

Recorded at the Request of:
CITY OF SEDONA



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

Fourth Amendment to Development Agreement
Cliffs at Oak Creek
City of Sedona & Cliffs Mortgage LLC

Development Agreement Dated 1997 - 97-37363
First Amendment Dated Sept 25, 2001 - 3112835
Second Amendment Dated November 12, 2003 - 3245165
Third Amendment Dated July 27, 2004 - 3296688

When recorded, return to:

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

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

THIS FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT (the "**Fourth Amendment**") is entered into this Fourteenth day of December, 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, 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, and that certain Third Amendment to Development Agreement (the "**Third Amendment**"), dated July 27, 2004 and recorded as **Document No. 3296688** 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. The Third Amendment further extended the submittal deadline and public hearing schedule established in the Second Amendment.

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 Third 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 Fourth Amendment to extend the moratorium 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.

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 Fourth Amendment and the Recitals stated above are hereby incorporated by reference into this Fourth Amendment.

2. **Effect of Amendment.** Except as herein amended, the provisions of the Development Agreement, the First Amendment, the Second Amendment and the Third 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 the Cliffs at Oak Creek, LLC, the former developers of the Property (the "**Former Developer**"), under the Development Agreement, the First Amendment, the Second Amendment and the Third Amendment and agrees to be bound by and to assume responsibility for all obligations of the Former Developer thereunder.

4. **City's Claims.** By entering into this Fourth Amendment, City does not waive any of its claims, rights or defenses with respect to the Former Developer, 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. March 15, 2005 – Planning and Zoning Commission public hearing for consideration of development review and recommendation regarding zone change, preliminary plat, and final development agreement, with the submission of revised supporting documents no later than February 21, 2005.
- g. April 12, 2005 – 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 April 26, 2005.

If Owner, through Developer, fails to perform within the extended time frame set forth herein (that is fails to make a complete application to City on or before February 21, 2005 for the Planning and Zoning Commission hearing of March 15, 2005) and, as a result of this failure, the City Council fails to take action on the zone change, preliminary plat or development agreement for the new development on the Property by April 26, 2005, the City shall deduct one hundred and thirty-three (133) days from the remaining time allotted of one hundred eighty (180) days to meet the obligation to obtain a construction permit under the Second Amendment; this deduction is based on the nineteen (19) week extension requested from the current City Council hearing date of December 14, 2004 to April 26, 2005.

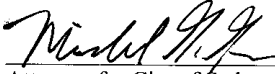
If Owner, through Developer, meets the obligations to perform under this Fourth Amendment and City does not approve the proposed design, zone change, preliminary plat and/or development agreement, there shall be no reduction in the current time frame allotted.

6. **Effective Date.** This Fourth 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.

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

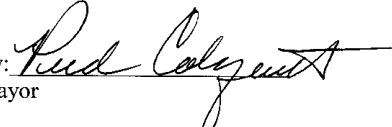
Date: 12-16-04

CITY OF SEDONA, an Arizona
Municipal corporation

ATTEST:



City Clerk

By: 

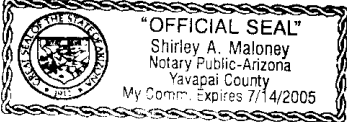
Mayor

Date: 12-16-04



STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this 16th day of DEC, 2004, by PUD COLQUITT, Mayor of the City of Sedona, an Arizona municipal corporation.



Shirley A Maloney
Notary Public

7/14/2005
My Commission Expires

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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: December 16, 2004

STATE OF ARIZONA)
County of Maricopa) ss.

The foregoing instrument was acknowledged before me this 16th day of December, 2004 by Ben L. Schaub of CLIFFS MORTGAGE, L.L.C., an Arizona limited liability company, for and on behalf thereof.

Suzanne Rolfe
Notary Public



HAWPWINWPDOCS-2004/Cliffs 4th amend to DA final.DOC



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