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CITY OF SEDONA



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SEDONA, ARIZONA 86336

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Third Amendment to Development Agreement  
The Cliffs at Oak Creek -Dev. Agreement of 12-22-97  
Dated October 21, 2004  
City of Sedona & Cliffs Mortgage LLC

When recorded, return to:

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

**THIRD AMENDMENT TO DEVELOPMENT AGREEMENT  
(The Cliffs at Oak Creek)**

THIS THIRD AMENDMENT TO DEVELOPMENT AGREEMENT (the "**Third Amendment**") is entered into this 21<sup>st</sup> day of OCTOBER, 2004 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. Owner owns that real property located within the municipal boundaries of City in Coconino County, Arizona, consisting of approximately twenty-two (22) acres that is the subject of that certain Development Agreement for the Cliffs at Oak Creek (the "**Development Agreement**"), dated December 22, 1997 and recorded as Document No. 97-37363 in the Official Records of the Coconino County Recorder's Office, Arizona (the "**Official Records**"), that certain First Amendment to the Development Agreement (the "**First Amendment**"), dated September 25, 2001 and recorded as Document No. 3112835 in the Official Records, and that certain Second Amendment to the Development Agreement (the "**Second Amendment**"), dated November 12, 2003 and recorded as Document No. 3245165 in the Official Records.
- B. The Second Amendment extended and established new terms for a moratorium, which the First Amendment had created to modify the Development Agreement's deadline for commencement of construction on 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.
- D. Owner, through Developer, and City have worked closely together since approval of the Second Amendment on a new design for development of the Property, a new development agreement, and a schedule for public hearings before the Planning and Zoning Commission and City Council for zone change, development review, preliminary plat and final consideration of the new development agreement.
- E. Owner, through Developer, approached City with this proposed Third Amendment to extend the moratorium for no more than ninety (90) days to allow time to complete the collaborative process with City to redesign the development with less impact on its surroundings.
- F. Owner and City agree that it is in their best interest to provide additional time to complete work on the new development plans.

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**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto agree as follows:

1. **Incorporation of Documents and Recitals.** All documents and exhibits referred to in this Third Amendment and the Recitals stated above are hereby incorporated by reference into this Third Amendment.
2. **Effect of Amendment.** Except as herein amended, the provisions of the Development Agreement, the First Amendment and the Second Amendment remain in full force and effect and binding on the parties hereto.
3. **Owner's Rights and Responsibilities.** Owner hereby represents and warrants that it is the lawful assignee of/successor in interest to all rights of Cliffs Mortgage, LLC, and the Cliffs at Oak Creek, LLC, the former developers of the Property (the "**Former Developers**"), under the Development Agreement, the First Amendment and the Second Amendment and agrees to be bound by and to assume responsibility for all obligations of the Former Developers thereunder.
4. **City's Claims.** By entering into this Third Amendment, City does not waive any of its claims, rights or defenses with respect to the Former Developers, all of which are expressly reserved.
5. **Extended Time.** Owner and City acknowledge and agree that Paragraphs 7.f and 7.g of the Second Amendment are modified to extend the time for the Planning and Zoning Commission and the City Council to act on the new development plans for the Property and to read as follows:
  - f. October 5, 2004 – Planning and Zoning Commission public hearing for consideration of development review and recommendation regarding zone change, preliminary plat, and final development agreement. An acceptable alternative date for the Planning and Zoning Commission public hearing is no later than November 2, 2004.
  - g. December 14, 2004 – City Council public hearing for zone change, preliminary plat, and final development agreement. An acceptable alternative date for the City Council public hearing is no later than January 11, 2005.
6. **Effective Date.** This Third Amendment shall be effective upon the occurrence of each of the following events: (i) execution by the parties hereto; and (ii) recordation in the Official Records of Coconino County.

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

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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.

[Signature]  
Attorney for City of Sedona

Date Oct. 18, 04

CITY OF SEDONA, an Arizona  
Municipal corporation

By: [Signature]  
Mayor

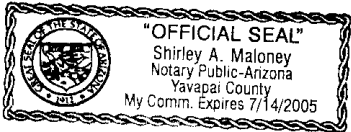
ATTEST:

[Signature]  
City Clerk

Date: 10/21/04

STATE OF ARIZONA            )  
  )  
  ) ss.  
County of YAVAPAI            )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of OCTOBER, 2004, by Rud Colquitt, Mayor of the City of Sedona, an Arizona municipal corporation.



[Signature]  
Notary Public

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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*  
Ben L. Schaub

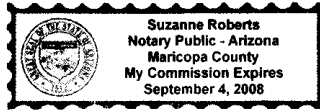
Its: Vice President

Date: 10/14/04

STATE OF ARIZONA     )  
County of Maricopa    ) ss.

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of November, 2004, by Ben L. Schaub of CLIFFS MORTGAGE, L.L.C., an Arizona limited liability company, for and on behalf thereof.

*Suzanne Roberts*  
Notary Public



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