

Cardace Owens - RECORDER  
OFFICIAL RECORDS OF COCONINO COUNTY  
CITY OF SEDONA

3112835  
10/22/2001 03:51P  
AM 7:00



3112835  
Page: 1 of 5  
AM

**Recorded at the Request of:  
CITY OF SEDONA**

**When Recorded Mail to:  
CITY OF SEDONA  
PAT SULLIVAN, CMC  
CITY CLERK  
102 ROADRUNNER DRIVE  
SEDONA, ARIZONA 86336**

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Yavapai County  
Patsy Jenney-Colon, Recorder  
10/04/2001 02:54P PAGE 1 OF 4  
CITY OF SEDONA  
RECORDING FEE 3.00  
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**FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT**

The parties to this agreement (the "Parties") are the City of Sedona, an Arizona municipal corporation, (The "City") and Cliffs Mortgage, LLC, (the "Developer") assignee of/successor in interest to the Cliffs at Oak Creek, LLC, an Arizona limited liability company (the "Former Developer").

WHEREAS, on or about December 22, 1997 the City of Sedona and the Cliffs at Oak Creek, LLC entered into that certain Development Agreement recorded at Coconino County Recorder's Office as document number 97-37363, docket number 2054 page 631 through 676, and;

WHEREAS, the parties are desirous of entering into an agreement to amend the Development Agreement to modify the deadline for commencement of construction; now therefore:

**IT IS HEREBY AGREED AS FOLLOWS:**

1. All terms and conditions of the Development Agreement shall remain in full force and effect and binding on the parties except as specifically amended herein;
2. Developer hereby represents and warrants that it is the lawful assignee of/ successor in interest to all rights of the Former Developer under the Development Agreement and agrees to be bound by and to assume responsibility for all obligations of the Former Developer thereunder;
3. By entering into this Amendment, the City does not waive any of its claims, rights or defenses with respect to the Former Developer, all of which are expressly reserved;
4. Paragraph 2.1, pages 9 and 10 of the Agreement which states: "Developer shall submit all necessary documentation and acquire all necessary building permits from the City for Phase I of the project not later than 3 years from receipt by developer of all necessary development review, re-zoning approvals by the City" (the "Requirement") is hereby modified as follows:

Developer has filed certain plans and documents with the City moving towards the issuance of a building permit. Developer and City have been discussing possible modifications of the plans and specifications. Both parties believe that it is in the best interest of the City and the Developer to place a moratorium upon the Requirement set forth above so the parties can explore other alternatives that may be mutually beneficial to the City and the Developer. The parties agree that the issuance of the approval of the development review and re-zoning approvals by the City was made May 25, 1999, and that construction of the project is required to commence within three years of this date. City and Developer hereby agree that this time frame shall be suspended (the "Moratorium") until the earlier of the following events:

- a. A new development application is approved by the City; or
- b. A new development application is denied by the City; or

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*KSS*

c. Either party notifies the other in writing that the Moratorium is terminated.

(The occurrence of a, b, or c above shall be considered the "Date of Termination").

4. Developer shall have 10 months from the Date of Termination to comply with the Requirement. The plans as currently submitted by the Developer to the City shall be reviewed and considered under the same terms and conditions, building codes and requirements as exist at the date of this amendment.
5. Developer shall provide a summary written report on or before December 31, 2001 and every 3 months thereafter during the moratorium period, setting forth the progress of its efforts to formulate alternative development plans for the subject property.
6. Beginning May 25, 2002, and throughout the duration of the moratorium period, the developer agrees to pay monthly to the City, a sum of money representing the interest cost of the anticipated contribution for off-site parking. This sum shall be calculated by applying the monthly equivalent of the Local Government Interest Pool Rate (LGIP rate) to the principal amount of the developer's portion currently estimated at \$598,456.48, which represents 30.56% of the construction cost of the city's uptown parking lot. Developer's portion is calculated based upon the current Phase I development plan that requires 44 spaces to be provided offsite. The City has an uptown parking lot under development for 144 spaces, with a construction cost of \$1,958,300. Developer's portion, based upon current plans, is 44/144, equaling 30.56%. This monthly amount will cease or be modified upon the following conditions: (1) after the expiration of the moratorium and upon payment of the principal amount representing the developer's contribution for offsite parking, or (2) upon other alternate arrangements meeting the parking requirements as specified under the Development Agreement, or (3) upon approval of a plan between the City and the Developer which provides for all parking onsite, then this requirement will cease or, in the event of an agreement or approved plan that provides for fewer or greater offsite parking requirements, this formula shall be adjusted and the interest payment shall be adjusted accordingly and prospectively based upon the percentage of parking spaces required by Developer as against the total of 144 offsite parking spaces being provided by the City in its offsite parking facility.

DATED this 25 day of Sept., 2001.

City of Sedona, an Arizona municipal corporation

By:



Its:

Mayor





Cliffs Mortgage, LLC, an Arizona limited liability company

By: Investment Planners of America Inc

Its: Manager

By: Ken E. Schaub

Its: President

