

RESOLUTION NO. 2005 - 12
[Development Agreement with The Preserve]

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SEDONA, ARIZONA, AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY, TO ENTER INTO A DEVELOPMENT AGREEMENT, PURSUANT TO ARIZONA REVISED STATUTES § 9-500.05 (AS AMENDED), WITH SEDONA OAK CREEK PARTNERS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, GOVERNING THE CONDITIONS, TERMS AND REQUIREMENTS FOR THE FUTURE DEVELOPMENT OF PROPERTY KNOWN AS “THE PRESERVE AT OAK CREEK,” AND TERMINATING THE PRIOR DEVELOPMENT AGREEMENT WITH CLIFFS MORTGAGE, LLC, WHEN THE PROJECT WAS KNOWN AS “THE CLIFFS AT OAK CREEK.”

WHEREAS:

- Arizona Revised Statutes § 9-500.05 (as amended) authorizes a municipality, by ordinance or resolution, to enter into development agreements relating to real property located in the city limits, and
- A development agreement shall be consistent with the general or community plan of the city applicable to the property on the date of its execution, and
- Such agreement may specify or otherwise relate to its duration, permitted uses and densities, building heights, preservation of historic or environmentally sensitive lands, phasing or time of construction of improvements, or any other matters relating to the development of the property, and
- The burdens of the development agreement are binding on, and the benefits of the development agreement inure to, the parties to the agreement and all their successors in interest and assigns by recording a copy of the agreement in Coconino County, Arizona, within ten (10) days of its execution, such recordation constituting notice of its terms and conditions, and
- A development agreement may be amended, or cancelled in whole or in part, by mutual consent of the parties to the development agreement, or by their successors in interest or assigns, and
- Sedona Oak Creek Partners, LLC, (“Developer”) and the City of Sedona, an Arizona municipal corporation (“City”), desire to enter into a development agreement in connection with Developer’s proposed planned development project for certain real property consisting of approximately 22 acres bisected by Highway 89A at the northern entrance to the City, and to terminate an existing development agreement and plan for the property known as “The Cliffs at Oak Creek,” to which Developer is a successor in interest, and

- Developer and the City (collectively, the “Parties”), desire to agree to certain conditions, terms and requirements for the development of the subject property by agreeing upon certain grants, considerations, and concessions made by Developer in favor of the City, and by also setting forth certain development rights and assurances on Developer’s behalf, and
- The Planning & Zoning Commission of the City granted development review of the first phase of the project (Buildings A-F, the Spa in the Hillside Village, and the Main Lodge) pursuant to the Land Development Code of the City, on March 15, 2005, and
- The City Council will be asked, along with approval of the Development Agreement, to take action on the preliminary plat for the entire project (SUB2004-1), and approve zoning map change to PD (Planned Development)(ZC2004-1) to allow for the amended site plan consistent with the Development Agreement,

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

1. *Development Agreement Approval.* The form development agreement negotiated by the Parties to accomplish the above-stated purposes (the “Agreement”), incorporated herein as Exhibit A, is consistent with the general and community plan of the City of Sedona as it is currently applicable to the property, and is hereby approved. The agreement is in the best interests of the City and the citizens hereof, and meets the requirements and form of ARS § 9-500.05 (as amended). The Mayor is hereby authorized to execute and enter into the Agreement on behalf of the City upon final approval as to form by the City Attorney.
2. *Recordation.* Not later than ten (10) days after the Mayor executes the Agreement, the City shall record a copy with the Coconino County Recorder pursuant to ARS § 9-500.05.D.
3. *Cancellation of “The Cliffs” Development Agreement.* The Parties hereby cancel the prior development agreement for the property pursuant to ARS § 9-500.05.C, known as “The Cliffs at Oak Creek,” wherein the owners and developers were predecessors in interest to the Developer, dated December 22, 1997, recorded as document No. 97-37363 in the Official Records of Coconino County Recorder’s Office, Arizona, and all subsequent amendments and extensions (documents No. 3112835, 3245165, 3296688, and 3303854).
4. *Collateral Action by the City.* The Agreement is to be interpreted with, and subject to, any conditions applied by the City in approval of the PD (Planned Development) amendment to the site plan following zone change procedures (ZC2004-1), and the Preliminary Plat approval for the entire project (SUB2004-1). The Agreement shall not be operative and in effect until council action on those items has been completed, and, if either is rejected, shall be null and void

....

PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona,
this 26th day of April, 2005.

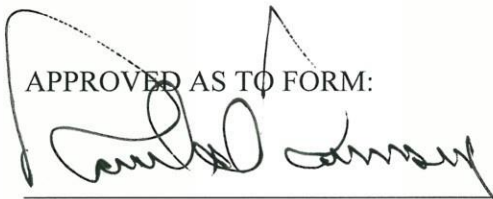
CITY OF SEDONA

By 
Pud Colquitt, Mayor

ATTEST:


City Clerk

APPROVED AS TO FORM:

 4/29/05
City Attorney

When recorded, return to:

Withey, Anderson & Morris, PLC
2525 East Arizona Biltmore Circle, Suite A-212
Phoenix, Arizona 85016
Attn: Jason B. Morris, Esq.

**DEVELOPMENT AGREEMENT
(The Preserve at Oak Creek)**

THIS DEVELOPMENT AGREEMENT for The Preserve at Oak Creek (this "**Agreement**") is entered into this 26th day of April, 2005 by and between the CITY OF SEDONA, an Arizona municipal corporation ("**City**") and SEDONA OAK CREEK PARTNERS, L.L.C., a California limited liability company ("**Developer**").

RECITALS

- A. Cliffs Mortgage, L.L.C., an Arizona limited liability company ("**Owner**") owns that real property located within the municipal boundaries of City in Coconino County, Arizona, consisting of approximately twenty-two (22) acres, as depicted on the map attached hereto as **Exhibit A** and legally described in attached **Exhibit B**, (the "**Property**"). The Property is adjacent to the boundaries of City's Uptown Enhancement Project. Owner authorized Developer to process and negotiate with City a new design for development of the Property and this Agreement regarding that development. By its consenting signature hereto, Owner agrees to recordation of this Agreement on the Property.
- B. The Property is zoned PD (Planned Development) and is bisected north to south by State Route 89A. The Property consists of fourteen (14) original parcels. Developer's conceptual master plan for the Property provides for a unified development called the Preserve at Oak Creek (the "**Preserve**"), which includes an interval ownership resort community containing interval ownership and affordable work-force rental dwelling units, associated recreational and commercial facilities, publicly accessible viewing areas of Oak Creek, a publicly accessible botanical preserve, and a public park, and is attached hereto as **Exhibit C** (the "**Master Plan**"). The Master Plan sets forth development plans for the Property consistent with City's current subdivision and zoning regulations and with City's site improvement standards. The Master Plan also depicts the planned residential, accessory commercial, and recreational components of the Preserve.
- C. Developer and City acknowledge that development of the Property pursuant to the Master Plan is consistent with the current Sedona Community Plan (the "**General Plan**") and will result in a high-quality, unified, and master-planned development that is more beneficial to City than development of the Property as isolated uses on separate pads and parcels. Although the General Plan could be revised, City acknowledges and agrees that it shall not initiate a revision of the General Plan that would impact the Property before execution of this Agreement and approval of the Master Plan. Particularly because of the Property's

location as the northern gateway to the City, City acknowledges the benefits provided by the unified development of the Property with consistent architecture and landscaping, yet developed with an incremental design approach reflective of Uptown Sedona's historic territorial village vernacular.

- D. The interval ownership portion of the Preserve will contain up to one hundred thirty-eight (138) two and three bedroom dwelling units to be defined as follows: fifty-nine (59) "Unit Type A" (1,330 square feet/two-bedroom); four (4) "Unit Type B" (1,980 square feet/three-bedroom); six (6) "Unit Type C" (1,700 square feet/three-bedroom); forty-eight (48) "Unit Type E" (1,600 square feet/three-bedroom); and twenty-one (21) "Unit Type F" (1,650 square feet/three-bedroom). Each unit type shall be referred to herein as a "**Unit**". Each one (1) week of ownership for each Unit shall be considered a "**Unit Term**." Each interval of ownership shall consist of a minimum of three (3) Unit Terms, i.e. three (3) weeks. The Units will not include lockout units and will not be available for nightly rental to the general public. However, if the Preserve is part of a network of interval ownership properties, owners of Unit Terms at properties within that network shall be able to use a Unit at the Preserve for all or a portion of a Unit Term if such time is available. Developer shall assess appropriate transaction privilege taxes on any fees, including maintenance fees, charged to such owners within the network for staying at the Preserve. Developer understands City's concerns regarding interval ownership development contributing its fair share to City and is committed to being a good corporate citizen in the City. Developer shall contribute a one-time conveyance fee and an annual homeowners' fee per Unit Term as set forth in § 2.6 of this Agreement.
- E. Developer shall provide a benefit to the community by providing the land and improvements for, and access to, an approximately 7.8-acre public park (the "**Jordan Preserve**") for passive recreation, including benches and trails, on that portion of the Property east of Oak Creek. The Jordan Preserve will provide non-vehicular public access to approximately two thousand (2,000) linear feet of the east side of Oak Creek currently not available to the public and access to U.S. Forest Service trailheads. Developer and City staff shall hold planning workshops to discuss design and operation of and access to the Jordan Preserve, including maintenance of, and restrictions on access at night to, the Jordan Preserve at night. The community will receive a further benefit as Developer shall improve the Jordan Preserve and then dedicate it to City for ownership and maintenance. Developer shall construct one (1) bridge from the northern portion of the Property west of Oak Creek to the Jordan Preserve to provide access to and from the Jordan Preserve, as shown on the Master Plan and as set forth in § 2.3 of this Agreement.
- F. Developer and City recognize the importance of public art for the community. Developer may fulfill its public art requirement through developing art installations, with approval from City's Arts and Culture Commission, including installation on the viewing platform on the west side of State Route 89A of interpretive graphics that chronicle the historic use of the Property, such as the George Jordan orchards.
- G. Developer and City recognize the importance of providing affordable workforce multi-family housing in the City, and desire to offset the impact of the Preserve on the affordable workforce multi-family housing needs in the City. City may provide certain concessions not

otherwise available to Developer to accomplish the provision of affordable workforce multi-family housing as set forth in § 2.7 of this Agreement.

- H. City acknowledges that the development of the Property and construction of public improvements are of such magnitude that Developer requires assurances from City of Developer's ability to complete the development of the Property pursuant to the Master Plan before it can secure private financing for the development of the Property. City and Developer acknowledge that the development of the Property pursuant to this Agreement will result in significant benefits to Developer and City by providing assurances to Developer that it will have the ability to develop the Property in accordance with the General Plan and the Master Plan, provided that Developer pays the applicable development fees.
- I. Developer and City understand and acknowledge that this Agreement is a "Development Agreement" within the meaning of, and entered into pursuant to the terms of, A.R.S. § 9-500.05, in order to facilitate the development of the Property by providing for the conditions, terms, and requirements for the construction and installation of certain infrastructure as set forth in § 2 of this Agreement, and for development rights and assurances related to the development of the Property as set forth in § 3 of this Agreement.
- J. The Property is currently the subject of that certain Development Agreement for the Cliffs at Oak Creek, dated December 22, 1997 and recorded as Document Number 97-37363 in the Official Records of the Coconino County Recorder's Office, Arizona. Upon the Effective Date as described in § 6.22 of this Agreement, the Development Agreement for the Cliffs at Oak Creek shall terminate as to the Property, and City and Owner will execute, acknowledge, and record a confirmation of the termination and release of the Development Agreement for the Cliffs at Oak Creek with respect to the Property.

NOW, THEREFORE, in consideration of the foregoing promises and the mutual promises and agreements set forth herein, the parties agree as follows:

AGREEMENT

- 1. **Termination of Development Agreement for the Cliffs at Oak Creek and Related Documents.** Upon the Effective Date as described in § 6.22 of this Agreement, the Development Agreement for the Cliffs at Oak Creek and its exhibits and related documents shall terminate as to the Property, and Owner and City shall execute, acknowledge and record a confirmation of the termination and release of: (i) the Development Agreement for the Cliffs at Oak Creek, dated December 22, 1997 and recorded as Document Number 97-37363 in the Official Records of the Coconino County Recorder's Office, Arizona; (ii) the First Amendment to the Development Agreement, dated September 25, 2001 and recorded as Document Number 3112835 in the Official Records of the Coconino County Recorder's Office, Arizona; (iii) the Second Amendment to the Development Agreement (also known as the moratorium amendment), dated November 12, 2003 and recorded as Document Number 3245165 in the Official Records of the Coconino County Recorder's Office, Arizona; (iv) the Third Amendment to the Development Agreement, dated October 21, 2004 and recorded as Document Number 329668 in the Official Records of the Coconino County Recorder's Office, Arizona; and (v) the Fourth Amendment to the

Development Agreement, dated December 14, 2004 and recorded as Document Number 3303854 in the Official Records of the Coconino County Recorder's Office, Arizona. The Termination and Release of Agreements form is attached hereto as **Exhibit D**.

2. **Infrastructure.**

2.1 **Street/Traffic Flow Improvements.** As part of the initial phase of development of the Preserve, Developer agrees to construct or have constructed street and traffic flow improvements in the Uptown Enhancement Project ("UEP") area including the roundabout on State Route 89A adjacent to the north end of the Preserve, in conformance with the City's approved UEP plan and the City's design and standards for the roundabout, up to the amount of the circulation/streets development impact fee for the development of the Property. The Developer further acknowledges and agrees that it shall bear the additional cost of side-walk, conduit, curb and gutter extending from the entrance to the proposed Jordan Preserve at the northern end of the Preserve to Art Barn Road on the east side of State Route 89A, as well as side-walk, curb, conduit and gutter connecting the northern end of the hillside portion of the Preserve to the proposed UEP improvements on the west side of State Route 89A shown in the Conceptual Streetscape Master Plan – Uptown Enhancement Area dated June 17, 2004; these additional costs shall not be credited against any applicable development impact fees. Developer shall be exempt from any City assessments applicable to the Property that are related to the improvements completed in conformance with this § 2.1.

2.2 **City Assessments.** Developer acknowledges and agrees that it shall pay its share of City assessments applicable to the Property that are in effect on or after the Effective Date of this Agreement. However, Developer shall be exempt from payment of any City assessment related to the improvements specified in § 2.1 of this Agreement.

2.3 **Jordan Preserve and Bridge.** As part of the initial phase (not later than completion of phase 1) of development of the Property, Developer shall construct the Jordan Preserve and one (1) pedestrian bridge from that portion of the Property west of Oak Creek to the Jordan Preserve (the "**Pedestrian Bridge**") as mutually agreed by Developer and City during design of the Jordan Preserve, including provision of trailheads and a lockable gate on the State Route 89A side of the Pedestrian Bridge to restrict access to the Jordan Preserve "after hours" as agreed by Developer and City. Developer shall erect an aesthetically appropriate screen to delineate access to the Jordan Preserve from the developed portion of the Property as shown in attached **Exhibit E**; this screen could include walls, open fencing, vegetation, or some combination thereof. Before issuance of permits for construction of the Jordan Preserve, Developer and City shall mutually establish and agree to a list of restrictions for use of the Jordan Preserve. The restrictions shall include, but not be limited to: (i) daily hours of approved access; (ii) permitted activities; (iii) prohibited activities; (iv) standards for group use; (v) joint approval of signage; and (vi) preservation guidelines, such as routine assessment and active protection, if necessary, of environmentally sensitive habitat. Developer shall dedicate, and City shall accept, the Jordan Preserve and the Pedestrian Bridge upon completion of construction and final City sign-offs and before public use of the Jordan Preserve is permitted. Upon its acceptance of the Jordan Preserve and the Pedestrian Bridge, City shall assume maintenance of the Jordan Preserve and access easements to the Jordan Preserve and liability for public access to same. City shall name Developer as "also insured" on any general liability policies secured for the Jordan Preserve. If

City determines within six (6) months of the Effective Date not to accept the Jordan Preserve and the Pedestrian Bridge, Developer shall have no further obligations under this § 2.3 or Recital E of this Agreement.

2.4 Botanical Preserve. Developer shall develop a botanical preserve (the “**Botanical Preserve**”) showcasing samples of indigenous hillside vegetation on the west side of State Route 89A, as shown on the Master Plan, which shall remain in private ownership but shall be open to the public. The Botanical Preserve shall include approximately 7,688 square feet. Developer shall name City as “also insured” on any liability policies governing the Botanical Preserve.

2.5 Oak Creek Overlook Viewing Area. The viewing area that is located between the destination restaurant and the gym, as shown on the Master Plan, shall be open to the public. Developer and City shall mutually establish and agree to restrictions on use of the viewing area regarding public health and safety concerns, public decency, and consideration of all users. These restrictions shall include, but not be limited to: (i) supervision of minors and pets, including leash requirements for pets; (ii) limitations on use of alcohol in public spaces that are not governed by a liquor license; (iii) standards for amplified music; (iv) prohibition of defacement of property; (v) standards for public decency; and (vi) reference to City’s public nuisance regulations. Developer shall name City as “also insured” on any liability policies governing the viewing area.

2.6 Homeowners’ Assessment. Developer will pay to City a one-time payment of one hundred twenty dollars (\$120.00) per Unit Term within thirty (30) days after the conveyance of each Unit Term. Developer will pay to City an ongoing annual payment for each Unit Term, after the initial year of conveyance, of sixty dollars (\$60.00) for each Unit Term. The purpose of the fee is to recognize that City cannot collect taxes on interval ownership units similar to those taxes it collects on hotel/motel users, and provide a means for Developer, as a good corporate citizen, and future Unit owners, to contribute to City’s operation and maintenance expenditures that benefit the community at large. For purposes of clarification, the intended calculation for determining the homeowners’ assessments due City shall be:

- (i) \$120 x 138 (or the actual number of Units constructed, if fewer) x __ (for “upon sale” assessment); and
- (ii) \$60 x 138 (or the actual number of Units constructed, if fewer) x __ (for “annual” assessment)

Such assessment shall be in the form of a covenant running with the land for so long as the Units are maintained as interval ownership units. Developer agrees to cause sufficient information to be provided to City to substantiate the payments made for “upon sale” and “annual” assessments on an annual basis, commencing one year after conveyance of the first Unit. For the first year of “upon sale” assessments, Developer shall prepare a semi-annual report for City.

The annual assessment for each Unit Term shall be adjusted every year as follows:

- (i) The Consumer Price Index for All Urban Consumers (All Cities – All Items) (1982-84) (the "Index") will be used in adjusting the annual assessment.

- (ii) The Index for the month in which the first final Certificate of Occupancy is issued for a Unit ("Base Month") shall be compared with the same calendar month for each subsequent adjustment ("Adjustment Month").
- (iii) The annual assessment payable during each subsequent year shall be the annual assessment payable during the year immediately preceding the Adjustment Month as increased by the change in the Adjustment Month Index. Notwithstanding the foregoing, in the event the Index adjustment is more than five percent (5%), the annual assessment payable for the next year shall be increased a maximum of five percent (5%).
- (iv) During the Adjustment Month and continuing until the Index for the Adjustment Month is published, Developer shall be entitled to estimate the Index for the Adjustment Month and to adjust the annual assessment in accordance with this §2.5. At such time as the Index for the Adjustment Month is published, the annual assessment shall be adjusted and Developer shall determine if it is necessary to make adjustments for the period such estimate was being used. If Developer has overpaid, City shall credit Developer with the amount of such overpayment on the next annual assessment due. If Developer has underpaid, Developer shall pay all additional amounts due with the next annual payment due.

2.7 Affordable Workforce Rental Housing. Developer agrees to include in its Master Plan six (6) apartment units rentable for not less than ninety (90) days and not greater than two (2) years per lease in order to provide an affordable workforce multi-family housing element to the Preserve. Developer shall have the discretion as to the location, design and size of such apartment units so long as each such apartment unit is a minimum of six hundred (600) square feet. The apartment units will be made available to employees on the Property whose households earn a gross income of less than or equal to one hundred percent (100%) of the area median income for the household size in Coconino County; the accumulated annual rent for the affordable units shall be capped at thirty percent (30%) of the annual area median income for the household size in Coconino County. Developer shall implement a selection process or lottery system to ensure equity in tenant selection. If Developer is not able to rent the apartment units to income qualified employees on the Property, then any un-rented apartment unit shall be made available to other parties who meet the income qualifications for households specified above in this § 2.7; a City housing authority shall be responsible for managing rental of the apartment units to parties not employed on the Property. When each lease expires, employees on the Property shall have first priority to rent the apartment units. Developer or a successor operator shall pay for community maintenance fees, property insurance, any applicable property taxes, parking, trash and water, and normal wear and tear to affordable units. Tenants will be responsible for their own utilities (gas and electric service), phone, modem and cable service. Developer shall submit an annual report to City providing records of tenants' incomes, rents paid and employee waiting lists. For a period of twenty (20) years after issuance of the certificates of occupancy for the apartment units, Developer agrees not to sell, transfer, deed, or otherwise convey such apartment units without the prior written consent of City except for purposes of leasing or renting such units for 90 days or more per term; Developer acknowledges that City must process a subdivision before these units can be sold. Such apartment units are intended to be an integral part of Developer's desired "village" effect for the Preserve, and shall be completed not later than completion of Phase 1 of the Preserve (apartment units must be

completed in order for issuance of Certificates of Occupancy for development on the west side of State Route 89A). City agrees that it shall not charge plan review fees, permit fees, building fees, or development impact fees as stated in Article 16 of the Land Development Code for the six affordable apartment units. Developer shall ensure that maximum occupancy requirements are satisfied as established in applicable Building and Fire Codes.

2.8 Wood Burning Fireplaces. Developer acknowledges City's Wood Burning Fireplace Ordinance and shall install no wood burning fireplaces in any buildings on the Property.

2.9 Public Service Announcement Signage. Developer shall dedicate to City an easement over a small site on the Property for public installation and maintenance of a public service announcement sign, at a location that is mutually agreeable to Developer and City, which agreement shall not be unreasonably withheld by either party.

2.10 Infrastructure Assurance. Before issuing building permit(s) or permits for construction of infrastructure, City may require Developer to provide assurances where appropriate and necessary to assure that the installation of infrastructure and improvements directly related to such building permit(s) or permits for construction of infrastructure ("**Infrastructure Assurance**"). All assurances provided by Developer shall relate to that construction which Developer undertakes. Developer may elect either, or combination of, the following methods of Infrastructure Assurance:

2.10.1 A performance bond;

2.10.2 An irrevocable and unconditional standby letter of credit, subject to City approval.

All Infrastructure Assurances provided by Developer shall comply with the applicable provisions of City's subdivision ordinance relating to such assurances, as established in § 3.2 of this Agreement. Once Developer has complied with the required Infrastructure Assurances, Developer shall have the right to replace such initial method of Infrastructure Assurance, either in whole or in part, with any of the other above methods of Infrastructure Assurance. City agrees that within ten (10) working days from City's approval of the particular completed infrastructure or improvements for which City has required and Developer has provided Infrastructure Assurance, City shall release such Infrastructure Assurance, in whole or in part as may be appropriate under the circumstances, in the manner provided in the applicable subdivision ordinance, as established in § 3.2 of this Agreement.

2.11 Undergrounding Off-Site Utilities. Developer acknowledges and agrees that it shall pay its share of the cost to underground the overhead utilities that serve the Property along Schnebly Road from Jordan Road to the Property if such an undergrounding program is undertaken by City and Arizona Public Service ("**APS**"). Developer's share shall be a portion of the 20% of the cost that area property owners must pay per City's agreement with APS for the undergrounding program, a copy of which is attached hereto as **Exhibit F**, and shall be an amount that is mutually agreeable to Developer and City.

3. **Development Plans.**

3.1 **Master Plan.** Concurrently with the approval of this Agreement and upon City's review and due consideration, City hereby approves the Master Plan for the development of the Property. Thereafter, development of the Property by Developer shall be in accordance with the Master Plan, as may be amended from time to time, which shall include provisions for construction of a public park with access to Oak Creek and the Forest Service trail heads. Developer is authorized to implement the types of uses, building heights, and densities and intensities of uses as set forth in the Master Plan, and will be accorded all approvals necessary to permit Developer to implement the Master Plan, subject to City's review and approvals of rezoning applications, site plans and specifications, and other similar items in accordance with City's zoning, subdivision, and other applicable ordinances as established in § 3.2 of this Agreement. City, having exercised its discretion in approving the Master Plan, agrees to cooperate reasonably in processing the approval or issuance of such permits, plans, specifications, plats and/or other development approvals of or for the Property as may be requested by Developer in order to implement, and which are reasonably consistent with, the Master Plan, provided that Developer complies with all applicable requirements, as established in § 3.2 of this Agreement, pays all applicable fees, including without limitation, grading fees and building permit fees, and subject to City's review and approval thereof, in accordance with its zoning, development and design review, subdivision, and other applicable ordinances, as established in § 3.2 of this Agreement.

3.2 **Applicable Law.** The ordinances, rules, regulations, permit requirements, policies, or other requirements of City applicable to the Property and the development of the Property shall be those that are now existing and in force for City as of the Effective Date. City shall not apply to the Property any legislative or administrative land use regulation adopted by City or pursuant to an initiated measure subsequent to the Effective Date of this Agreement that would change, alter, impair, prevent, diminish, delay, or otherwise impact the development or use of the Property as set forth in the Master Plan, except as follows:

3.2.1 As specifically agreed to in writing by Developer;

3.2.2 Necessary to alleviate or otherwise contain a legitimate, bona fide harmful and noxious use of the Property, in which event any ordinance, rule or regulation to be imposed in an effort to contain or alleviate such harmful or noxious use shall be the most minimal and the least intrusive alternative possible and may be imposed only after public hearing and comment and shall not, in any event, be imposed arbitrarily;

3.2.3 As required or mandate by federal, state or case law;

3.2.4 Future changes to Sedona Building Code and other similar construction and safety-related codes;

3.2.5 Adoption and enforcement of zoning ordinance provisions regarding nonconforming property or uses.

Nothing shall be interpreted as relieving Developer of any obligations which it may have with respect to regulations enacted by the Federal government or the State of Arizona that apply to the Property. Nothing in this agreement shall alter or diminish the authority of City to exercise its

eminent domain powers. City agrees that, on the Effective Date, Developer and its successors and assigns shall be deemed to have a vested right to develop the Property in accordance with the Master Plan as it applies to the Property on the Effective Date, and City will not initiate any changes or modifications to the Master Plan or the zoning of the Property, except at the request of Developer.

3.3 Development and Other Fees. Developer shall pay development impact fees that apply to the Property at the time of and as a condition to issuance of the building permit for each dwelling unit or nonresidential building pursuant to Article 16 of City's Land Development Code regarding development impact fees. Pursuant to A.R.S. § 9-463.05.3, City shall provide a credit toward Developer's payment of a development impact fee for the required dedication of public sites and the cost of all improvements provided by Developer in connection with development of the Property for which that development impact fee is assessed. Developer will be required to pay the then current applicable filing fees, plan review fees, permit fees, and building fees, except for the aforementioned fees associated with affordable housing units.

3.4 Historic Sensitivity. Developer shall work with City and use its reasonable efforts to incorporate historic elements on the Property, including the George Jordan well house, in the development of the Property in either their original location or elsewhere on the Property. Before issuance of grading or building permits for the Preserve, Developer shall file with the City Community Development Director an application for designation of the George Jordan well house as a Landmark through the City Historic Preservation Commission.

3.5 Environmentally Sensitive Design. Developer agrees to use its best efforts to design and operate the development on the Property in an environmentally sensitive manner, including use of low flow plumbing fixtures in all buildings constructed on the Property, incorporating low water use adaptive and native plant landscaping in its landscaping plans, encouraging guests to limit laundry of linens, and incorporating, to the extent Developer determines in its sole and absolute discretion to be feasible, green building materials. Following good stewardship principles, Developer shall also incorporate the following in its design for the Property: (i) perform mapping of the existing tree canopy; (ii) perform an analysis of pedestrian and vehicular traffic generated by development of the Property; (iii) limit grading envelopes to building pads, circulation routes and utility easements, as approved by City; (iv) where appropriate, design bioswales and approved filtration systems for drainage of impervious surfaces to Oak Creek; and (v) use best management practices to avoid run-off into Oak Creek from the Preserve. Developer shall operate the Preserve in accordance with The Institute of Ecotourism's resort conservation guidelines as set forth in **Exhibit G**.

3.6 Setback Waivers. City agrees to waive the PD(Planned Development) setback requirements for portions of the Property adjacent to commercial, multiple family residential or lodging zoned parcels on property that is not part of the Property's development.

3.7 Preservation of Vegetation. Developer shall use its best efforts to minimize the impact on native trees and other native plant materials (including shrubs, ground covers and vines) when constructing buildings, surface parking, and other improvements on the Property and shall preserve as many of the mature and healthy trees on the Property as possible. Developer shall prepare a tree inventory to assess the placement, integrity and long-term health

of the existing trees on the Property. Developer and City shall mutually agree to siting of improvements to the Property to protect and preserve significant riparian zones and trees. Developer shall use its best efforts to restore existing degraded riparian areas of the Property.

3.8 Off-Site Sales Office. Developer agrees that it shall have no off-site sales offices in City for the Preserve. However, Developer may conduct off-site sales at an existing, previously established, corporate sales office within the property boundaries of a timeshare or interval ownership project in City. Independent real estate brokers who are not exclusively tied to the Preserve and do not maintain or work from an off-site sales office within the City of Sedona may sell Unit Terms for the Preserve

4. Default, Dispute Resolution, and Expedited Review.

4.1 Default. Failure or unreasonable delay by either party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days (the “**Cure Period**”) after written notice thereof from the other party shall constitute a default under this Agreement. However, if the failure or delay is such that more than thirty (30) days would reasonably be required to perform such action or to comply with any term or provision hereof, then such party shall have such additional time as may be necessary to perform or comply so long as such party commences performance or compliance within said thirty (30) day period and diligently proceeds to complete such performance or fulfill such obligation. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event such default is not cured within the Cure Period, the non-defaulting party shall have all rights and remedies that are set forth in § 4.2 of this Agreement.

4.2 Dispute Resolution/Remedies. The parties shall be limited to the remedies and dispute resolution process set forth in **Exhibit H** and in this § 4.2. Any dispute, controversy, claim, or cause of action arising out of or relating to this Agreement shall be governed by Arizona law. Developer and City agree that any decision rendered by the Panel (as defined in **Exhibit H**) pursuant to the provisions of **Exhibit H** shall be binding on both parties, and if either party does not abide by the decision rendered by the Panel during the pendency of an action before the court of competent jurisdiction (if permitted pursuant to **Exhibit H**) or otherwise (no court action), the other party may institute an action for money damages on the issues that were the subject of the Panel’s decision and/or any other relief as may be permitted by law.

4.3 Expedited Review. Developer and City acknowledge that development of the Preserve will require City to review and approve (unless prevented or prohibited by state law) plans, perform construction inspections, and issue certificates of occupancy. City agrees to use its best efforts to expedite all such approvals and inspections. City further agrees that it will review and respond to Developer on all requests for plan reviews and permits in accordance with its adopted department or City policies at the time of the review. In doing so, City will use its best efforts to process promptly the applications for approvals and permits. Any other official actions required for development of the Property which may require meetings of boards, commissions, or the City Council shall be placed on the next regularly scheduled agendas, in compliance with public notice requirements. City shall impose no unusual or extraordinary plan or design review requirements on development of the Property.

5. **Notice and Filings.**

5.1 **Manner of Serving.** All notices, filings, consents, approvals, and other communications provided for herein or given in connection herewith shall be in writing and delivered personally or sent by registered or certified United States mail, postage prepaid, to address provided herein or as may be changed in writing:

- To City: City of Sedona
102 Roadrunner Drive
Sedona, Arizona 86336
Attn: City Manager
- With copies to: City of Sedona
102 Roadrunner Drive
Sedona, Arizona 86336
Attn: City Attorney
- And to: City of Sedona
Department of Community Development
102 Roadrunner Drive
Sedona, Arizona 86336
Attn: Director of Community Development
- To Developer: Sedona Oak Creek Partners, L.L.C.
c/o Steinberg and Foster, Attorneys At Law
1334 Park View Avenue, Suite 100
Manhattan Beach, California 90266
Attn: Jonathan Brake
- With a copy to: Withey, Anderson & Morris, PLC
2525 East Arizona Biltmore Circle, Suite A-212
Phoenix, Arizona 85016
Attn: Jason B. Morris

5.2 **Mailing Effective.** Notices, filings, consents, approvals, and communications given by mail shall be deemed delivered seventy-two (72) hours following deposit in United States mail, postage prepaid and addressed as set forth above.

6. **General.**

6.1 **Waiver.** No delay in exercising any right or remedy by either Developer or City shall constitute a waiver thereof. Waiver of any of the terms of this Agreement or the Master Plan shall not be valid unless in writing and signed by all parties hereto. The failure of any party to enforce the provisions of this Agreement or the Master Plan or to require performance of any of the provisions shall not be construed as a waiver of such provisions or affect the right of the party to enforce all of the provisions of this Agreement and the Master Plan. Waiver of any

breach of this Agreement or the Master Plan shall not be held to be a waiver of any other or subsequent breach thereof.

6.2 Attorneys' Fees. In the event it becomes necessary for a party to this Agreement to employ legal counsel or to bring an action at law or other proceedings to enforce any of the terms, covenants or conditions of this Agreement, the successful party in any such action or proceeding may apply for attorneys' fees pursuant to A.R.S. § 12-341.01.

6.3 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together constitute one and the same instrument. The signature pages from one or more such counterpart(s) may be removed from such counterpart(s) and such signature pages all attached to a single document so that the signatures of all parties may be attached physically to a single document.

6.4 Headings. The headings for the sections of this Agreement are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said sections in any way to affect this Agreement.

6.5 Incorporation of Recitals and Exhibits. All documents and exhibits referred to in this Agreement and the Recitals stated above are hereby incorporated by reference into this Agreement.

6.6 Additional Acts and Documents. Each party hereto agrees to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to implement the provisions, intent and purpose of this Agreement. If any such action or approval is required of any party in furtherance of the rights under this Agreement, such approval shall not unreasonably withheld.

6.7 Time of the Essence. Time is of the essence in implementing the terms of this Agreement.

6.8 Assignment. The rights and obligations of Developer under this Agreement may be transferred or assigned, in whole or in part, to any subsequent owner of all or any portion of the Property by written instrument expressly assigning such rights and obligations, recorded in the Official Records of the Coconino County Recorder's Office, Arizona, without further consent from City. Notice of any transfer or assignment in accordance with this § 6.8 shall be provided to City within ten (10) days of such transfer and assignment. As provided in A.R.S. § 9-500.05.D, the burdens of this Agreement bind, and the benefits of this Agreement inure to, the parties hereto and their successors in interest and assigns, and this Agreement runs with the land.

6.9 No Partnership or Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other agreement between Developer and City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization, or corporation not a party hereto. No such person, firm, organization, or corporation shall have any right or cause of action hereunder.

6.10 Entire Agreement. This Agreement, including all documents and exhibits incorporated herein by reference, supercedes any and all other prior or contemporaneous agreements, inducements, understandings, and conditions, express or implied, either oral or written, except as herein contained and no statement, promise or inducement made by either party, or agent of either party, that is not contained in this written Agreement, with respect to the subject matter hereof, shall be valid or binding.

6.11 Amendment. No change or addition is to be made to this Agreement except by a written amendment executed by the parties hereto. Within ten (10) days after any amendment to this Agreement, such amendment shall be recorded by, and at the expense of, the party requesting the amendment in the Official Records of the Coconino County Recorders Office, Arizona.

6.12 Authority. The parties to this Agreement represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. Developer and City warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing. Developer represents to City that, by entering this Agreement, Developer has bound the Property and all persons and entities having any legal or equitable interest therein to the terms of this Agreement.

6.13 Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect provided that the overall intent of the parties is not materially vitiated by such severability. If any applicable law or court of competent jurisdiction prohibits or excuses the City from undertaking any contractual commitment to perform any act hereunder, this Agreement shall remain in full force and effect, but the provision requiring such action shall be deemed to permit the City to take such action at its discretion. If, however, the City fails to take the action specified hereunder, the Developer shall be entitled to terminate this Agreement and proceed under § 4.1 of this Agreement to exercise those remedies available to it.

6.14 Choice of Forum/Venue. Any suit or action brought under this Agreement shall be commenced in Superior Court of the State of Arizona in and for the County of Coconino, Flagstaff, Arizona, but only after exhausting all possible administrative remedies. Such a suit or action may be removed therefrom only upon the mutual agreement of Developer and City. The parties hereto waive all provisions of law providing for a change of venue in such proceeding to another county.

6.15 Choice of Law. The laws of the State of Arizona shall be applied to the validity, performance and enforcement of all provisions of this Agreement.

6.16 Conflict of Interest. This Agreement is subject to the cancellation provisions of A.R.S. § 38-511, but the parties hereto do not believe any such reasons for cancellation of this Agreement pursuant to said statute now exist.

6.17 Recordation. No later than ten (10) days after this Agreement has been executed by Developer and City, it shall be recorded in its entirety by City, at Developer's expense, in the Official Records of the Coconino County Recorders Office, Arizona.

6.18 No Developer Representations. Except as specifically set forth herein, nothing contained herein or in the Master Plan shall be deemed to obligate Developer or City to complete any part or all of the development of the Property.

6.19 City Approval. If City is required pursuant to this Agreement to give its prior written approval, consent or permission, such approval, consent or permission shall not be unreasonably withheld or delayed.

6.20 Limitation on Damages. Notwithstanding any other provision in this Agreement, neither Developer nor City shall in any event be responsible or liable for punitive damages as a result of any act or omission in connection with this Agreement.

6.21 Nonliability of City Officials and Employees. Except for mandamus and other special actions, no member, official, or employee of City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by City or for any amount that may become due to Developer or successor, or under any obligation under the terms of this Agreement.

6.22 Effective Date and Term.

6.22.1 This Agreement shall be effective (the “**Effective Date**”) upon (i) execution by the parties hereto and (ii) recordation in accordance with § 6.17 of this Agreement.

6.22.2 The term of this Agreement shall commence on the Effective Date and shall automatically terminate on the tenth (10th) anniversary of such date. Developer may extend the term hereof for one (1) additional period of ten (10) years due to then existing market or other economic conditions, upon written notice delivered to City at least three (3) months before the expiration hereof.

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

The remainder of this page intentionally is left blank.

APPROVED AS TO FORM AND AUTHORITY

The foregoing Agreement has been reviewed by the undersigned attorney who has determined that it is in proper form and within the power and authority granted under the laws of the State of Arizona to the City of Sedona.

Attorney for City of Sedona

Date: _____

CITY OF SEDONA, an Arizona
Municipal corporation

ATTEST:

By: _____
Mayor

City Clerk

Date: _____

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by _____, Mayor of the City of Sedona, an Arizona municipal corporation.

Notary Public

CONSENT

OWNER:

CLIFFS MORTGAGE, L.L.C., an Arizona
limited liability company

By: Investment Planners of America,
Inc., an Arizona corporation, its
managing partner

By: _____
Ben L. Schaub

Its: Vice President

Date: _____

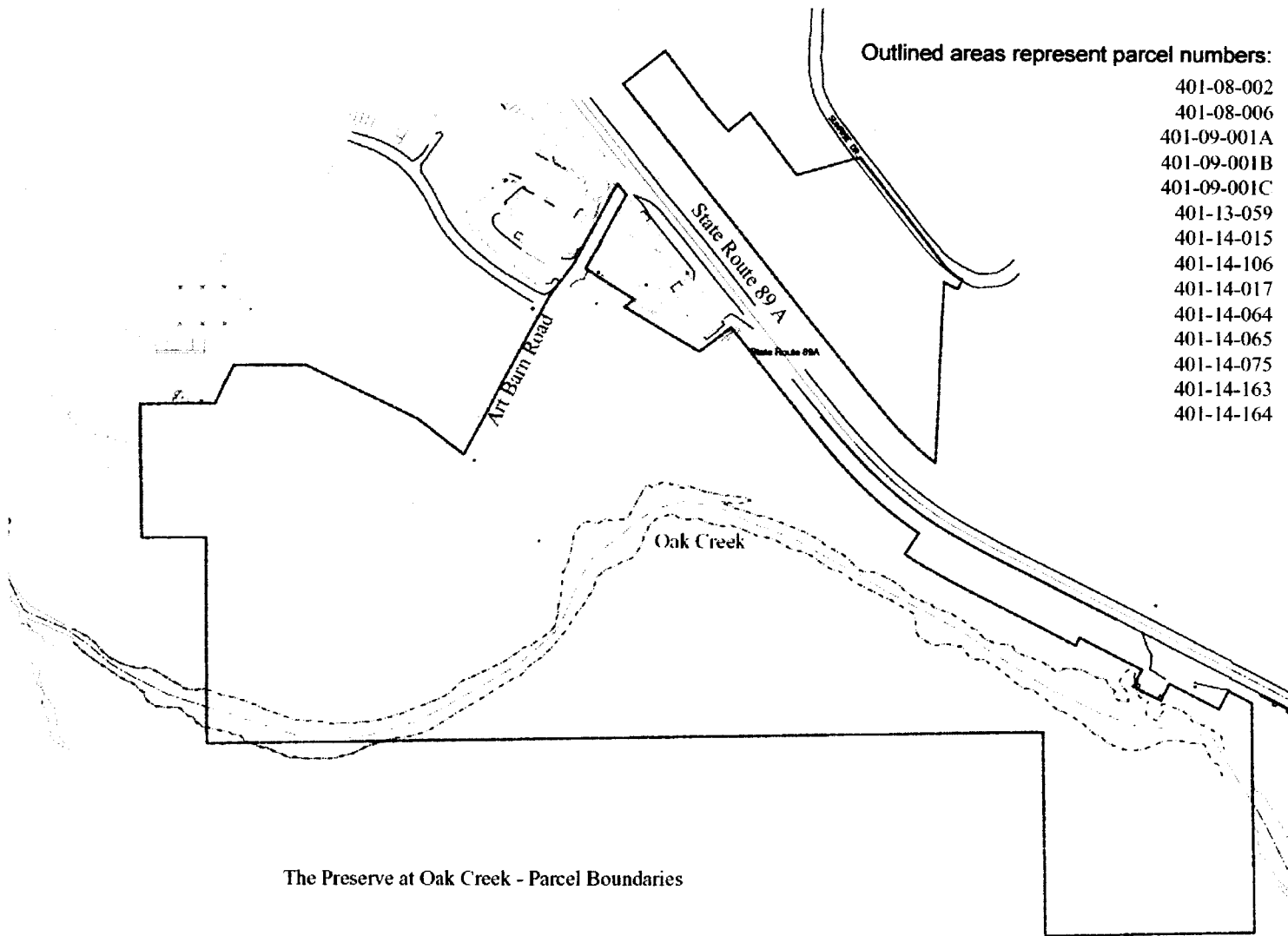
STATE OF ARIZONA)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 200_, by Ben L. Schaub of CLIFFS MORTGAGE, L.L.C., an Arizona limited liability company, for and on behalf thereof.

Notary Public

EXHIBIT A
Property Map

EXHIBIT A



Outlined areas represent parcel numbers:

- 401-08-002
- 401-08-006
- 401-09-001A
- 401-09-001B
- 401-09-001C
- 401-13-059
- 401-14-015
- 401-14-106
- 401-14-017
- 401-14-064
- 401-14-065
- 401-14-075
- 401-14-163
- 401-14-164

The Preserve at Oak Creek - Parcel Boundaries

EXHIBIT B
Legal Description

EXHIBIT B

PARCEL NO. 1:

A parcel of land located in the Northwest quarter of Section 8, Township 17 North, Range 6 East, of the Gila and Salt River Base and Meridian, Coconino County, Arizona, and Lots 44, 45 and Tract A of Sierra Vista Subdivision, recorded in Case 2, Map 20, records of Coconino County, Arizona, more particularly described as follows:

COMMENCING at a BLM Brass Cap marking the Southwest corner of said Northwest quarter, from which the Northwest corner of said Northwest quarter bears North $^{\circ}03'23''$ West, a distance of 2629.73 feet;

thence North $29^{\circ}43'14''$ East, a distance of 1258.67 feet (North $29^{\circ}04'$ East, 1260.34 feet – Record) to a point on the Westerly right-of-way of U.S. Highway 89-A;

thence North $51^{\circ}38'23''$ East, along said right-of-way, a distance of 373.93 feet (North $51^{\circ}17'$ East, 374 feet – Record) to a $\frac{1}{2}$ " rebar with Brass Tag marked "LS 14814" and the TRUE POINT OF BEGINNING;

thence North $38^{\circ}21'29''$ West, a distance of 84.77 feet (North $38^{\circ}48'00''$ West 84.70 feet – Record) to a $\frac{1}{2}$ " rebar with Brass Tag marked "LS 14184";

then North $53^{\circ}12'20''$ East, a distance of 110.25 feet (North $52^{\circ}43'00''$ East, 110.00 feet – Record) to a $\frac{1}{2}$ " rebar with Brass Tag marked "LS 14184";

thence North $48^{\circ}51'44''$ East, a distance of 51.90 feet (North $48^{\circ}41'00''$ East, 52.07 feet – Record) to a $\frac{1}{2}$ " rebar with Brass Tag marked "LS 14184";

thence North $39^{\circ}56'20''$ West, along a Southwesterly line of Tract A of said subdivision, a distance of 45.44 feet (North $40^{\circ}44'07''$ West, 45.49 feet – Record) to a 1" pipe;

thence North $53^{\circ}06'19''$ East, along the Northwesterly line of said Tract A, a distance of 123.19 feet (North $52^{\circ}25'03''$ West 121.66 feet – Record) to a $\frac{1}{2}$ " rebar;

thence North $15^{\circ}46'36''$ West, along the Westerly line of Lot 45 of said subdivision, a distance of 89.85 feet (North $16^{\circ}10'19''$ West, 90.13 feet – Record) to a $\frac{1}{2}$ " rebar;

thence North $14^{\circ}46'06''$ West, a distance of 15.78 feet to a nail and shiner;

thence North $51^{\circ}45'08''$ East, a distance of 121.58 feet to a concrete nail and plastic disc marked "LS 19853";

thence North $52^{\circ}17'18''$ East, a distance of 91.68 feet to a concrete nail and plastic disc marked "LS 19853";

thence along a non-tangent curve in a Northeasterly direction said curve being concave to the Northwest, having a radius of 91.13 feet, arc length of 41.70 feet, a chord bearing of North $40^{\circ}15'05''$ East, and a chord length of 41.34 feet to a concrete nail and plastic disc marked "LS 19853";

thence South $62^{\circ}51'3''$ East, along a non-tangent line, a distance of 16.00 feet to a concrete nail and plastic disc marked "LS 19853" marking the most Northerly corner of Lot 44 of said subdivision;

thence South $26^{\circ}40'09''$ West, along the Northerly line of said Lot 44, a distance of 24.46 feet (South $26^{\circ}23'08''$ West, 24.54 feet – Record) to a $\frac{1}{2}$ " rebar;

thence South 87° 11' 31" East, a distance of 129.35 feet (South 87° 24' 52" East, 130.17 feet – Record) to a ½" rebar marking the Northeast corner of said Lot 44;
thence South 87° 33' 26" East, along the Northerly line of said Tract A, a distance of 160.58 feet, South 87° 24' 52" East, 162.85 feet – Record) to the Westerly right-o-way of said Highway 89-A and a ½" rebar with Brass Tag marked "LS 14184";
thence along said Westerly right-of-way on a non-tangent curve in a Southwesterly direction, said curve being concave to the Northwest, having a radius of 534.00 feet, arc length of 67.33 feet, a chord bearing of South 41° 46' 40" West, and a chord length of 67.28 feet to a ½" rebar with Brass Tag marked "LS 14184" marking Highway 89A S.C. 93+78.75, 66' Left;
thence along said Westerly right-of-way, along a line 66.00 feet Northwesterly of, and parallel to Highway 89-A centerline spiral, having a chord bearing of South 49° 37' 02" West, and chord length of 123.63 feet to a ADOT Right-of-Way Marker at T.S. 92+47.85, Left;
thence South 51° 38' 23" West, along said Westerly right-of-way, a distance of 592.09 feet to the TRUE POINT OF BEGINNING.

PARCEL NO. 2:

A parcel of land in the Northwest quarter of Section 8, Township 17 North, Range 6 East, of the Gila and Salt River Base and Meridian, Coconino County, Arizona more particularly described as follows:

COMMENCING at the Southwest corner of said Northwest quarter from which the Northwest corner of said Northwest quarter bears North 00° 03' 23" West, a distance of 2,629.73 feet;
thence North 32° 33' 58" East, a distance of 1,235.49 feet (North 30° 53' 52" East, 1,236.88 feet – record) to the centerline P.C. Sta 1,146+38.6 of Highway 89A;
thence North 51° 37' 13" East, along said centerline a distance of 785.28 feet (North 51° 17' East, 785 feet – record);
thence South 38° 22' 47" East (South 38° 43' East – record), a distance of 40.00 feet to the Southeasterly right of way of said Highway and the TRUE POINT OF BEGINNING;
thence North 51° 37' 13" East (North 51° 17' East – record), along said rights of way, a distance of 180.60 feet to a nail in a concrete right of way marker, marking the beginning of an offset to the centerline spiral;
thence along said offset, having a chord bearing of North 49° 30' 12" East, and a chord distance of 135.19 feet to the P.C. of a curve in a Northeasterly direction;
thence along said curve concave to the Northwest, having a radius of 640.00 feet, arc length of 33.28 feet, central angle of 002° 58' 48", a chord bearing of North 43° 52' 49" East, and a chord length of 33.28 feet;
thence leaving said right of way along a non-tangent line which bears South 51° 22' 47" East, a distance of 204.59 feet (South 51° 43' East, 203.65 feet – record);
thence South 24° 52' 13" West (South 24° 32' West – record), a distance of 305.80 feet;
thence North 63° 11' 53" West, a distance of 290.49 feet (North 63° 28' West, 290.50 feet – record) to a ½ inch rebar with cap "Landmark LS #14184";
thence North 38° 05' 59" West, a distance of 63.85 feet (North 28° 43' West, 63.70 feet – record) to the TRUE POINT OF BEGINNING.

PARCEL NO. 3:

A parcel of land located in the Northwest quarter of Section 8, Township 17 North Range 6 East of the Gila and Salt River Base and Meridian, Coconino County, Arizona, more particularly described as follows:

COMMENCING at the Southwest corner of said Northwest quarter, from which the Northwest corner of said Northwest quarter bears North 00° 03' 23" West, a distance of 2,629.13 feet; thence North 00° 03' 23" West, along the West line of said Northwest quarter, a distance of 997.36 feet (North 00° 33' 30" East, 999.8 feet – Record); Thence North 89° 56' 07" East, a distance of 1,453.69 feet (South 89° 27' East, 1,465 feet – Record) to a ½ inch rebar with cap marked "Landmark LS #14184 and the TRUE POINT OF BEGINNING"; thence North 37° 3' 35" East, a distance of 112.83 feet (North 38° 00' East, 133 feet – Record) to a ½ inch rebar with cap marked "Landmark LS #14184"; thence North 61° 34' 57" East, a distance of 107.06 feet (North 62° 00' East, 107 feet – Record) to a ½ inch rebar; thence North 33° 47' 57" East, a distance of 100.00 feet (North 34° 13' East, 100 feet – Record) to a ½ inch rebar with cap marked "LS #19853"; thence North 89° 34' 57" East, a distance of 290.20 feet (East, 280 feet – Record), to a point on the East line of the Northeast quarter of the Northwest quarter of the Southeast quarter of the Northwest quarter; thence South 00° 50' 56" East, a distance of 560.06 feet (South, 560 feet more or less – Record), to the Southeast corner of the Southeast quarter of the Northwest quarter of the Southeast quarter of the Northwest quarter; thence 89° 38' 12" West, a distance of 328.50 feet (West, 330 feet more or less – Record), to a ½ inch rebar with cap marked "Landmark LS #14184" marking the Southwest corner of said Southeast quarter of the Northwest quarter of the Southeast quarter of the Northwest quarter; thence South 00° 43' 32" East, along the East line of the East half of the Southwest quarter of the Southeast quarter of the Northwest quarter, a distance of 102.52 feet (South, 108 feet – Record) to a ½ inch rebar with cap marked "LS #19853"; thence South 89° 25' 05" West, a distance of 211.92 feet (West – Record) to a ½ inch rebar with cap marked "LS #19853"; thence North 00° 34' 21" West, a distance of 118.86 feet (North, 119 feet – Record), to a ½ inch rebar with cap marked "Landmark LS #14184"; thence North 63° 54' 57" West, a distance of 67.16 feet (North 62° 00" West, 67.2 feet – Record) to a ½ inch rebar; thence North 00° 34' 44" West, a distance of 114.96 feet (North 115 feet – Record) to a ½ inch rebar with cap marked "Landmark LS #14184"; thence North 25° 26' 34" East, a distance of 196.98 feet (North 26° 00' East, 200 feet – Record) to the TRUE POINT OF BEGINNING.

PARCEL NO. 4:

A parcel of land in the Northwest quarter of Section 8, Township 17 North, Range 6 East, of the Gila and Salt River Base and Meridian, Coconino County, Arizona, described as follows:

BEGINNING at the Northeast corner of the Southwest quarter of the Northeast quarter of the Northeast quarter of the Northwest quarter, of said Section 8;
thence South 00° 58' 45" East, a distance of 333.55 feet to the Southeast corner of said Southwest quarter of the Northeast quarter of the Northeast quarter of the Northwest quarter of said Section 8;
thence South 89° 20' 42" West, a distance of 325.38 feet to the Southwest corner of said Southwest quarter of the Northeast quarter of the Northeast quarter of the Northwest quarter of said Section 8;
thence South 00° 50' 56" East, a distance of 665.72 feet to the Southeast corner of the Southwest quarter of the Northeast quarter of the Northwest quarter of said Section 8;
thence continuing South 00° 50' 56" East, a distance of 104.48 feet to the Northeast corner of the parcel of land described in Docket 1375, page 865;
thence South 89° 34' 57" West, a distance of 290.20 feet to the Northwest corner of last said parcel;
thence North 32° 47' 57" East, a distance of 53.80 feet to the most Easterly corner of the parcel of land described in Docket 1563, page 391;
thence North 63° 11' 53" West, a distance of 108.86 feet to the most Southerly corner of the parcel of land described in Docket 683, page 559;
thence North 24° 52' 13" East, a distance of 305.80 feet to the most Easterly corner of last said parcel;
thence North 51° 22' 47" West, a distance of 204.59 feet to the most Northerly corner of last said parcel and a point on the Southeasterly right-of-way of U.S. Highway 89-A;
thence along said right-of-way of the following courses and distances:
thence along the arc of a curve in a Northeasterly direction, said curve being concave to the Northwest, having a radius of 640.00 feet, arc length of 95.92 feet, central angle of 008° 35' 15", a chord bearing of North 38° 21' 51" East, to Highway Sta. 95+40.00 feet right;
thence South 56° 06' 16" East, along a non-tangent line, a distance of 40.00 feet to Highway Sta. 95+00, 80.00 feet right;
thence along the arc of a non-tangent curve in a Northeasterly direction, said curve being concave to the Northwest, having a radius of 680.00 feet, arc length of 4.81 feet, central angle of 000° 24' 18" a chord bearing of North 33° 41' 35" East, to C.S. Sta. 95+04.24, 80.00 feet right;
thence along an offset line, 80.00 feet from the centerline spiral said offset line having a chord bearing of North 29° 23' 20" East, a distance of 139.55 feet to S.T. Sta. 96+35.14 BK. And Sta. 96+34.79 AHD, 80.00 feet right;
thence North 27° 14' 26" East, a distance of 165.21 feet to Sta. 98+00, 80.00 feet right;
thence North 62° 45' 34" West, a distance of 14.00 feet to Sta. 98+00, 66.00 feet right;
thence North 27° 14' 26" East, a distance of 112.46 feet to the Southwest corner of the parcel of land described in Docket 1601, page 0b 70;
thence leaving said right-of-way, South 62° 45' 34" East, a distance of 35.00 feet to the Southeast corner of last said parcel;
thence North 27° 14' 26" East, a distance of 50.00 feet to the Northeast corner of last said parcel;
thence North 62° 45' 34" West, a distance of 35.00 feet to the Northwest corner of last said parcel and to said Southeasterly right-of-way;
thence North 27° 14' 26" East, along said right-of-way, a distance of 87.36 feet to Sta. 100+50, 66.00 feet right;

thence North 62° 45' 34" West, along said right-of-way, a distance of 33.00 feet to Sta. 100+50, 33.00 feet right;
thence North 27° 14' 26" East, along said right-of-way, a distance of 41.18 feet to the North line of the Southeast quarter of the Northwest quarter of the Northeast quarter of the Northwest quarter of said Section 8;
thence North 89° 13' 22" East, a distance of 366.08 feet to the TRUE POINT OF BEGINNING.

PARCEL NO. 5:

A tract of land in the Northwest quarter of Section 8, Township 17 North, Range 6 East, of the Gila and Salt River Base and Meridian, Coconino County, Arizona, more particularly described as follows:

BEGINNING at a point on the Southeasterly line of Highway 89A, a distance of North 1323.79 feet and East 1067.93 feet from the West quarter corner of said Section 8, said Point of Beginning is also distant along said highway line, North 51° 17' 00" East, a distance of 119.01 feet from the most Northerly corner of the B. B. Neninger property as described in Book 41 of Official Records, pages 576-577;

Thence along the Northeasterly line of Sedona Art Center property, South 61° 41' 00" East, (Record South 63° 07' 13" East) a distance of 143.5 feet and South 53° 18' 00" East, (Record South 54° 44' 13" East), a distance of 64.37 feet;

Thence leaving said Art Center property South 62° 09' 00" East, a distance of 289.2 feet to the Northwesterly line of the Arizona Water Company property;

Thence along said Northwesterly line, North 37° 03' 00" East (Record North 38° 00' 00" East), a distance of 20 feet, and North 61° 13' 00" East, (Record North 62° 00' 00" East), a distance of 107 feet and North 33° 26' 00" East (Record North 34° 13' 00" East), a distance of 100 feet;

Thence leaving said Arizona Water Company property North 33° 26' 00" East, a distance of 53.2 feet;

Thence North 63° 28' 00" West, along a Southerly prolongation of, and along the Westerly boundary of that parcel described in Book 50 of Official Records, page 291, a distance of 398.9 feet to the most Easterly corner of the Vue Motel property;

thence along the Vue Motel boundary line, South 30° 36' 00" West, a distance of 139.97 feet;

thence North 38° 43' 00" West, a distance of 20 feet;

thence South 31° 37' 00" West, a distance of 90.7 feet;

thence North 61° 53' 00" West, a distance of 135.0 feet to a point on the Southeasterly line of Highway 89A;

thence along said Highway, South 51° 17' 00" west to a distance of 21.35 feet to the Point of Beginning.

TOGETHER WITH an easement for road purposes fifteen (15') feet in width lying contiguous with and Southwesterly of the line above described as South 62° 09' 00" East, a distance of 289.2 feet.

EXHIBIT C
Master Plan

EXHIBIT C
One of Two

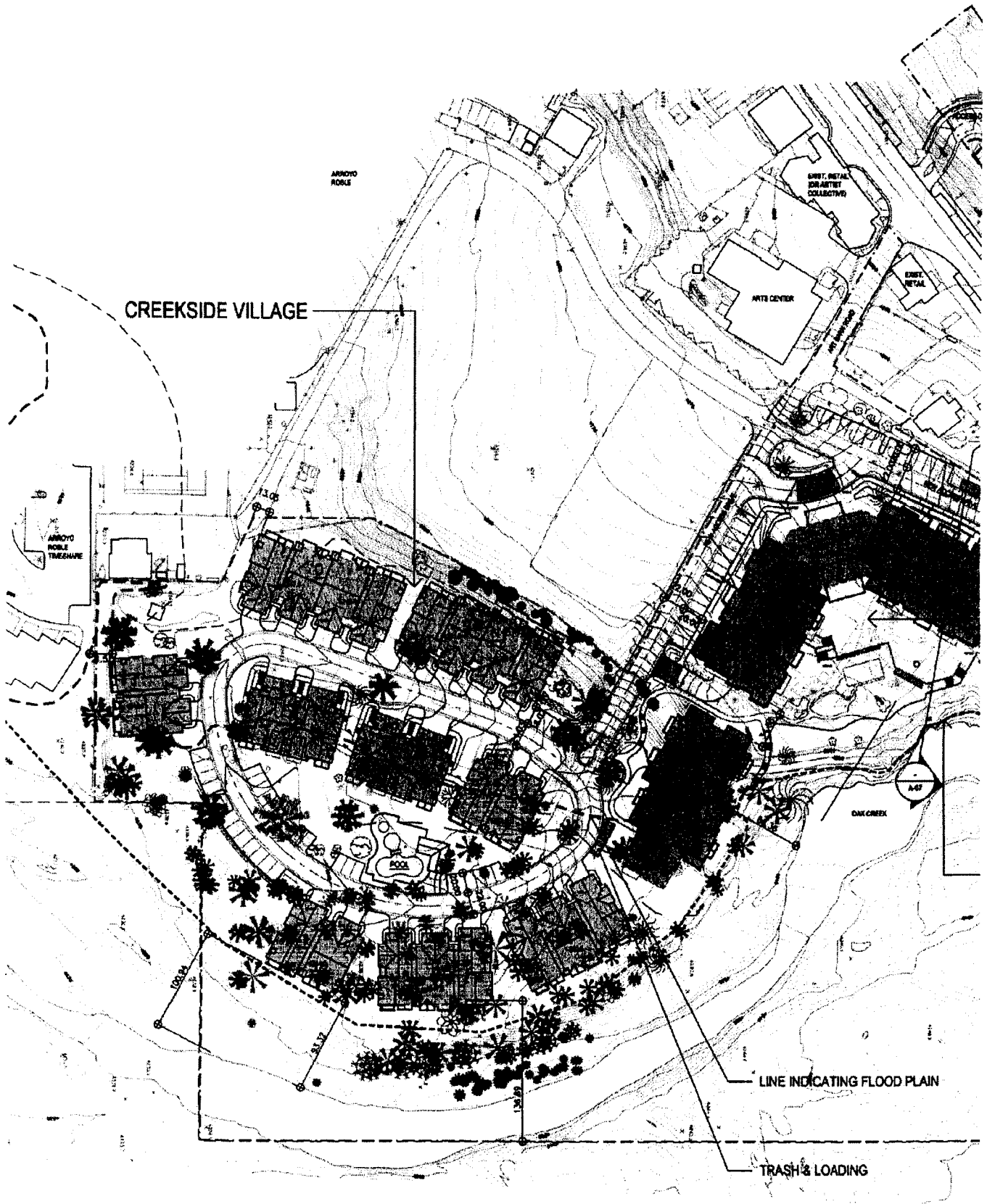


EXHIBIT C
Two of Two

HATCH LEGEND

-  - 2 STORY
-  - 3 STORY

NOTE: TRASH AND RECYCLING FOR HILLSIDE WILL BE HANDLED IN GARAGE.

LINE INDICATING OPEN SPACE DESIGNATION

HILLSIDE VILLAGE

NOTE: SPA BLDG IS UNDERGROUND AT THIS POINT.

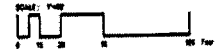
MAIN LODGE

TRASH & RECYCLING LINE OF FLOODWAY

POTENTIAL LOCATION FOR FUTURE CROSS-COUNTRY

PROPERTY LINE

USFS BOUNDARY



MASTER SITE PLAN

1'-00" 1

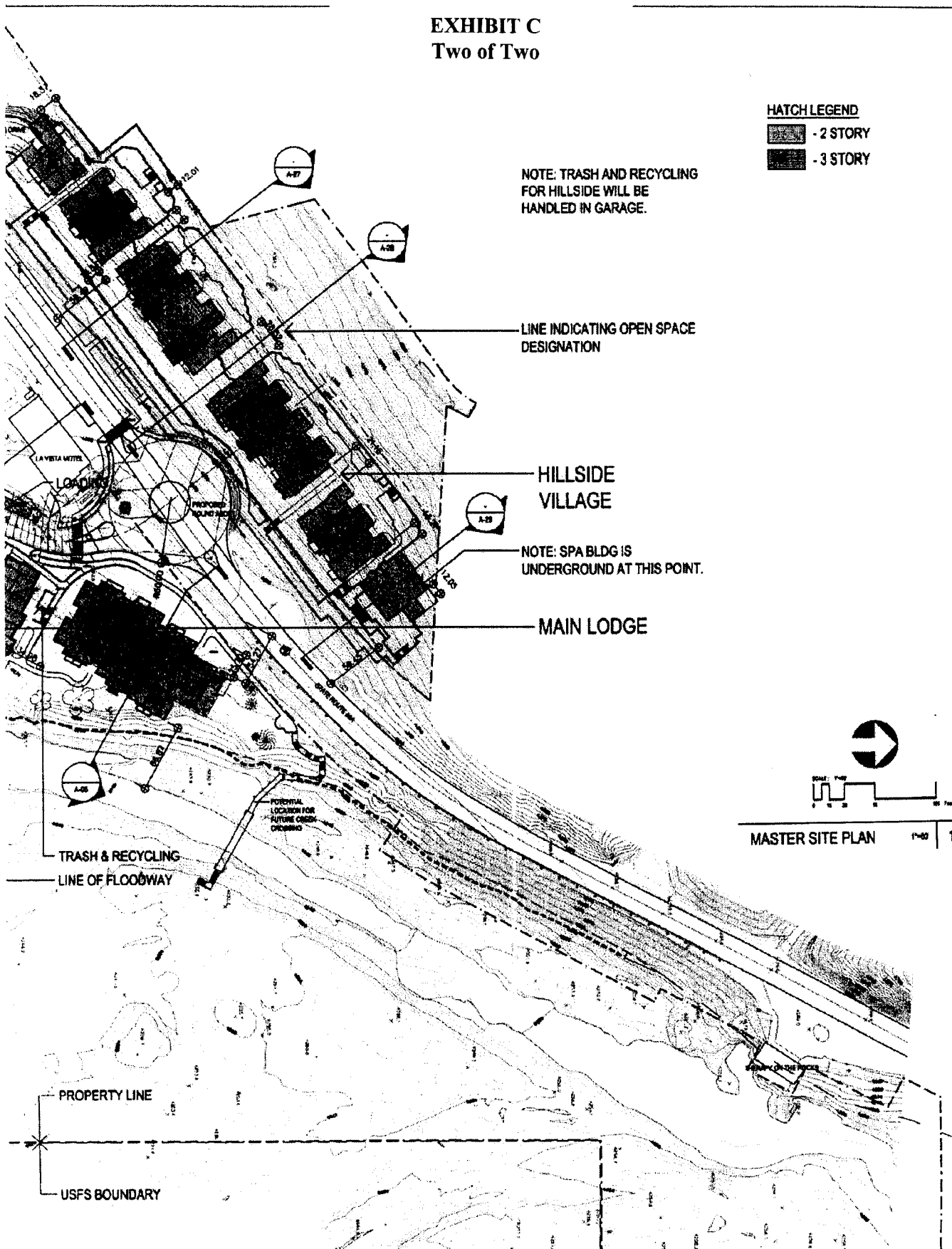


EXHIBIT D
Termination and Release of Agreements

EXHIBIT D

When recorded, return to:
Withey, Anderson & Morris, PLC
2525 East Arizona Biltmore Circle, Suite A-212
Phoenix, Arizona 85016
Attn: Jason B. Morris, Esq.

TERMINATION AGREEMENT

This Termination Agreement is entered into this ____ day of _____, 2005 by and between the City of Sedona, an Arizona municipal corporation ("City"), and Cliffs Mortgage, L.L.C., an Arizona limited liability company ("Owner").

RECITALS

A. City and Owner are parties to that Development Agreement dated December 22, 1997 and recorded in the Official Records of the Coconino County Recorder's Office as Document Number 97-37363 ("Development Agreement") and to its four amendments: (i) the First Amendment to the Development Agreement, dated September 25, 2001 and recorded as Document Number 3112835 in the Official Records of the Coconino County Recorder's Office, Arizona; (ii) the Second Amendment to the Development Agreement (also known as the moratorium amendment), dated November 12, 2003 and recorded as Document Number 3245165 in the Official Records of the Coconino County Recorder's Office, Arizona; (iii) the Third Amendment to the Development Agreement, dated October 21, 2004 and recorded as Document Number 329668 in the Official Records of the Coconino County Recorder's Office, Arizona; and (iv) the Fourth Amendment to the Development Agreement, dated December 14, 2004, 2004 and recorded as Document Number 3303854 in the Official Records of the Coconino County Recorder's Office, Arizona (collectively the "Four Amendments").

B. Owner owns that real property located within the municipal boundaries of City in Coconino County, Arizona, consisting of approximately twenty-two (22) acres and legally described on Exhibit "A" attached hereto that is the subject of the Development Agreement and the Four Amendments (the "Property").

C. Owner authorized Sedona Oak Creek Partners, L.L.C., a California limited liability company ("**Developer**") to process and negotiate with City a new design for development of the Property and a new development agreement (the "**New Development Agreement**").

D. Owner, through Developer, agreed as a part of the negotiations for the New Development Agreement to terminate the Development Agreement and the Four Amendments upon execution of the New Development Agreement.

E. City and Owner desire to terminate the Development Agreement and the Four Amendments in recognition of the execution of the New Development Agreement and approval of the new development plan for the Property.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and agreements contained herein, the parties hereto agree as follows:

AGREEMENT

1. City and Owner hereby terminate the Development Agreement and the Four Amendments, effective as of the date written above. From and after such date, neither the Development Agreement nor the Four Amendments shall have any further force or effect, and neither City nor Owner shall have any obligation whatsoever under the Development Agreement or the Four Amendments.

2. City shall record this Termination Agreement in the Official Records of the Coconino County Recorder's Office within 10 days from its execution by both parties.

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

APPROVED AS TO FORM AND AUTHORITY

The foregoing Agreement has been reviewed by the undersigned attorney who has determined that it is in proper form and within the power and authority granted under the laws of the State of Arizona to the City of Sedona.

Attorney for City of Sedona

Date: _____

CITY OF SEDONA, an Arizona
Municipal corporation

ATTEST:

By: _____
Mayor

City Clerk

Date: _____

STATE OF ARIZONA)
) ss.
County of Coconino)

The foregoing instrument was acknowledged before me this _____ day of _____, 200_, by _____, Mayor of the City of Sedona, an Arizona municipal corporation.

Notary Public

OWNER:

CLIFFS MORTGAGE, L.L.C., an Arizona limited liability company

By: Investment Planners of America, Inc., an Arizona corporation, its managing partner

By: _____
Ben L. Schaub

Its: Vice President

Date: _____

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 200_, by Ben L. Schaub of CLIFFS MORTGAGE, L.L.C., an Arizona limited liability company, for and on behalf thereof.

Notary Public

EXHIBIT A

PARCEL NO. 1:

A parcel of land located in the Northwest quarter of Section 8, Township 17 North, Range 6 East, of the Gila and Salt River Base and Meridian, Coconino County, Arizona, and Lots 44, 45 and Tract A of Sierra Vista Subdivision, recorded in Case 2, Map 20, records of Coconino County, Arizona, more particularly described as follows:

COMMENCING at a BLM Brass Cap marking the Southwest corner of said Northwest quarter, from which the Northwest corner of said Northwest quarter bears North $^{\circ}03' 23''$ West, a distance of 2629.73 feet;
thence North $29^{\circ} 43' 14''$ East, a distance of 1258.67 feet (North $29^{\circ} 04'$ East, 1260.34 feet – Record) to a point on the Westerly right-of-way of U.S. Highway 89-A;
thence North $51^{\circ} 38' 23''$ East, along said right-of-way, a distance of 373.93 feet (North $51^{\circ} 17'$ East, 374 feet – Record) to a $\frac{1}{2}$ " rebar with Brass Tag marked "LS 14814" and the TRUE POINT OF BEGINNING;
thence North $38^{\circ} 21' 29''$ West, a distance of 84.77 feet (North $38^{\circ} 48' 00''$ West 84.70 feet – Record) to a $\frac{1}{2}$ " rebar with Brass Tag marked "LS 14184";
then North $53^{\circ} 12' 20''$ East, a distance of 110.25 feet (North $52^{\circ} 43' 00''$ East, 110.00 feet – Record) to a $\frac{1}{2}$ " rebar with Brass Tag marked "LS 14184";
thence North $48^{\circ} 51' 44''$ East, a distance of 51.90 feet (North $48^{\circ} 41' 00''$ East, 52.07 feet – Record) to a $\frac{1}{2}$ " rebar with Brass Tag marked "LS 14184";
thence North $39^{\circ} 56' 20''$ West, along a Southwesterly line of Tract A of said subdivision, a distance of 45.44 feet (North $40^{\circ} 44' 07''$ West, 45.49 feet – Record) to a 1" pipe;
thence North $53^{\circ} 06' 19''$ East, along the Northwesterly line of said Tract A, a distance of 123.19 feet (North $52^{\circ} 25' 03''$ West 121.66 feet – Record) to a $\frac{1}{2}$ " rebar;
thence North $15^{\circ} 46' 36''$ West, along the Westerly line of Lot 45 of said subdivision, a distance of 89.85 feet (North $16^{\circ} 10' 19''$ West, 90.13 feet – Record) to a $\frac{1}{2}$ " rebar;
thence North $14^{\circ} 46' 06''$ West, a distance of 15.78 feet to a nail and shiner;
thence North $51^{\circ} 45' 08''$ East, a distance of 121.58 feet to a concrete nail and plastic disc marked "LS 19853";
thence North $52^{\circ} 17' 18''$ East, a distance of 91.68 feet to a concrete nail and plastic disc marked "LS 19853";
thence along a non-tangent curve in a Northeasterly direction said curve being concave to the Northwest, having a radius of 91.13 feet, arc length of 41.70 feet, a chord bearing of North $40^{\circ} 15' 05''$ East, and a chord length of 41.34 feet to a concrete nail and plastic disc marked "LS 19853";
thence South $62^{\circ} 51' 3''$ East, along a non-tangent line, a distance of 16.00 feet to a concrete nail and plastic disc marked "LS 19853" marking the most Northerly corner of Lot 44 of said subdivision;
thence South $26^{\circ} 40' 09''$ West, along the Northerly line of said Lot 44, a distance of 24.46 feet (South $26^{\circ} 23' 08''$ West, 24.54 feet – Record) to a $\frac{1}{2}$ " rebar;

thence South 87° 11' 31" East, a distance of 129.35 feet (South 87° 24' 52" East, 130.17 feet – Record) to a ½" rebar marking the Northeast corner of said Lot 44;
thence South 87° 33' 26" East, along the Northerly line of said Tract A, a distance of 160.58 feet, South 87° 24' 52" East, 162.85 feet – Record) to the Westerly right-of-way of said Highway 89-A and a ½" rebar with Brass Tag marked "LS 14184";
thence along said Westerly right-of-way on a non-tangent curve in a Southwesterly direction, said curve being concave to the Northwest, having a radius of 534.00 feet, arc length of 67.33 feet, a chord bearing of South 41° 46' 40" West, and a chord length of 67.28 feet to a ½" rebar with Brass Tag marked "LS 14184" marking Highway 89A S.C. 93+78.75, 66' Left;
thence along said Westerly right-of-way, along a line 66.00 feet Northwesterly of, and parallel to Highway 89-A centerline spiral, having a chord bearing of South 49° 37' 02" West, and chord length of 123.63 feet to a ADOT Right-of-Way Marker at T.S. 92+47.85, Left;
thence South 51° 38' 23" West, along said Westerly right-of-way, a distance of 592.09 feet to the TRUE POINT OF BEGINNING.

PARCEL NO. 2:

A parcel of land in the Northwest quarter of Section 8, Township 17 North, Range 6 East, of the Gila and Salt River Base and Meridian, Coconino County, Arizona more particularly described as follows:

COMMENCING at the Southwest corner of said Northwest quarter from which the Northwest corner of said Northwest quarter bears North 00° 03' 23" West, a distance of 2,629.73 feet;
thence North 32° 33' 58" East, a distance of 1,235.49 feet (North 30° 53' 52" East, 1,236.88 feet – record) to the centerline P.C. Sta 1,146+38.6 of Highway 89A;
thence North 51° 37' 13" East, along said centerline a distance of 785.28 feet (North 51° 17' East, 785 feet – record);
thence South 38° 22' 47" East (South 38° 43' East – record), a distance of 40.00 feet to the Southeasterly right of way of said Highway and the TRUE POINT OF BEGINNING;
thence North 51° 37' 13" East (North 51° 17' East – record), along said rights of way, a distance of 180.60 feet to a nail in a concrete right of way marker, marking the beginning of an offset to the centerline spiral;
thence along said offset, having a chord bearing of North 49° 30' 12" East, and a chord distance of 135.19 feet to the P.C. of a curve in a Northeasterly direction;
thence along said curve concave to the Northwest, having a radius of 640.00 feet, arc length of 33.28 feet, central angle of 002° 58' 48", a chord bearing of North 43° 52' 49" East, and a chord length of 33.28 feet;
thence leaving said right of way along a non-tangent line which bears South 51° 22' 47" East, a distance of 204.59 feet (South 51° 43' East, 203.65 feet – record);
thence South 24° 52' 13" West (South 24° 32' West – record), a distance of 305.80 feet;
thence North 63° 11' 53" West, a distance of 290.49 feet (North 63° 28' West, 290.50 feet – record) to a ½ inch rebar with cap "Landmark LS #14184";
thence North 38° 05' 59" West, a distance of 63.85 feet (North 28° 43' West, 63.70 feet – record) to the TRUE POINT OF BEGINNING.

PARCEL NO. 3:

A parcel of land located in the Northwest quarter of Section 8, Township 17 North Range 6 East of the Gila and Salt River Base and Meridian, Coconino County, Arizona, more particularly described as follows:

COMMENCING at the Southwest corner of said Northwest quarter, from which the Northwest corner of said Northwest quarter bears North 00° 03' 23" West, a distance of 2,629.13 feet; thence North 00° 03' 23" West, along the West line of said Northwest quarter, a distance of 997.36 feet (North 00° 33' 30" East, 999.8 feet – Record); Thence North 89° 56' 07" East, a distance of 1,453.69 feet (South 89° 27' East, 1,465 feet – Record) to a ½ inch rebar with cap marked "Landmark LS #14184 and the TRUE POINT OF BEGINNING; thence North 37° 3' 35" East, a distance of 112.83 feet (North 38° 00' East, 133 feet – Record) to a ½ inch rebar with cap marked "Landmark LS #14184"; thence North 61° 34' 57" East, a distance of 107.06 feet (North 62° 00' East, 107 feet – Record) to a ½ inch rebar; thence North 33° 47' 57" East, a distance of 100.00 feet (North 34° 13' East, 100 feet – Record) to a ½ inch rebar with cap marked "LS #19853"; thence North 89° 34' 57" East, a distance of 290.20 feet (East, 280 feet – Record), to a point on the East line of the Northeast quarter of the Northwest quarter of the Southeast quarter of the Northwest quarter; thence South 00° 50' 56" East, a distance of 560.06 feet (South, 560 feet more or less – Record), to the Southeast corner of the Southeast quarter of the Northwest quarter of the Southeast quarter of the Northwest quarter; thence 89° 38' 12" West, a distance of 328.50 feet (West, 330 feet more or less – Record), to a ½ inch rebar with cap marked "Landmark LS #14184" marking the Southwest corner of said Southeast quarter of the Northwest quarter of the Southeast quarter of the Northwest quarter; thence South 00° 43' 32" East, along the East line of the East half of the Southwest quarter of the Southeast quarter of the Northwest quarter, a distance of 102.52 feet (South, 108 feet – Record) to a ½ inch rebar with cap marked "LS #19853"; thence South 89° 25' 05" West, a distance of 211.92 feet (West – Record) to a ½ inch rebar with cap marked "LS #19853"; thence North 00° 34' 21" West, a distance of 118.86 feet (North, 119 feet – Record), to a ½ inch rebar with cap marked "Landmark LS #14184"; thence North 63° 54' 57" West, a distance of 67.16 feet (North 62° 00" West, 67.2 feet – Record) to a ½ inch rebar; thence North 00° 34' 44" West, a distance of 114.96 feet (North 115 feet – Record) to a ½ inch rebar with cap marked "Landmark LS #14184"; thence North 25° 26' 34" East, a distance of 196.98 feet (North 26° 00' East, 200 feet – Record) to the TRUE POINT OF BEGINNING.

PARCEL NO. 4:

A parcel of land in the Northwest quarter of Section 8, Township 17 North, Range 6 East, of the Gila and Salt River Base and Meridian, Coconino County, Arizona, described as follows:

BEGINNING at the Northeast corner of the Southwest quarter of the Northeast quarter of the Northeast quarter of the Northwest quarter, of said Section 8;
 thence South 00° 58' 45" East, a distance of 333.55 feet to the Southeast corner of said Southwest quarter of the Northeast quarter of the Northeast quarter of the Northwest quarter of said Section 8;
 thence South 89° 20' 42" West, a distance of 325.38 feet to the Southwest corner of said Southwest quarter of the Northeast quarter of the Northeast quarter of the Northwest quarter of said Section 8;
 thence South 00° 50' 56" East, a distance of 665.72 feet to the Southeast corner of the Southwest quarter of the Northeast quarter of the Northwest quarter of said Section 8;
 thence continuing South 00° 50' 56" East, a distance of 104.48 feet to the Northeast corner of the parcel of land described in Docket 1375, page 865;
 thence South 89° 34' 57" West, a distance of 290.20 feet to the Northwest corner of last said parcel;
 thence North 32° 47' 57" East, a distance of 53.80 feet to the most Easterly corner of the parcel of land described in Docket 1563, page 391;
 thence North 63° 11' 53" West, a distance of 108.86 feet to the most Southerly corner of the parcel of land described in Docket 683, page 559;
 thence North 24° 52' 13" East, a distance of 305.80 feet to the most Easterly corner of last said parcel;
 thence North 51° 22' 47" West, a distance of 204.59 feet to the most Northerly corner of last said parcel and a point on the Southeasterly right-of-way of U.S. Highway 89-A;
 thence along said right-of-way of the following courses and distances:
 thence along the arc of a curve in a Northeasterly direction, said curve being concave to the Northwest, having a radius of 640.00 feet, arc length of 95.92 feet, central angle of 008° 35' 15", a chord bearing of North 38° 21' 51" East, to Highway Sta. 95+40.00 feet right;
 thence South 56° 06' 16" East, along a non-tangent line, a distance of 40.00 feet to Highway Sta. 95+00, 80.00 feet right;
 thence along the arc of a non-tangent curve in a Northeasterly direction, said curve being concave to the Northwest, having a radius of 680.00 feet, arc length of 4.81 feet, central angle of 000° 24' 18" a chord bearing of North 33° 41' 35" East, to C.S. Sta. 95+04,24, 80.00 feet right;
 thence along an offset line, 80.00 feet from the centerline spiral said offset line having a chord bearing of North 29° 23' 20" East, a distance of 139.55 feet to S.T. Sta. 96+35.14 BK. And Sta. 96+34.79 AHD, 80.00 feet right;
 thence North 27° 14' 26" East, a distance of 165.21 feet to Sta. 98+00, 80.00 feet right;
 thence North 62° 45' 34" West, a distance of 14.00 feet to Sta. 98+00, 66.00 feet right;
 thence North 27° 14' 26" East, a distance of 112.46 feet to the Southwest corner of the parcel of land described in Docket 1601, page 0b 70;
 thence leaving said right-of-way, South 62° 45' 34" East, a distance of 35.00 feet to the Southeast corner of last said parcel;
 thence North 27° 14' 26" East, a distance of 50.00 feet to the Northeast corner of last said parcel;
 thence North 62° 45' 34" West, a distance of 35.00 feet to the Northwest corner of last said parcel and to said Southeasterly right-of-way;
 thence North 27° 14' 26" East, along said right-of-way, a distance of 87.36 feet to Sta. 100+50, 66.00 feet right;

thence North 62° 45' 34" West, along said right-of-way, a distance of 33.00 feet to Sta. 100+50, 33.00 feet right;
thence North 27° 14' 26" East, along said right-of-way, a distance of 41.18 feet to the North line of the Southeast quarter of the Northwest quarter of the Northeast quarter of the Northwest quarter of said Section 8;
thence North 89° 13' 22" East, a distance of 366.08 feet to the TRUE POINT OF BEGINNING.

PARCEL NO. 5:

A tract of land in the Northwest quarter of Section 8, Township 17 North, Range 6 East, of the Gila and Salt River Base and Meridian, Coconino County, Arizona, more particularly described as follows:

BEGINNING at a point on the Southeasterly line of Highway 89A, a distance of North 1323.79 feet and East 1067.93 feet from the West quarter corner of said Section 8, said Point of Beginning is also distant along said highway line, North 51° 17' 00" East, a distance of 119.01 feet from the most Northerly corner of the B. B. Neninger property as described in Book 41 of Official Records, pages 576-577;

Thence along the Northeasterly line of Sedona Art Center property, South 61° 41' 00" East, (Record South 63° 07' 13" East) a distance of 143.5 feet and South 53° 18' 00" East, (Record South 54° 44' 13" East), a distance of 64.37 feet;

Thence leaving said Art Center property South 62° 09' 00" East, a distance of 289.2 feet to the Northwesterly line of the Arizona Water Company property;

Thence along said Northwesterly line, North 37° 03' 00" East (Record North 38° 00' 00" East), a distance of 20 feet, and North 61° 13' 00" East, (Record North 62° 00' 00" East), a distance of 107 feet and North 33° 26' 00" East (Record North 34° 13' 00" East), a distance of 100 feet;

Thence leaving said Arizona Water Company property North 33° 26' 00" East, a distance of 53.2 feet;

Thence North 63° 28' 00" West, along a Southerly prolongation of, and along the Westerly boundary of that parcel described in Book 50 of Official Records, page 291, a distance of 398.9 feet to the most Easterly corner of the Vue Motel property;

thence along the Vue Motel boundary line, South 30° 36' 00" West, a distance of 139.97 feet;

thence North 38° 43' 00" West, a distance of 20 feet;

thence South 31° 37' 00" West, a distance of 90.7 feet;

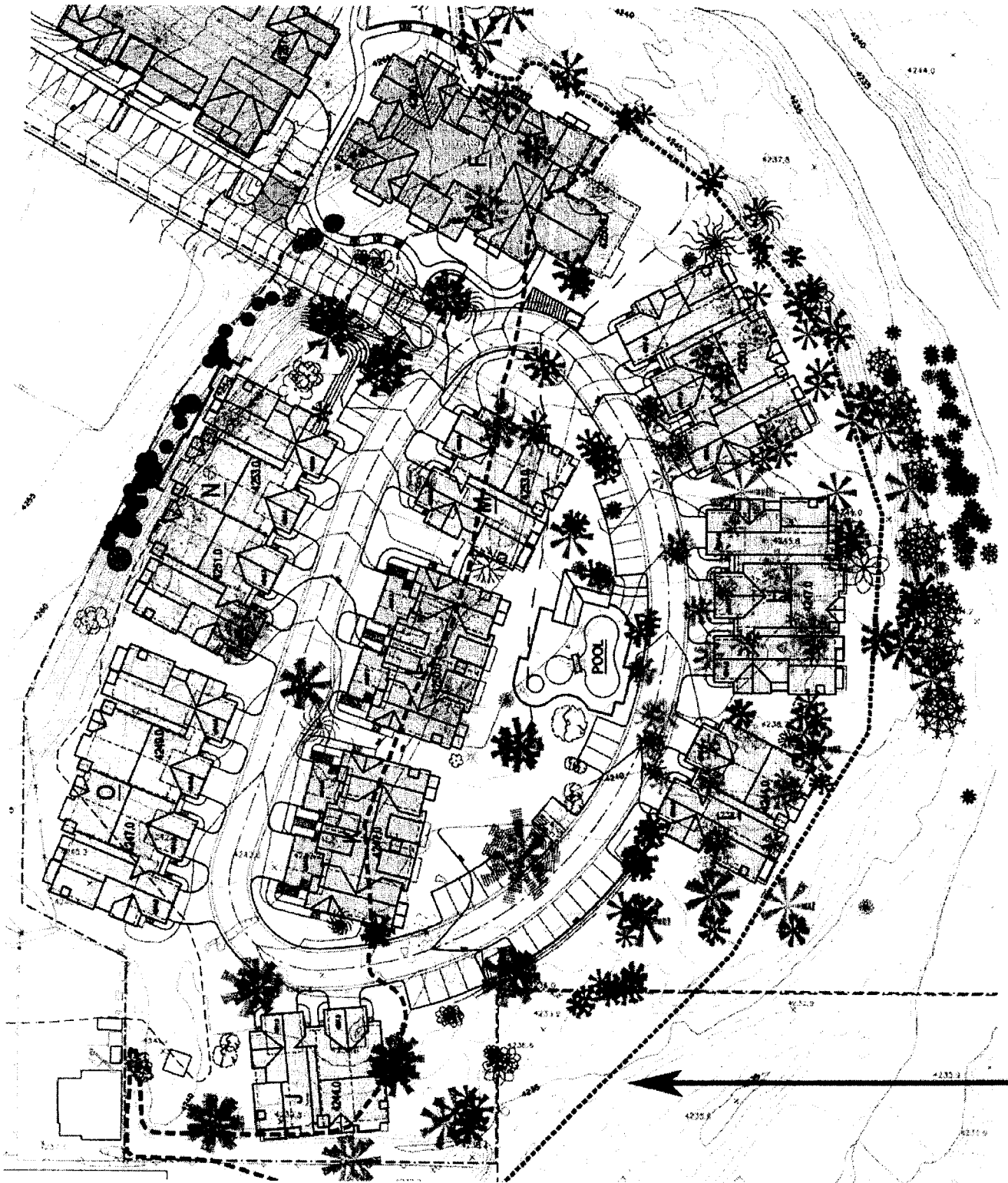
thence North 61° 53' 00" West, a distance of 135.0 feet to a point on the Southeasterly line of Highway 89A;

thence along said Highway, South 51° 17' 00" west to a distance of 21.35 feet to the Point of Beginning.

TOGETHER WITH an easement for road purposes fifteen (15') feet in width lying contiguous with and Southwesterly of the line above described as South 62° 09' 00" East, a distance of 289.2 feet.

EXHIBIT E
Jordan Preserve Fence

EXHIBIT E



Boundary line of proposed fence between Project and Jordan Preserve. To be designed as part of Creekside Village Development Plan Approval

EXHIBIT F
Undergrounding Agreement – City and APS

EXHIBIT F

ADDENDUM NUMBER ONE
TO
THE CITY OF SEDONA
ELECTRIC DISTRIBUTION UNDERGROUNDING AGREEMENT
APS CONTRACT NO. 42224

This addendum Number One to Electric Distribution Undergrounding Agreement (the "Addendum") is entered this 13 day of November, 2001, by and between Arizona Public Service Company, an Arizona corporation ("APS"), and the City of Sedona, an incorporated municipality (the "City").

The City and APS entered into an Electric Distribution Undergrounding Agreement which became effective November 26, 1991 (the "Agreement"), for the purpose of facilitating the undergrounding of approximately 52 miles of overhead electric distribution lines within the corporate limits of the City.

The City and APS are now interested in extending the termination date of the Agreement under the terms contained herein.

NOW, THEREFORE, in consideration of the following covenants, promises, and provisions, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

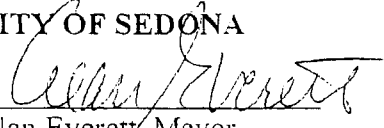
1. The first sentence of section 11 of the Agreement entitled "Term" shall be amended to read as follows:

The term of this agreement is 11 years.

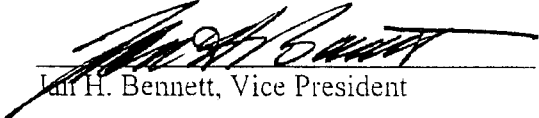
2. All other terms and conditions of the Agreement (including the funding provisions) shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Addendum on the day and year first above written.

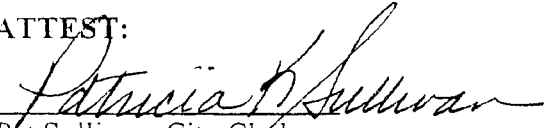
CITY OF SEDONA


Alan Everett, Mayor

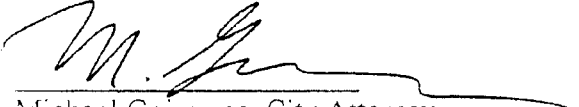
ARIZONA PUBLIC SERVICE COMPANY


Ian H. Bennett, Vice President

ATTEST:


Pat Sullivan, City Clerk

APPROVED AS TO FORM:


Michael Goimarac, City Attorney



A subsidiary of Pinnacle West Capital Corporation

Tel 928/282-7128
Internet: <http://www.aps.com>

65 Coffee Pot Drive
Sedona, AZ 86336-4506

November 29, 2001

Patrick K. Sullivan, CMC
City Clerk
City of Sedona
102 Roadrunner Drive
Sedona, Arizona 86336

Re: Addendum No. 1 to Electric Distribution Undergrounding Agreement

Dear Pat,

Please find enclosed Copy #1 of Addendum No. 1 to the City of Sedona's Electric Distribution Undergrounding Agreement with Arizona Public Service, Contract No. 42224, signed by Jan H. Bennett, Vice President, APS.

If you have any questions regarding the addendum, please give me a call at 204-1046.

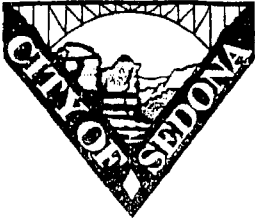
Sincerely,

A handwritten signature in black ink, appearing to read "Kent Jones", is written over a horizontal line.

Kent Jones
Area Supervisor

Enc Addendum No. 1

Cc: File



102 Roadrunner Drive
Sedona, Arizona 86336
(520) 282-3113
TDD (520) 204-7102
Fax (520) 204-7105

November 21, 2001

Mr. Kent Jones
Arizona Public Service
65 Coffee Pot Drive
Sedona, Arizona 86336

Re: Addendum No. 1 to Electric Distribution Undergrounding Agreement

Dear Kent:

On November 13, 2001, the city council passed Addendum Number One to the City of Sedona's Electric Distribution Undergrounding Agreement with Arizona Public Service, APS Contract No. 42224. The two (2) originals have been signed by the City and are enclosed for signature by Jan H. Bennett, Vice President. Please have Jan sign both originals and return one to me in the self-addressed, stamped envelope, I have provided for your convenience.

If you have any questions regarding the addendum, please call City Manager Eric Levitt at 928-204-7186.

Sincerely,

Patricia K. Sullivan, CMC
City Clerk

Enc: Addendum No. 1 - 2

C: File

ORIGINAL

APS Contract No. 42224

ELECTRIC DISTRIBUTION
UNDERGROUNDING AGREEMENT

By this Electric Distribution Undergrounding Agreement (this "Agreement") entered into this 26th day of November, 1991, Arizona Public Service Company, an Arizona corporation ("APS"), and the City of Sedona, an incorporated municipality ("Sedona"), in consideration of the mutual covenants, promises, provisions and agreements stated herein, do hereby agree as follows:

RECITALS:

1. Sedona is an incorporated municipality in Coconino and Yavapai Counties, Arizona.
2. APS is a public utility company currently providing electric power to Sedona, its occupants and residents as well as the surrounding area. APS has both overhead electric transmission lines of 69 kilovolts (69 kV) and higher and approximately 52 miles of overhead electric distribution lines of 12 kilovolts (12 kV) and lower (the "12 kV Lines") within the corporate limits of Sedona.
3. Sedona desires to have all overhead electric distribution lines within its boundaries systematically removed and converted to an underground system during the next ten (10) years.
4. APS wishes to cooperate with and assist Sedona in converting its overhead distribution system to an underground system in an efficient and timely manner.

PROMISES AND COVENANTS:

NOW THEREFORE, in consideration of the foregoing recitals and in further consideration of the following covenants, promises, and provisions, the parties hereto, for themselves, their agents, employees, successors and assignees, do hereby agree as follows:

5. Underground Conversion:

APS agrees to remove all of the 12 kV Lines then owned by it pursuant to Section 7 below and replace them with equivalent underground lines at the rate of approximately 5.2 miles per year or as otherwise agreed to by the parties.

APS will be responsible for the total coordination of all activities required to convert the 12 kV Lines, including: (i) providing all materials, labor, trenching, backfill, conduits, ducts and surface restoration; (ii) interfacing with other utilities; and (iii) coordinating conversion of service entrances with APS' customers, as outlined in the draft Information Sheet attached hereto as Exhibit "A."

6. Qualified Contractors

Sedona and APS agree to jointly prepare a list of prequalified contractors which will be updated periodically but in no event later than July 1 of each year. These contractors will be invited to bid on selected portions of underground conversion projects.

Sedona and APS shall jointly review the bids received and select the successful bidders. The bidder selected shall be the lowest fully responsive responsible bidder. APS will execute a

contract with the successful bidder following receipt of written approval of the bid from Sedona.

Sedona at its option may provide such services as earthwork and surface restoration or such other services as agreed to by the parties. The value of any such services provided by Sedona shall be included in the total cost of each individual line conversion to be funded pursuant to Section 7.

7. Project Funding:

It is the goal to convert from overhead to underground the entire 52 miles of 12 kV Lines in ten (10) years. However, if necessary, this Agreement may be renewed pursuant to Section 11 hereof. The cost of the entire conversion project is currently estimated at Twenty Million Three Hundred Ninety-Six Thousand Dollars (\$20,396,000), calculated in July 1991 dollars, not adjusted for inflation.

APS agrees to pay 45% and Sedona agrees to pay 55% of the cost of the entire conversion project. It is understood by the parties that these percentages are based on the completion of the entire project and may vary from line conversion to line conversion and from year to year in accordance with APS' Administrative Rules for Electric Extension Policy and APS' tariffs approved by the Arizona Corporation Commission.

8. Annual Work Plan

Sedona and APS shall meet in February of each year and jointly prepare an annual work plan for conversion of the 12 kV Lines,

taking into account the long-range plans of both parties among other things.

If the parties cannot agree on the order of priority for converting the 12 kV Lines, APS agrees to accept Sedona's preferred ordering unless to do so would cause APS undue hardship in operating or maintaining its system, in which case Sedona agrees to consider an appropriate modification by APS.

9. Undergrounding Ordinances:

Sedona shall assist APS in the conversion of the 12 kV Lines during the term of this Agreement by passing ordinances to facilitate APS customers' participation in the conversion projects.

10. Capital Butte Substation:

APS agrees that when the adjacent property surrounding its Capital Butte Substation is developed, APS will present to Sedona's City Council a plan for the beautification of its Capital Butte Substation. This design shall be in compliance with existing ordinances and be compatible with surrounding development. Construction of these improvements will be scheduled as needed and when Sedona, APS, and affected neighbors agree.

11. Term:

The term of this Agreement is ten (10) years. This Agreement may be renewed for up to five (5) consecutive one-year terms, if at the end of the first term of this Agreement and each subsequent term, the entire 12 kV distribution system has not been converted. Renewal shall be by the mutual written consent of the parties.

Sedona may cancel this Agreement by giving APS 60 days written notice; provided, however, that the projects for which field construction has begun shall be completed pursuant to this Agreement.

12. Effective Date

This Agreement shall become effective on the date upon which the electors of Sedona approve the Franchise Agreement submitted by APS.

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

CITY OF SEDONA

ARIZONA PUBLIC SERVICE COMPANY

By *June Cornelison*
June Cornelison, Mayor

By *Jan H. Bennett*
Jan H. Bennett, Vice
President, Customer Service

Attest:

By *Marie Brown*
Marie Brown, City Clerk

Approved as to form:

By *Melinda Garrahan*
Melinda Garrahan, City
Attorney

EXHIBIT "A"

CITY OF SEDONA
UNDERGROUNDING ELECTRIC
CONVERSION PROJECT

INFORMATION SHEET

CUSTOMER CONTACTS

Arizona Public Service	Kent Jones	282-4000
City of Sedona	Ken Griffin	282-7344

PROJECT DESCRIPTION

The City of Sedona entered into a 10 year Undergrounding Agreement with Arizona Public Service (APS) which became effective on November 19, 1991. As a part of this agreement, APS agreed to begin a process which will result in overhead electric distribution facilities (facilities less than 69 kV) being placed underground. The goal is to proceed at the rate of approximately 5.2 miles per year.

COST ALLOCATION - The Undergrounding Agreement states:

APS agrees to pay 45% and Sedona agrees to pay 55% of the cost of the entire conversion project. It is understood by the parties that these percentages are based on the completion of the entire project and may vary from line conversion to line conversion and from year to year in accordance with APS' Administrative Rules for Electric Extension Policy and APS' tariffs approved by the Arizona Corporation Commission.

This means that the cost allocation between APS and the City of Sedona stated below is an approximation only and that the actual cost split between APS and the City of Sedona on each individual line conversion may vary.

Type I Facilities located in public rights-of-way

APS	45%
City of Sedona	55%

Undergrounding of facilities located in public rights-of-way will be accomplished in accordance with a priority list prepared by the City of Sedona and APS.

Type II Facilities located in public utility easements, along side or rear lot lines, along private roads, and on private property.

APS	45%
City of Sedona	2/3 of 55%
Participating Customers	1/3 of 55%

For undergrounding of such facilities a signed and notarized petition or letter must be submitted by a minimum of 90% by number of the property owners. If less than 100% of the property owners request the undergrounding, the requesting property owners can still proceed by pledging to cover the participating customers' share of the City's portion of the costs.

Individual customers are responsible for 100% of the cost to modify or replace electric meter panels and risers. APS will obtain from a licensed electrician cost estimates for all panel conversions. An electrical permit from the City will be required for such work.

STANDARD FACILITY LOCATIONS - All utility locations and installations will be made in conformance with the City's right-of-way ordinance (Article 7-15, City Code).

- 1) Trench Lines - The preferred location for trenches needed to convert the overhead lines to underground is in the road right-of-way but outside of the existing pavement. This location, in reference to the property lines, will vary depending on existing underground facilities and field conditions.
- 2) Transformers - The preferred location for pad mounted transformers will be in front of or back behind the trench line either in or out of the right-of-way and ideally near a property corner of a customer it serves. Transformers must be on level ground, and out of water retention areas. Please refer to Exhibit A for clearance requirements and equipment dimensions.
- 3) Switching Cabinets and Capacitor Banks - This equipment must also remain out in the front of the property, generally in the right-of-way. Switching cabinets and capacitor banks must also be on flat, level ground and out of water retention areas. Please refer to Exhibit A for clearance requirements and equipment dimensions.

ACTION PLAN FOR CONVERSION PROJECTS

Action Steps

Responsible Party

- | | |
|--|------------------|
| 1) Neighbors canvassed to assess level of interest - Type II only. | Customer/Citizen |
|--|------------------|

ACTION PLAN FOR CONVERSION PROJECTS - CONT.

<u>Action Steps</u>	<u>Responsible Party</u>
2) Written request made to City officials including names and addresses of interested parties, signatures and parameters of requested conversion Type II only.	Customer/Citizen
3) Record request and forward to APS - Type II only.	City of Sedona
4) Review request and project parameters with City officials.	APS
5) Prepare preliminary cost worksheet to include construction costs, trenching, and cost split.	APS
6) Review preliminary cost worksheet with City officials.	APS
7) Preliminary approval given, project priority and cost allocation established.	City of Sedona
8) Contact customer to inquire whether they would like APS to obtain panel conversion estimates. Obtain cost estimates for panel conversions, as needed, from electrical contractors.	APS
9) Provide written preliminary cost estimate to impacted customers. Copy to City officials. Type II only.	APS
10) Written approval signed and returned to APS giving authorization to proceed. Copy to City officials. Type II only.	Customer/Citizen
11) Initiate work order and send to APS Engineering Section for design.	APS
12) Notify US West and Warner Cable of proposed conversion parameters.	APS

ACTION PLAN FOR CONVERSION PROJECTS - CONT.

<u>Action Steps</u>	<u>Responsible Party</u>
13) Prepare design and actual cost worksheet.	APS
14) Present design and actual cost worksheet to City officials for final approval.	APS
15) Present APS design to US West & Warner Cable.	APS
16) US West and Warner Cable design complete.	US West, Warner Cable
17) Job surveyed and staked.	APS
18) Permits obtained for APS trenching.	APS
19) Easements obtained for APS facilities.	APS
20) Agreements prepared and monies collected from City. Contractors to be selected by APS with concurrence by City of Sedona.	APS
21) Monies collected from individual customers/citizens. Type II only.	City of Sedona
22) Pre-Construction meeting with City officials, US West, Warner Cable, Electrician, Contractor, and Trencher.	APS
23) Begin construction.	APS
24) APS facilities in and operable.	APS
25) US West and Warner Cable facilities in and operable.	US West, Warner Cable
26) Poles removed.	APS

[0007/LKC04]

EXHIBIT G
The Institute of Ecotourism Resort Conservation Model
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A. Employee education and empowerment

- ◆ Organize staff meetings and discussions
- ◆ Create an employee eco-suggestion program
- ◆ Offer incentives for managers and employees
- ◆ Clearly articulate company environmental goals and projects
- ◆ Environmental management training opportunities
- ◆ Regular employee training

B. Energy Efficiency

- ◆ Install light switch reminders
- ◆ Track and post energy usage, benchmarking
- ◆ Retrofit lighting with low energy alternatives
- ◆ Assess 24 hour lighting
- ◆ Complete regular maintenance on HVAC systems
- ◆ Install energy efficient washers and dryers
- ◆ Use weather stripping to close air gaps around doors and windows

C. Waste Minimization

- ◆ Encourage double sided copying
- ◆ Install air hand dryers in staff washrooms
- ◆ Implement a resort recycling program
- ◆ Conduct a waste audit
- ◆ Review portion control solutions: condiments, etc.

D. Water Conservation

- ◆ Track and post water usage, benchmarking
- ◆ Implement an optional linen and towel reuse program
- ◆ Detect and fix water leaks
- ◆ Decrease water loss through evaporation
- ◆ Use reclaimed water for water features on-site
- ◆ Install low flow toilets
- ◆ Install water conserving showerheads

E. Environmental Purchasing

- ◆ Restrict the use of harmful chemicals and pesticides
- ◆ Buy recycled-content paper and office products

EXHIBIT H

Dispute Resolution/Remedies

- A. The dispute resolution process (the “**Process**”) and remedies set forth herein shall not apply to any action by City to condemn or acquire by inverse condemnation all or any portion of the Property. In the event of any such action by City, Developer shall have all rights and remedies available to it at law or in equity.
- B. If an event of default is not cured within the Cure Period, the non-defaulting party may institute the Process by providing written notice initiating the Process (the “**Initiation Notice**”) to the defaulting party.
- C. Within fifteen (15) days after delivery of the Initiation Notice, each party shall appoint one person to serve on an arbitration panel (the “**Panel**”). Within twenty-five (25) days after delivery of the Initiation Notice, the persons appointed to serve on the Panel shall themselves appoint one person to serve as the third member of the Panel. The one person selected shall function as the chairperson of the Panel (the “**Chairperson**”).
- D. The parties agree that remedies available for award by the Panel shall be limited to specific performance and declaratory relief.
- E. The parties have structured the Process with the goal of providing for the prompt and efficient resolution of all disputes falling within the purview of this Process. To that end, either party can petition the Panel for an expedited hearing if circumstances justify it. Such circumstances shall be similar to what a court would view as appropriate for injunctive relief or temporary restraining orders. In any event, the hearing of any dispute not expedited will commence as soon as practicable, but in no event later than forty-five (45) days after selection of the Chairperson. This deadline can be extended only with the consent of both parties to the dispute or by decision of the Panel on a showing of emergency circumstances.
- F. The Chairperson shall conduct the hearing pursuant to the Center for Public Resources’ Institute for Dispute Resolution Rules for Non-Administered Arbitration (Rev. 2000, or then in effect) except that the Agreement and this **Exhibit H** shall control over conflicting rules (including, *e.g.*, Rule 16 and its successors). The Chairperson shall determine: (i) the nature and scope of discovery, if any; and (ii) the manner of presentation of relevant evidence consistent with the deadlines provided herein and with the parties’ objective that disputes be resolved in a prompt and efficient manner. No discovery may be had of privileged materials or information. The Chairperson, upon proper application, shall issue such orders as may be necessary and permissible under law to protect confidential, proprietary or sensitive materials or information from public disclosure or other misuse. Any party may make application to the Coconino County Superior Court (the “**Court**”) to have a protective order entered as may be appropriate to confirm such orders of the Chairperson.

- G. In order to effectuate the parties' goals, the hearing, once commenced, will proceed from business day to business day until concluded, absent a showing of emergency circumstances. Except as otherwise provided herein, the Process shall be governed by the Uniform Arbitration Act as enacted in Arizona at A.R.S. § 12-1501 *et seq.*
- H. The Panel shall, within fifteen (15) days from the conclusion of any hearing, issue its decision. The decision shall be rendered in accordance with the Agreement and the laws of the State of Arizona.
- I. Either Developer or City may appeal the decision of the Panel to the Court for a de novo review of the issues decided by the Panel, if such appeal is made within thirty (30) days after the Panel issues its decision. Except as provided in Paragraphs A and I of this **Exhibit H**, the parties agree that the remedies available for award by the Court shall be limited to specific performance and declaratory relief. The decision of the Panel shall be binding on both parties until the Court renders a binding decision. If the non-prevailing party in the Process fails to appeal to the Court within the timeframe set forth herein, the decision of the Panel shall be final and binding.
- J. If so directed by the Panel, the non-prevailing party shall pay all reasonable and actual attorneys' fees and costs of the prevailing party associated with any Process before the Panel. The determination of prevailing and non-prevailing parties, and the appropriate allocation of fees and costs, will be included in the decision by the Panel. Each party shall pay its own attorneys' fees and costs associated with an appeal to the Court or to any appellate court thereafter.