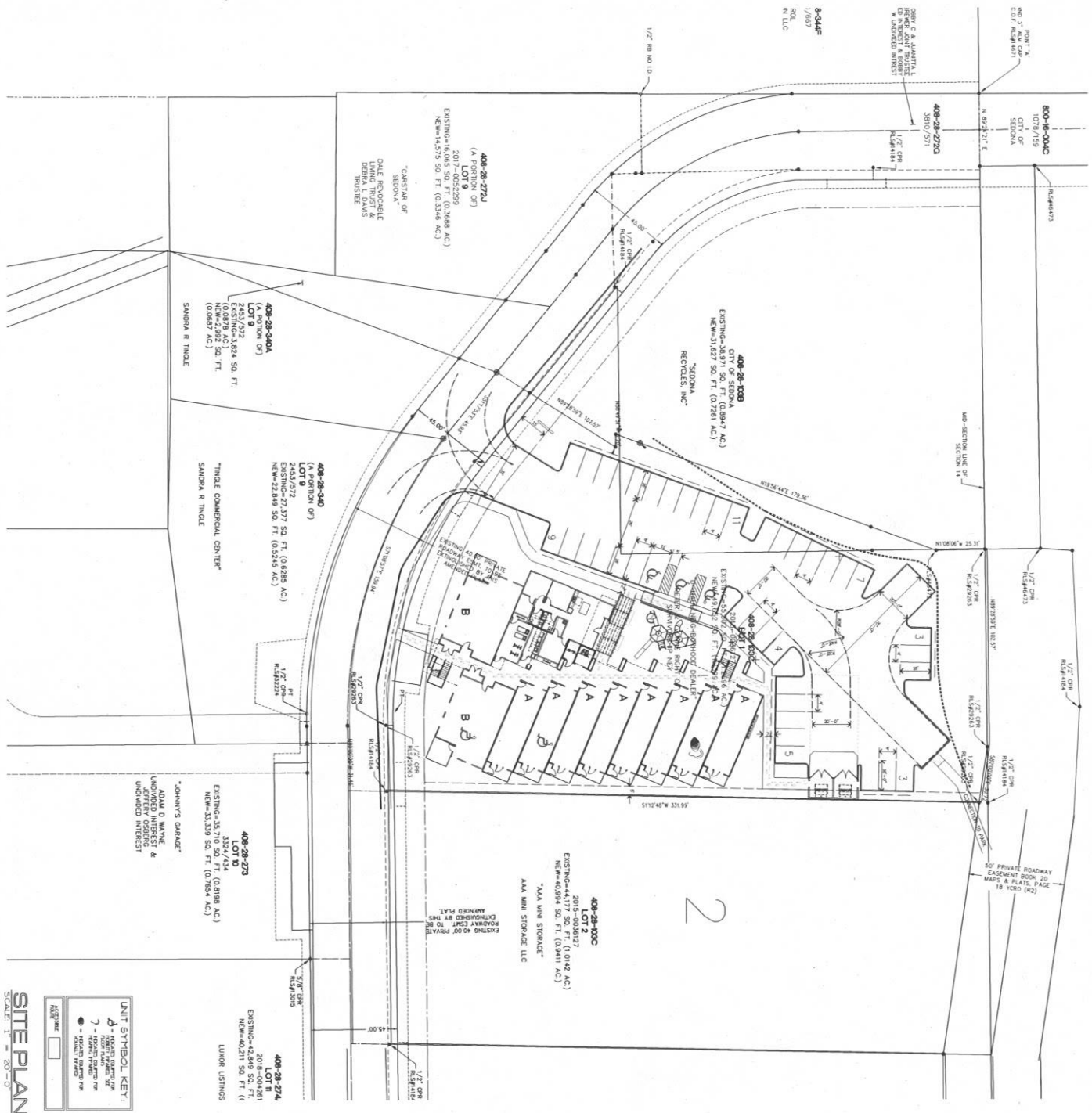
The Southwest quarter of the Southwest quarter of the Southwest quarter of the Southwest quarter of Section 12, Township 17 North, Range 5 East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona.

EXCEPTING therefrom any portion of said property lying within Sunset Drive as set forth in Dedication of Sunset Drive plat recorded in Book 12 of Maps, Page 34.

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

Exhibit "B"

SITE PLAN



SITE PLAN
SCALE: 1" = 20'-0"

UNIT SYMBOL KEY

(Symbol)	EXISTING UNIT
(Symbol)	NEW UNIT
(Symbol)	UNIT TO BE REMOVED
(Symbol)	UNIT TO BE ADDED

Address	Size (sq ft)	Units	Value
2250 Shelby Drive	225,000	120	\$12,000,000
2251 Shelby Drive	225,000	120	\$12,000,000
2252 Shelby Drive	225,000	120	\$12,000,000
2253 Shelby Drive	225,000	120	\$12,000,000
2254 Shelby Drive	225,000	120	\$12,000,000



S.1
SITE PLAN

Revisions:

NO.	DATE	DESCRIPTION
1	05/18/24	REVISED PER COMMENTS
2	05/27/24	REVISED PER COMMENTS
3	06/11/24	REVISED PER COMMENTS
4	06/11/24	REVISED PER COMMENTS
5	06/11/24	REVISED PER COMMENTS
6	06/11/24	REVISED PER COMMENTS

Issue Date:
MARCH 2024

Villas on Shelby
2250 Shelby Drive
Sedona, AZ 86336
HS Development Partners

PRELIMINARY DRAWING
Not for Construction

ATHENA STUDIO, LLC
2801 E. Camelback Road
Phoenix, AZ 85016
602-274-5000