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CITY OF SEDONA

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SEDONA, ARIZONA 86336

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Second Amendment to the Development Agreement  
Cliffs at Oak Creek LLC and City of Sedona

Original Development Agreement recorded  
Coconino County Records Office  
Document No. 97-37363, Docket 2054 Pg 631-676

First amendment recorded with Coconino County  
Document 3112835 on 10-22-01

## SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT

The parties to this agreement City of Sedona, an Arizona municipal corporation (“City”) and Cliffs Mortgage, LLC, (“Developer”) a 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 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 Development Agreement was amended by the parties on September 25, 2001, (Said amendment being referred to hereafter as the “First Amendment” )and;

WHEREAS, pursuant to the terms of the First Amendment, the City of Sedona exercised its option to terminate the moratorium on May 27, 2003, and;

WHEREAS, since then the Developer has approached the City with this proposed Second Amendment to the Development Agreement, and;

WHEREAS, both sides believe that it is in the best interest of the City and the Developer to place a moratorium upon the requirement to submit all necessary documentation and acquire all necessary building permits from the City for Phase I of the project by April 27, 2004, so each side can explore other alternatives that may be mutually beneficial to the City and the Developer, and;

WHEREAS, the parties are desirous of entering into an agreement to amend the Development Agreement to reinstate a moratorium under the terms and conditions set forth herein; 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 Second 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 Development Agreement originally stated prior to the First Amendment: “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

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by developer of all necessary development review, re-zoning approvals by the City". This provision previously referred to as (the "Requirement") in the First Amendment is hereby modified as follows with this modification replacing and superceding the modifications made to it in the First Amendment:

Developer has filed certain plans and documents with the City moving towards the issuance of a building permit. Developer and City have been discussing the phasing of the development on the property and 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 the issuance of the approval of the development review and re-zoning approvals by the City was made May 25, 1999 and that under the terms of the original development agreement, construction of the project is required to commence within three years of this date. By the First Amendment to this Development Agreement, and the City's actions subsequent thereto, the deadline for commencing construction was extended to April 27, 2004. 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
- c. City notices Developer in writing that the Moratorium is terminated as of the date Developer receives such notice.
- d. Developer misses one of the development milestones as discussed in item #7.

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

5. Developer shall have 180 days from the Date of Termination to comply with the Requirement. Any new development project submitted by the Developer to the City shall be reviewed and considered under the terms and conditions, building codes and requirements as exist at the time of ultimate approval.

6. Notwithstanding paragraph 5 above, should Developer chooses to move forward with the currently approved project per the December 22, 1997 Development Agreement he shall notify the City in writing. The City shall then have 120 days from the date of this written notice to issue the building permit.

7. In addition to the events set forth in Paragraph 4 above that will terminate the moratorium, this paragraph sets forth another series of possible events that will have the same effect.

It is understood by the parties that Developer has the property in escrow to sell the entire property to a new buyer. The new buyer is proposing a new development called The Preserve at Oak Creek. The Developer and his /or its assigns including any new buyer of the property agree and understand that failure to meet the following "development schedule milestones" can, within the sole discretion of the Sedona City Manager, constitute an event that automatically terminates the moratorium. The first date below that is not met will be considered the "Date of Termination." If the City Manager determines that there are no valid reasons explaining the failure to meet the following milestones, he will notify the Developer in writing that the moratorium is lifted.

- a. December 29, 2003 – Filing deadline for joint conceptual review public hearing with the City Council and Planning and Zoning Commission.
- b. February 1, 2004 – Submission deadline of first draft of new development agreement for the Preserve at Oak Creek. The first draft of the development agreement shall be jointly developed by the Developer and the City.
- c. March 2, 2004 – Joint conceptual review public hearing with the City Council and Planning and Zoning Commission.
- d. May 31, 2004 – Filing deadline for Planning and Zoning Commission public hearing for zone change, development review and preliminary plat.
- e. June 15, 2004 – Submission deadline for final draft of development agreement for the Preserve at Oak Creek.
- f. August 3, 2004 - Planning and Zoning Commission public hearing for zone change, development review and preliminary plat and final development agreement.
- g. October 26, 2004 – City Council public hearing for zone change, development review, preliminary plat and consideration of final development agreement.

8. The Developer and the City shall work together to consider multiple options on the development of that portion of the property located west of SR 89A and identified as the Hillside Property including options to explore the preservation of the property.

9. Throughout the duration of the moratorium period, the developer agrees to pay monthly, by the 15<sup>th</sup> of each month, 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 constructed an uptown parking lot for 144 spaces, with a construction cost of \$1,958,300. Developer's portion, 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

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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 12<sup>th</sup> day of November 2003.

City of Sedona, an Arizona municipal corporation

By: *Dick Ellis*  
Dick Ellis, its mayor

Cliffs at Oak Creek, LLC an Arizona limited liability company by Cliffs Mortgage, LLC, an Arizona limited liability company, its successor-in-interest

By: *Investment Planners of America, Inc.*  
Its: *managing member*  
By: *Kenneth E. Schaub*  
Kenneth Schaub, its ~~manager~~ *President*

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