RESOLUTION NO. 2006-10
(Rezoning Ordinance as Public Record)

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SEDONA, ARIZONA, ESTABLISHING AS A PUBLIC RECORD THE TERMS OF THAT CERTAIN ORDINANCE OF THE CITY OF SEDONA, ARIZONA; AMENDING THE ZONING DESIGNATION FOR THAT PROPERTY DESCRIBED HEREIN FROM PD (PLANNED DEVELOPMENT) TO PD (PLANNED DEVELOPMENT) WITH AN AMENDED SITE PLAN; DIRECTING THE AMENDMENT OF THE ZONING MAP UPON COMPLETION OF ALL ZONING CONDITIONS SET FORTH HEREIN; AND REPEALING ALL ORDINANCES IN CONFLICT HEREWITH.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF SEDONA, ARIZONA that the terms set forth in Sections 1 through 3 herein constitute a public record to be incorporated by reference into Ordinance No. 2006-04.

Section 1. Adoption by Reference

The property being rezoned consists of approximately 22 acres bisected by Highway 89A at the northern entrance to the city, being Coconino County Assessor parcels number 401-08-002A; 401-08-006; 401-09-001A/B/C; 401-13-059; and 401-14-015/016/017/064/065/075. These parcels are subject to a proposed development agreement for The Preserve at Oak Creek Condominiums, on property formerly described as The Preserve at Oak Creek. The property is hereby changed from its current designation of PD (Planned Development) to PD (Planned Development) with a revised site plan and change of primary use from timeshare units to condominiums upon completion of all zoning conditions set forth in Exhibit A.

Section 2. Zoning Map

The zoning map shall be amended to reflect this zoning change, and at least three (3) copies of the map shall be kept in the office of the City Clerk for public use and inspection.

Section 3. Repeal

All ordinances and parts of ordinances in conflict with this Ordinance are repealed to the extent of such conflict.

APPROVED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona this 14th day of February, 2006.

Susan Solomon, Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

When recorded, return to:

Gallagher & Kennedy, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016
Attn: Wm. F. Allison, Esq.

DEVELOPMENT AGREEMENT
(The Preserve at Oak Creek Condominiums)

THIS DEVELOPMENT AGREEMENT for The Preserve at Oak Creek Condominiums (this "**Agreement**") is entered into this ___ day of _____, 2006 by and between the CITY OF SEDONA, an Arizona municipal corporation ("**City**") and COLE INVESTMENT ADVISORS, INC., an Arizona corporation ("**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 master plan for the Property provides for a unified development called the Preserve at Oak Creek (the "**Preserve**"), which includes a for-sale condominium community containing one hundred fifty-eight (158) single-ownership condominiums, a fitness room, 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 and recreational components of the Preserve, including the proposed three (3) phases for development of the Property.

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**") as may be amended prior to or concurrently with this Agreement 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. The proposed 158 condominiums includes density from the Jordan Preserve, as defined herein, pursuant to A.R.S. § 9-461.06.N. 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 condominium portion of the Preserve will contain up to one hundred fifty-eight (158) two, three, four and five bedroom dwelling units to be defined as follows: thirty-six (36) "Unit Type A" (1,293 to 1,947 square feet/two-bedroom); four (4) "Unit Type B" (1,267 to 1,980 square feet/three-bedroom); twenty-seven (27) "Unit Type C" (1,702 to 2,026 square feet/three-bedroom); thirty-three (33) "Unit Type D" (1,267 to 1,789 square feet/two-bedroom); fifty-three (53) :Unit Type E" (1,600 square feet/three-bedroom); one (1) "Unit Type F" (2,532 square feet/four-bedroom); one (1) "Unit Type G" (2,078 square feet/three-bedroom); one (1) "Unit Type H" (2,726 square feet/three-bedroom); one (1) "Unit Type I" (2,100 square feet/two-bedroom); and one (1) "Unit Type J" (2,565 square feet/five-bedroom). The condominiums shall not include lockout units and will not be available for nightly or weekly rental to the general public**; any rental shall comply with minimum rental periods established in the Sedona City Code**.

E. Developer shall provide a benefit to the community by dedicating to City**, if City determines that such dedication is appropriate and desirable,** the land for (1) 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 and (2) access from the condominium site to the Jordan Preserve on the east side of State Route 89A. 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. City shall be responsible for design, construction and maintenance of improvements to the Jordan Preserve and access thereto.

F. Developer and City recognize the importance of public art for the community. Developer has agreed to provide a monetary public art contribution to City as set forth in § 2.6 of this Agreement.

G. Developer and City recognize the importance of providing affordable workforce housing in the City, and desire to offset the impact of the Preserve on the affordable workforce housing needs in the City. Developer has agreed to construct twelve (12) off-site affordable workforce, for sale condominium units, or provide an in lieu fee for development or purchase of affordable housing units**if City develops an in lieu fee program, or otherwise participate in City's affordable housing policy**, as set forth in § 2.7 of this Agreement. 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 Preserve at Oak Creek, dated April 26, 2005, and recorded as Document Number 3323518 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 aforementioned Development Agreement for The Preserve 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 that Development Agreement for The Preserve 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 Preserve at Oak Creek**. Upon the Effective Date as described in § 6.22 of this Agreement, the Development Agreement for The Preserve 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 the Development Agreement for The Preserve at Oak Creek, dated April 26, 2005 and recorded as Document Number 3323518 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 Phase 1 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 (the "**Roundabout Improvements**"), 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 Improvement Plans for Uptown Sedona Enhancement Project dated December 2, 2005 (the "**Additional Improvements**"); the costs for the Additional Improvements 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. City, in its sole discretion, may elect to construct the Roundabout Improvements and/or the Additional Improvements before Developer begins construction of the initial phase of development of the Preserve. If City constructs the Roundabout Improvements, Developer's obligations for those Roundabout Improvements shall be satisfied by its payment to City of the circulation/streets development impact fee for the development of the Property at the time of building permit issuance for such development. If City constructs the Additional Improvements, Developer shall reimburse City for the cost of the Additional Improvements within 45 days of receipt from City of certified records of the construction costs.

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 Access/Public Improvement Alternatives. **Developer and City** acknowledge and agree that Developer **shall provide one of the following public benefits to City at City's discretion.**

2.3.1 ~~2.3 Jordan Preserve and Access/Public Improvement Alternatives. Upon City issuance of the first building permit for construction on Phase 1 of the Preserve,~~ ***Jordan Preserve.*** Developer shall dedicate to City land for (1) the Jordan Preserve on that portion of the Property east of Oak Creek and (2) access from the condominium site to the Jordan Preserve on the east side of State Route 89A, both as shown on the Master Plan **(the "Jordan Preserve and Access"), if City determines that such dedication is appropriate and desirable. City shall request such dedication no later than one (1) year after the Effective Date**. City shall be responsible for design, construction and maintenance of improvements to the Jordan Preserve and ~~access thereto~~**Access**. Developer acknowledges and agrees that it shall reimburse City for up to One Hundred Thousand Dollars ($100,000.00) of the design costs associated with the Jordan Preserve and ~~access thereto~~**Access**, upon City providing certified records of the design costs to Developer. This reimbursement will occur in either Phase 1 or Phase 2 of development of the Preserve, depending solely on the timing of City's delivery of the certified records to Developer. During Phase 2 of development of the Preserve, ~~Developer shall be responsible for up to~~ Five Hundred Seven Thousand Dollars ($507,000.00) of ~~City's improvements~~ **public infrastructure purposes, as defined in A.R.S. § 48-701,** to the Jordan Preserve and ~~access thereto~~**Access**, e.g. construction of a pedestrian bridge and trails and riparian restoration/clean up within the Jordan Preserve, **shall be provided** through **sale and issuance of general obligation bonds by** a Community Facilities District ("**CFD**") as discussed in § 2.10 of this Agreement. If City does not ~~construct any improvements to~~**request dedication of** the Jordan Preserve ~~or access to the Jordan Preserve~~**and Access** within one (1) year of the Effective Date, City **acknowledges**

and agrees that ~~the land will revert to Developer and~~ Developer shall have no further obligations regarding **dedication of and** improvements to the Jordan Preserve and ~~access thereto. If City makes no improvements to the Jordan Preserve or it access~~**Access.**

2.3.2 ***Public Improvement Alternative.*** **If City determines that it shall not accept dedication of the Jordan Preserve and Access** within the period specified in ~~this § 2.3, Developer agrees that it shall be responsible for up to~~**§ 2.3.1,** Six Hundred Seven Thousand Dollars ($607,000.00)~~, through~~ **of public infrastructure purposes, as defined in A.R.S. § 48-701, shall be provided through the sale and issuance of general obligation bonds by** a CFD as discussed in § 2.10 of this Agreement, for ~~another public amenity selected by City that will benefit the Preserve and for which CFD funding is permissible under Arizona statutes. If City determines that it shall neither make improvements to the Jordan Preserve nor develop another public amenity that will benefit the Preserve consistent with CFD statutory requirements, Developer agrees that it shall donate Two Hundred Fifty Thousand Dollars ($250,000.00) to City for use at City's discretion; Developer shall make such donation before issuance of the first Certificate of Occupancy for development in Phase 2. City shall decide whether it will a) improve the Jordan Preserve, b) develop another public amenity to benefit the Preserve or c) accept Developer's cash donation for an unrelated expense no later than Developer's obtaining its first building permit for construction in Phase 2.~~**public infrastructure purposes not described in § 2.3.1 and selected by City in its sole discretion, either on or off of the Property (the "Alternative Public Amenity").**

2.3.3 ***Cash Contribution/Reimbursement.*** **Developer acknowledges and** agrees that it shall donate Two Hundred Fifty Thousand Dollars ($250,000.00) to City **upon issuance of the first certificate of occupancy for Phase 2 (the "Donation"). If City either makes improvements to the Jordan Preserve and Access or develops the Alternative Public Amenity, City shall make an accounting of its use of the Donation for public infrastructure purposes, as defined in A.R.S. § 48-701, and Developer shall be reimbursed for the amount of the Donation from CFD funds upon completion of such public infrastructure.** If City determines that it shall neither make improvements to the Jordan Preserve **and Access nor develop the Alternative Public Amenity, Developer agrees that City may use the Donation at City's discretion and acknowledges that it shall not be reimbursed for the amount of the Donation.**

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 adjacent to the northern-most building on the Property on the east side of State Route 89A, 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; (vi) reference to City's public nuisance regulations; and (vii) hours the viewing area is open for public use each day. Developer shall name City as "also insured" on any liability policies governing the viewing area.

2.6 Public Art Contribution. Developer agrees to donate twenty thousand dollars ($20,000.00) to City to be used for public art at City's discretion.

2.7 Affordable Workforce Housing. Developer agrees to construct twelve (12) **new** affordable work-force, for-sale condominium units (the "**Affordable Units**") in order to provide an affordable workforce housing element in City at a site, or sites, located within City's corporate boundaries but off of the Property (the "**Affordable Housing Site**"), or provide an in lieu fee for construction or purchase of affordable housing units **if City develops an in lieu fee program, or otherwise participate in City's affordable housing policy**, as established in this § 2.7. ~~The selected Affordable Housing Site~~**If City's affordable housing policy conflicts with the provisions of this §2.7, the affordable housing policy shall control, except regarding (i) the number and location of Affordable Units for which Developer is responsible and (ii) the establishment of the bonding fee. Developer shall be responsible for locating and purchasing an Affordable Housing Site, which** shall be in conformance with the Sedona Community Plan for a multiple family residential development. **Developer agrees to review and consider placement of the Affordable Units on one Affordable Housing Site or on multiple parcels within City's corporate boundaries.** If the selected Affordable Housing Site is not properly zoned to accommodate the twelve Affordable Units, City shall use its reasonable best efforts to rezone the Affordable Housing Site to accommodate the twelve Affordable Units. **If Developer is unable to locate or properly zone an Affordable Housing Site, it shall request an opportunity to discuss the provision of the Affordable Units with the City Council to determine the best alternative to proceed with such housing.**

2.7.1 *Design of Affordable Units.* The design of the Affordable Units and the site design of the Affordable Housing Site shall conform to United States Department of Housing and Urban Development ("**HUD**") standards, City's Land Development Code, and City's Design Review Manual. The Affordable Units shall include six (6) one-bedroom units with a minimum of ~~600~~**700** square feet, five (5) two-bedroom units with a minimum of ~~850~~**900** square feet and one (1) three-bedroom unit with a minimum of ~~1,000~~**1,050** square feet.

2.7.2 *Construction Phasing for Affordable Units.* Construction of the twelve Affordable Units shall be completed during Phase 2 of development of the Preserve, with Certificates of Occupancy issued, before City will issue Certificates of Occupancy for Phase 2 of the Preserve. City acknowledges and agrees that Certificates of Occupancy for Phase 2 shall not be delayed if Developer has actively and timely pursued City approvals necessary for development of the Affordable Units on the Affordable Housing Site but City has not granted such approvals, and Developer has been unable to complete the Affordable Units, for reasons beyond Developer's reasonable control.

2.7.3 *Use Restrictions.* The Affordable Units must be owner-occupied, may not be sub-leased or rented and must be inhabited by the certified purchaser. The maximum number

of occupants shall conform to City's definition of "family" and shall not exceed the maximum occupancy requirements established in applicable Building and Fire Codes.

2.7.4 *Establishing Sales Price for Affordable Units.* The sales price for the Affordable Units shall be established using the methodology set forth in attached **Exhibit E**, which includes an appended sample price calculation.

2.7.5 *Eligible Purchasers and Purchase Process.* The Affordable Units will be sold to ~~Sedona residents~~**households** who: (i) earn a gross income of between one hundred percent (100%) and one hundred twenty-five percent (125%) of the HUD area median income for the household size in ~~Yavapai or~~ Coconino County~~, whichever applies for a particular purchaser~~; (ii) have completed an application, interview and verification of income**, assets** and credit-worthiness; (iii) ~~either provide a down payment of twenty percent (20%) of the purchase price of the Affordable Unit or~~ demonstrate pre-qualification with a licensed lender for a ~~fixed-rate~~ mortgage for the Affordable Unit, including the ability to satisfy any contingencies on such mortgage; and (iv) are **living or** working within City's corporate boundaries but do not own a home in any jurisdiction. Approved buyers shall be chosen by lottery. City or a City-approved, non-profit, third-party housing agency (the "**Housing Agency**") shall perform the interview, lottery process and management of resale of the Affordable Units; Developer shall participate in selection of the first purchasers of the Affordable Units. The Housing Agency shall determine annual income of prospective purchasers using the process established in **Exhibit F**.

2.7.6 *Mortgage and Fee Restrictions.* Mortgage payments will be capped at thirty-five percent (35%) of the annual area median income for the household size in Coconino County, as set forth in **Exhibit E**. The Affordable Unit owners will be responsible for the cost of their own utilities (gas, electric, water and wastewater service), phone, modem and cable service, and solid waste pick-up.

2.7.7 *Affordability Covenant.* Developer shall record a fifty (50) year affordability covenant (the "**Affordability Covenant**")with the sale of each Affordable Unit. The Affordability Covenant shall expire after the Affordable Unit is occupied for a period of fifty (50) years by one (1) owner. The Affordability Covenant shall provide to City the right of first refusal to purchase an Affordable Unit sold during the term of the Affordability Covenant.

2.7.8 *Affordable Unit Resale.* If the initial purchaser of an Affordable Unit chooses to sell that Affordable Unit within the term of the Affordability Covenant, the Housing Agency shall manage such sale and shall use a lottery system to select the new purchaser from a list of pre-approved applicants.

2.7.9 *Fee Waiver.* 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 twelve Affordable Units.

2.7.10 ~~*In Lieu*~~***Bonding*** *Fee.* Upon City issuance of the first building permit for Phase 1, Developer shall provide to City a bond in an amount equal to twenty percent (20%) of the ~~in lieu~~**bonding** fee for all twelve Affordable Units, as established with the methodology set forth in **Exhibit E (the "Bonding Fee")**. City shall hold such ~~bond~~**Bonding Fee** as security that

Developer shall construct the Affordable Units in conformance with this Section 2.7. At its sole discretion **if City develops an in lieu fee program for provision of affordable housing**, City may require Developer to pay to City an amount equal to the ~~remaining eighty percent (80%) of the~~ in lieu fee for all or a portion of the twelve Affordable Units **less the amount of the Bonding Fee**; City shall make this election no later than the issuance of the first building permit for Phase 1. If City **develops an in lieu fee program and** elects to require ~~this further~~ payment of ~~the in lieu~~**such a** fee, Developer shall pay the balance of the in lieu fee no later than issuance of a certificate of occupancy for Phase 2 and shall have no responsibility to construct any Affordable Unit for which the full in lieu fee has been paid. City acknowledges and agrees that it shall use any such in lieu fee for provision of affordable housing within City's corporate limits.

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 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:

2.9.1 A performance bond;

2.9.2 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.

2.10 Community Facilities District. City acknowledges and agrees that any public infrastructure ~~improvements~~**, as such term is defined in A.R.S. § 48-701,** required to be constructed by Developer in order to serve the Property as established in this Agreement or otherwise required by City, ~~including Developer's monetary responsibility for improvements to the Jordan Preserve and access thereto,~~**in addition to public infrastructure purposes described in § 2.3.1 and § 2.3.2,** may be constructed, acquired or provided, upon Developer's request, through a CFD, as authorized pursuant to A.R.S. § 48-701 *et.seq.* In connection with any request by Developer for the formation of one or more CFDs, Developer shall provide all necessary

information and shall pay all fees and expenses as required by City for CFD formation. City agrees that it shall consider any requests by Developer to form a CFD comprised of all or part of the Property. Nothing contained herein shall be construed to compel City to finance any public infrastructure. ~~Notwithstanding the foregoing, the parties hereto acknowledge and agree that Developer's monetary obligations relating to the Jordan Preserve and its access set forth in § 2.3 of this Agreement are expressly conditioned on the formation by the City of one or more CFDs. Contingent upon a request by Developer, submittal of all required application information and payment of all applicable fees, if City fails to form one or more CFDs as contemplated herein, Developer shall not be obligated to provide money for improvements to the Jordan Preserve and its access. Immediately upon formation, and as a condition of formation,~~**If City requests formation of a CFD, the Developer shall sign the petition and support such formation so long as Developer controls the Property. As** a condition of formation of a CFD, City, Developer and the CFD shall enter into an intergovernmental financing participation and development agreement (the "**CFD DA**") ~~in general conformance with the standards~~**which shall include the provisions** set forth in attached **Exhibit G**, which shall be the governing set of City policies and procedures through the Term of this Agreement. Subject to the provisions of this Agreement, City agrees to assume responsibility for the ownership, operation and maintenance of completed public infrastructure ~~improvements financed,~~ acquired and/or constructed by ~~one or more CFDs~~**a CFD**. ~~Any~~ CFD shall cause to be levied a CFD operation and maintenance tax on all taxable property within the CFD. Developer acknowledges and agrees that it shall provide additional funds for the payment of CFD budgeted costs and expenses as required by the terms of the CFD DA. Developer may request and City or the CFD, as applicable, will use its best reasonable efforts to establish a means of collecting equitable reimbursements from other developers or other real property owners for the CFD's and/or Developer's actual costs of publicly bid infrastructure that are of the size, length or capacity greater than that needed to serve or mitigate the impacts of development of the Property and that will benefit such other developer's or real property owner's property within City's corporate boundaries. **City acknowledges and agrees that it shall cause third parties to prepare and submit any necessary feasibility report for an Alternative Public Amenity and shall not require Developer to indemnify City for any challenges related to an Alternative Public Amenity that is not located within the CFD boundary. Developer acknowledges and agrees that neither it nor any successor owners or assigns will challenge, or otherwise seek relief due to, use of CFD funds for any Alternative Public Amenity and indemnification provisions in the CFD DA against Developer will exclude such action of successor owner or assignor. Developer shall cooperate in good faith to assist with completion of feasibility reports for any Alternative Public Amenity, including provision of information necessary to complete said reports.**

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, including the three (3) proposed phases for 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. 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 ~~will~~**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. Developer shall have the right to develop the Property in three (3) phases, as set forth in the Master Plan, or, in its sole discretion, to elect to proceed with development as a one or two phase project, subject only to obtaining necessary development approvals and permits from City.

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, **subject to obtaining a building permit for development of the Property in accordance with Stipulation 2 of the Conditions of Approval for CPA2005-5, ZC2005-7 and SUB2005-19,** 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, 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; (v) use best management practices to avoid run-off into Oak Creek from the Preserve; (vi) limit the number of surface parking spaces on the Property; (vii) complete riparian restoration in conformance with Coconino County Flood Control standards and restrictions; and (viii) provide a minimum twenty (20) foot setback for habitable structures from the top of the Oak Creek bank.

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.

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:	Cole Investment Advisors, Inc. 2555 East Camelback Road, Suite 200 Phoenix, Arizona 85016 Attn: Scott Cole
With copies to:	Gallagher & Kennedy, P.A. 2575 East Camelback Road Phoenix, Arizona 85016 Attn: Wm. F. Allison
And to:	Hochhauser Blatter Architecture and Planning 122 East Arrellaga Street Santa Barbara, California 93101 Attn: Julie Guajardo McGeever

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~~**required** 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**; any subsequent owner of all or any portion of the Property shall be required to comply with the obligations of this Agreement and shall receive the benefits of this Agreement**.

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 (10^{th}) 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 _____, 2006, by _____, Mayor of the City of Sedona, an Arizona municipal corporation.

_____
Notary Public

DEVELOPER:

COLE INVESTMENT ADVISORS, INC.,
an Arizona corporation

By:_____

Its:_____

Date:_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by _____, the _____ of COLE INVESTMENT ADVISORS, INC., an Arizona 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 _____, 2006, 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 B
Legal Description

EXHIBIT C
Master Plan

EXHIBIT D
Termination and Release of Agreements

EXHIBIT E
Methodology to Establish Sales Price for Affordable Units

The following methodology shall be used to establish the sales price for Affordable Units associated with the Preserve at Oak Creek Condominiums and any related ~~in lieu~~**bonding** fee.

A. Income Categories and Area Median Income (AMI)

The United States Department of Housing and Urban Development ("**HUD**") determines the Area Median Income ("**AMI**") for areas throughout the nation, and updates the figure approximately yearly. When used in this Development Agreement, the term "median income" or AMI refers to the HUD Area Median Income for Coconino County. The median income as of February, 2005 was $52,050.00, per data provided by City of Sedona Staff in October of 2005.

B. Adjustment for Household Size

The AMI as published by HUD ($52,050.00 as of February, 2005) corresponds to the area median income for a household of four individuals. As shown in the following table, the AMI varies by the number of persons in the household. This is based on the rationale that a larger household requires a higher income to maintain a minimum standard of living. HUD sets the median incomes for other household sizes by applying a multiplier to the median income of a household of four (4) individuals. For example, HUD sets the median income of a household of three (3) individuals at 90% of that of a four-person household.

Table ~~4.~~**1.** Median Income Adjusted by Household Size

Number of Persons:	1	2	3	4
Median Income:	$36,400	$41,600	$46,800	$52,050
% of 4 Person Income	70%	80%	90%	100%

Income includes not only wages or salaries of all adult household members, but also earnings on assets such as stocks and bank accounts and real property held by the household.

C. Methodology for Setting Sales Price for Units

The initial maximum sale price for the Affordable Units is determined according to a formula. Although the definitions and narrative of the formula are lengthy, the basic concept is simple: the unit must be affordable to the new buyer; therefore, the price must be such that after a ten percent (10%) down payment, the total monthly payments for the

loan, taxes, insurance and homeowner association fees will not exceed thirty-five percent (35%) of a hypothetical "target" buyer's income.

1. **Mortgage Interest**

The sale price calculation is sensitive to changes in mortgage interest. To further the goal of long term affordability, and in order to smooth out interest-rate fluctuations, the following procedure for setting the interest rate will be used for the calculation of initial sale prices of Affordable Units:

Once per year, concurrently with the annual publication of the Area Median Income by HUD, the City will set the interest rate to be used in its sale price calculations for Affordable Units, as the higher of the following two rates:

(a) The average ten-year treasury constant maturity rate over the most recent 24 months, plus 200 basis points (2.0%), or

(b) The average rate charged by local institutional lenders on a zero point 30-year fixed rate mortgage

(Example: the average ten year treasury yield for January 2004 through December 2005, calculated from monthly data published on the U.S. Treasury Department web site, was 4.27%. Adding the 200 basis points results in an interest rate of 6.30%.) Upon approval of this Development Agreement, the interest rate will be set to reflect an actual 24-month average ending in January 2005.)

Calculation of in-lieu of fees to be paid concurrent with receipt of building permits in Phase I, bonding costs associated with the Affordable Units to be built off-site in Phase II, or in-lieu of fees to be paid against remainder of units in Phase II will be evaluated using the unit sales price (including mortgage, HOA, and utilities assumptions) established at the Effective Date of this Development Agreement.

2. **Homeowners Assessment**

The sale price calculation is also sensitive to changes in homeowner association (HOA) fees. For purposes of establishing a methodology for this Development Agreement, an average HOA expense of One Hundred Fifty Dollars ($150.00) per month has been proposed. Actual HOA fees will only be assessed on a pro-rata share of real homeowners costs assessed on the affordable project.

3. **Utilities**

For purposes of establishing a methodology for this Development Agreement, basic utilities are estimated at One Hundred Twenty-Five Dollars ($125.00)/per unit/per month.

4. **Sample of Sales Price Calculation**

Please refer to Appendix A for a sample calculation of the projected sale prices for affordable work-force condominium units, targeted to one hundred ~~percemt~~**percent** (100%) of the AMI ($52,050.00 as of February 2005). This calculation incorporates the mortgage interest rate of 6.30%, and the estimated monthly HOA utilities costs, as discussed above.

D. Methodology for Setting ~~an In-Lieu~~a Bonding Fee.

The ~~in-lieu~~**bonding** fee for each Affordable Unit not built on site will be calculated as of the Effective Date of this Development Agreement. The ~~in-lieu~~**bonding** fee will be calculated in a manner sufficient to make up the monetary difference between the following: 1) the Estimated Production Cost**, including land cost,** of a condominium unit in the City, and 2) the price of said dwelling unit, affordable to a household earning 100% of AMI. The Estimated Production Cost**, including land cost,** shall be deemed to be the median per square foot sales price of market-rate condominium units in the City of Sedona, less a fifteen (15%) adjustment to reflect the Developer's anticipated profit. The median sales price of condominium units in the City shall be established by City staff and City Council at approval of the Development Agreement, based on data provided by the Sedona Association of Realtors or other source selected by Staff, for sales during the four most recent calendar quarters prior to the calculation. ~~City staff and the City Council will annually review the median sales price of condominium units, and may, based on that review, adjust the in-lieu fee amount.~~

The ~~in-lieu~~**bonding** fee would be used to substantiate bond values against construction of Affordable Units, or in place of such construction, as City prefers.

APPENDIX A TO EXHIBIT E

SAMPLE CALCULATION OF MAXIMUM SALE PRICE

The following table shows a sample calculation of the maximum sale price of a condominium unit targeted to 100% of the AMI (AMI = $52,050.00 for a family of four, as of February 2005; verification of AMI provided by City to Developer, October 26, 2005).

MAXIMUM SALE PRICE FOR MIDDLE INCOME UNITS

MAXIMUM SALE PRICE FOR MIDDLE INCOME UNITS

Date:	February, ~~2004~~**2005**
Median income:	**$52,050**

Number of bedrooms:	~~0~~	1	2	3
Maximum income (% of median):	~~125%~~	125%	125%	125%
Target income (% of median):	~~100%~~	100%	100%	100%
Unit size multiplier factor:	~~0.6~~	0.75	0.9	1.05
Target income for affordability:	~~$31,230~~	$39,038	$46,845	$54,653
Housing cost/inc ratio for calc:	~~35%~~	35%	35%	35%
Max payment for housing expenses:	~~$911~~	$1,139	$1,366	$1,594
Down payment used for calc:	~~10%~~	10%	10%	10%
Mortgage interest used for calc:	~~6.35%~~	6.35%	6.35%	6.35%
HOA dues, utilities:	~~$275~~	$275	$275	$275
Property tax payments:	~~$89~~	~~$121~~**122**	~~$153~~**154**	~~$185~~**186**
Mortgage payments:	~~$547~~	~~$743~~ **742**	~~$938~~**937**	~~$1,134~~**1,133**
Amt of loan this will amortize:	~~$87,909~~	~~$119,408~~ **119,247**	~~$150,747~~ **150,586**	~~$182,246~~ **182,085**
Plus down payment:	~~$9,768~~	~~$13,268~~**3,250**	~~$16,750~~**6,732**	~~$20,250~~**0,232**
Maximum sale price:	~~$97,700~~	~~$132,700~~ **132,500**	~~$167,500~~ **167,300**	~~$202,500~~ **202,300**

For the purpose of determining the sales price City uses an interest rate equal to the higher of the following two rates: 1) the average ten-year treasury constant maturity rate over the most recent 24 months, plus 200 basis points (2.0%), or 2) the prevailing rate charged by local institutional

lenders on a zero point 30-year fixed rate mortgage at the time of final City Council approval of the project.

The initial maximum sale price calculation is sensitive to changes in the interest rate of the mortgage financing and will also vary with changes in the AMI.

PRESERVE AT OAK CREEK - AFFORDABLE HOUSING PROPOSAL

Phase I Bonding Calculation

Market Rate Condo Sales - 2005 $ 255.00 per sf

(Information provided by Sedona Association of Realtors MLS data for 2005)

Proposed Housing Mix	1-Bedroom	2-Bedroom	3-Bedroom
Number of units	6	5	1
Square footage of each unit	700	900	1050
Market value based Median Condo	$ 178,500.00	$ 229,500.00	$ 267,750.00
Market Value Less Developer Profit (Calculated at 15%)	$ 151,725.00	$ 195,075.00	$ 227,587.50
Maximum Sales Price at 70% of AMI	$ 80,000.00	$ 104,500.00	$ 129,100.00
Bonding Fee (Market value - Dev. Profit - 70% AMI Sales Price)	$ 71,725.00	$ 90,575.00	$ 98,487.50
SUB-TOTAL	$ 430,350.00	$ 452,875.00	$ 98,487.50
TOTAL BONDING FEE CALCULATION FOR BONDING PURPOSES			$ 981,712.50
Total Bonding Requirement at Phase I			*$ 196,342.50*

EXHIBIT F
Income Determination

The following process is based on the HOME program income determination process, 24 CFR 92.203.

The Housing Agency will use any one of the following methods to determine annual income for prospective purchasers of the Affordable Units:

1. Examine the source documents evidencing annual income for the family of the prospective purchaser, e.g. wage statement, interest statement, unemployment compensation statement;

2. Obtain from the family of the prospective purchaser a written statement of the family's annual income and family size and a certification that the information is complete and accurate. The certification must state that the prospective purchaser will provide the source documents upon request.

3. Obtain a written statement from the administrator of a government program under which the family of the prospective purchaser receives benefits and which examines the annual income of the family each year. The statement must indicate the family size and state the amount of the family's annual income.

EXHIBIT G

CFD Standards

Except as provided in this **Exhibit ~~E~~G**, any City CFD guidelines or standards (the "**CFD Guidelines**"), as may be **established after the Effective Date of the Agreement and** amended from time to time, shall apply to the Property. The CFD standards listed below shall apply to the Property and shall control over any inconsistent provisions contained in the ~~Policy~~**CFD Guidelines** now or in the future.

~~1. The CFD will hold a bond election for the authorization of the issuance of general obligation bonds.~~

~~2. Any general obligation bond authorization for a CFD shall expire 30 years from the date of voter authorization.~~

1. ~~3.~~ The City shall maintain, at no cost to Developer, the Jordan Preserve and other public infrastructure funded by the CFD. After payment of District expenses, tax proceeds remaining from the levy of the $0.30 District operation and maintenance tax may be used for the operation and maintenance of the Jordan Preserve **or other public infrastructure or improvements funded by the CFD. Neither City nor the CFD Board shall require that Developer pay any operation and maintenance expenses not covered with the $0.30 District operation and maintenance tax**.

2. ~~4.~~ The maximum target ad valorem property tax rate contemplated to be levied by the CFD shall be $_____, inclusive of ~~a~~**the** $0.30 **District** operation and maintenance tax levy~~.~~

~~5. The Developer shall have the sole right to submit feasibility reports to the CFD Board with respect to the issuance of CFD general obligation bonds.~~

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.