

APPROVED COPY 1-29-15

AMENDMENT TO SETTLEMENT AND RELEASE AGREEMENT

This Amendment to Settlement and Release Agreement (“Amendment”) is made and entered into as of this 29th day of JANUARY, 2015 (“Execution Date”), by and between: Canyon del Rio Investors, LLC, an Arizona Limited Liability Company (“CDRI”) and the City of Flagstaff, an Arizona Municipal Corporation (“City”).

CDRI and the City will be referred to collectively in this Amendment as “Parties, or each individual as a “Party”.

RECITALS

- A. On May 9, 2013, CDRI and the City entered into a Settlement and Release Agreement, a true and correct copy of which is attached hereto as “**Exhibit A**” (“Settlement Agreement”).
- B. CDRI and the City wish to amend the Settlement Agreement as set forth herein. All defined terms not specifically identified herein shall bear the meaning set forth in the Settlement Agreement.
- C. All terms of the Settlement Agreement remain in full force and effect except for those terms specifically amended herein.

In consideration of the mutual representations, warranties, covenants, agreements and releases set forth in the Settlement and Release Agreement as amended herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- 1. The foregoing Recitals are incorporated as part of this Amendment. The Parties agree that the Recitals are contractual and not mere Recitals.
- 2. The “CDR Property” as described in the Settlement Agreement is amended to the “CDRI Property” in the Settlement Agreement and this Amendment.
- 3. Paragraph 2(a) of the Settlement Agreement (“Specific Plan Amendment”) is deleted and all further references in the Settlement Agreement to the Amended 1984 Plan and the MPRA are deleted because (a) ~~the Parties concur the Specific Plan Amendment is not needed for Approval of the Zoning Application~~ and (b) certain provisions of the 1984 Specific Plan, as agreed upon by the Parties, will be included in the Development Agreement. The removal of references to the proposed “Amended 1984 Plan” and/or to amending the 1984 Specific Plan do not terminate or effect the 1984 Specific Plan.

4. After the Execution Date of the Settlement Agreement (May 9, 2013), the City Council Approved (January 14, 2014) and the Flagstaff Voters Ratified (May 20, 2014) the Flagstaff Regional Plan 2030 (“Current Regional Plan”). ~~The Parties concur the Zoning Application is in conformance with the Current Regional Plan and, accordingly, the Regional Plan Amendment is no longer needed.~~ Therefore, paragraph 2(c) of the Settlement Agreement (“Regional Plan Amendment”) is deleted.
5. Paragraph 2(d) of the Settlement Agreement (“Zoning Application”) is modified to provide the Zoning Application was submitted and reviewed by the City. The last sentence of Section 2(d) of the Settlement Agreement is deleted and replaced with the following: The Parties agree to convert the Zoning Application to a “Rezone with Concept Plan” Application which will be submitted by CDRI and processed by the City, this along with the Development Agreement and the Block Plat referred to in Section 3(b) are the “Entitlement Documents.”
6. Paragraph 2(e) of the Settlement Agreement (“Timing and Procedures”) is deleted and replaced by the following: The Parties agree to develop a timeframe for the review of the Entitlements by the Planning and Zoning Commission and Council, as appropriate, ~~once CDRI has completed its impact analyses and those analyses have been accepted as complete by the City.~~ The Parties further agree to schedule and Notice the Entitlements Applications for Hearing by the Planning Commission and City Council for dates that are as expeditious as is reasonably and legally possible once the Entitlements Applications and associated supportive materials (such as, but not limited to, the impact analyses) are accepted as complete by the City and the on and off-site mitigations identified and attributable to CDR are documented in the development agreement. Attached as **Exhibit B** is a Timeline for Canyon del Rio. This Timeline is an estimation of reasonable, expeditious processing by the City. Both Parties recognize that circumstances unforeseen by either Party or both Parties may make the indicated timeframes impossible or unreasonable for the City and/or CDRI to accommodate whereupon the Parties will continue in good faith with their reasonable, expeditious processing of the Entitlements Applications through completion of the Entitlements processes.
7. Paragraph 3(b) of the Settlement Agreement (“Block Plat Approval”) and other references in the Settlement Agreement to Block Plats are amended to confirm that one Block Plat (not multiple Block Plats) will be processed for the approximately 262 acre CDRI Property.

8. Paragraph 3(c) of the Settlement Agreement (“Zoning Confirmation”) is amended to delete all references to “UC” (because that Zoning District no longer exists in the City), to replace all such references to “UC” with “HC” and all further references in the Settlement Agreement to the UC Zoning District and the “UC Parcels” are replaced with the HC Zoning District and the “HC Parcels”.
9. Paragraph 3(l) of the Settlement Agreement (“Parcel O&P Sale”) is amended to add (in the first sentence) “and/or school” after “church” and to add (also in the first sentence) “(if necessary)” after “the City’s CUP process.”
10. Paragraph 4 of the Settlement Agreement (“Settlement Implementation”) is amended to delete references to the Deposit (pursuant to paragraph 11 of this Amendment).
11. Paragraph 5 of the Settlement Agreement (“Existing Butler Avenue Assessment”) is deleted and replaced with the following:

Effective upon the Effective Date of this Amendment, the Parties hereby terminate the Account and hereby mutually instruct the Escrow Agent to disburse within ten (10) days of the Effective Date of this Amendment to the City of Flagstaff the amount of \$21,861.00 (\$11,387 (Traffic) + \$10,474 (WSIA)) for currently due fees. All funds remaining (including accrued interest) in the Account (less Escrow Agent’s fees, if any) shall be disbursed to CDRI. The Parties further agree:

- a. All fees (if any) charged by Escrow Agent in connection with the Account shall be CDRI’s (not the City’s) responsibility and shall be deducted from the Account prior to disbursement of remaining funds in the Account to CDRI.
- b. Without prejudice or effect (for or against) either Party’s legal, factual and/or procedural position in the Maricopa County Action, the Maricopa County Action shall remain pending and stayed until below paragraph 11.b.1, 2 and/or 3 is satisfied.
 1. If the Zoning Application is Approved and Effective, the Development Agreement is Approved, Effective and Recorded, and the Block Plat is Approved, Effective and Recorded (collectively the “Approved and Effective Entitlements”), then CDRI shall pay to the City the sum of \$123,781.50 representing the remaining amount of the Butler Avenue assessment at issue in the Maricopa County Action. ~~Attached to this Amendment as Exhibits C, D and E are: 1) a fully executed Promissory Note for \$123,781.50 secured by; 2) a Deed of Trust which places the City of Flagstaff in first priority position; and 3) a Deed of Release and Reconveyance. Exhibit D~~

(Deed of Trust) may be recorded by the City in the event that CDRI does not pay the sum of \$123,781.50 within thirty days of the effective date of the last adopted Entitlement Document and CDRI hereby agrees to pay the property taxes then due on the CDR Land Investors I, LLC Property as defined in the Deed of Trust (Exhibit D hereto) prior to the City's Recordation of the Deed of Trust. If Exhibit D (Deed of Trust) is recorded then the City shall Record E (Deed of Release and Reconveyance) upon either:

(i) CDRI paying the sum of \$123,781.50 to the City; or

(ii) A final determination in the Maricopa County Action that CDRI is not required to pay the \$123,781.50 to the City.

2. Upon the Effective Date of this Amendment, CDRI agrees that neither it nor CDR Land Investors I, LLC will voluntarily encumber the property that secures the Deed of Trust (Exhibit D hereto) until either: 1) CDRI pays the total sum of \$123,781.50 to the City; or 2) the City otherwise records the Deed of Release and Reconveyance of the Deed of Trust; or 3) the Maricopa County Action is re-activated or reinstated. The City may record a notice of restriction on liens and encumbrances consistent with this Amendment. The City agrees to record a release of that notice upon the occurrence of any of the three events listed above.



3. Contingent on CDRI having submitted or re-submitted (as applicable) its Entitlements Applications (~~including updated impact analyses~~) by January 27, 2015 or at such time before or after as CDRI submits such Applications ("Application Submittal Date") then ~~City Staff and CDRI representatives shall, within the spirit of above paragraph 6 of this Amendment, exercise good faith and diligent efforts to mutually resolve (to the extent reasonably possible) outstanding Staff Comments on the Entitlements Applications whereupon City Staff shall provide clearance for the Entitlements Applications to be Noticed, Advertised and Posted for Planning Commission and City Council Hearings. If CDRI determines that the Entitlements Applications have not been or will not be timely reviewed and processed by City Staff and/or will not be heard by the Planning Commission and City Council within the spirit of above paragraph 6 of this Amendment, then CDRI may elect to defer pursuit of the Entitlements and re-activate the Maricopa County Action whereby, upon re-activation of such Action, the~~

Promissory Note for \$123,781.50 and the Deed of Trust securing that Note are void.

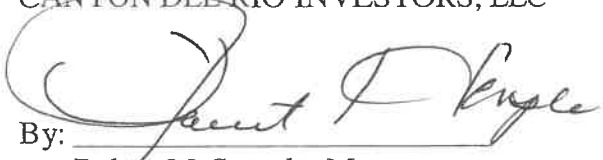
4. If the Council does not approve the Zoning Application, Development Agreement and Block Plat after the hearings, then the Promissory Note for \$123,781.50 and the Deed of Trust securing that Note are void and the Maricopa County Action shall be reinstated.

12. Paragraph 6 of the Settlement Agreement ("Disposition of the Lawsuits") is amended as necessary to provide that, pursuant to Paragraph 11 of this Amendment, the Coconino County Action may be Dismissed prior to Dismissal of the Maricopa County Action because:

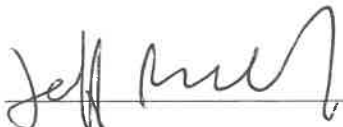

- a. ~~The Coconino County Action will be Dismissed within ten (10) days of achieving Approved and Effective Entitlements;~~ provided, however,
- b. The Maricopa County Action will not be Dismissed until either:
 1. The \$123,781.50 is paid to the City pursuant to Paragraph 11(b)(1) of this Amendment, or
 2. Disposition of the Maricopa County Action is finally decided by the Court pursuant to Paragraph 11(b)(2) of this Amendment.

The Parties have executed this Amendment as of the Execution Date.

CANYON DEL RIO INVESTORS, LLC

By: 
Robert M. Semple, Manager

CITY OF FLAGSTAFF

By: 
Its: 

APPROVED AS TO FORM AND CONTENT BY COUNSEL:

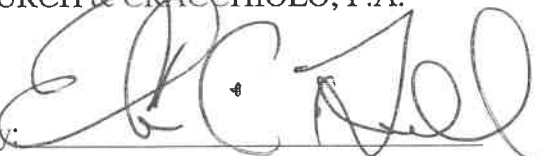
CITY OF FLAGSTAFF

By: 
Michelle D'Andrea
City Attorney

ATTEST:

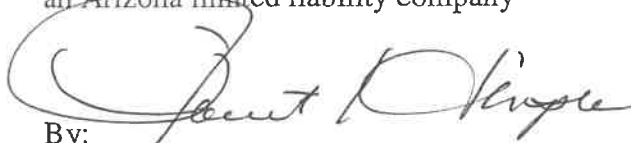
By: 
City Clerk

BURCH & CRACCHIOLO, P.A.

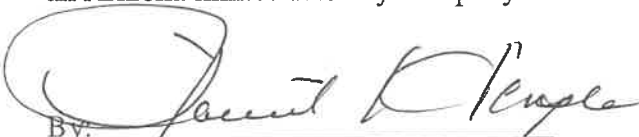
By: 
EDWIN C. BULL
Attorney for Canyon del Rio Investors, LLC

ACKNOWLEDGED AND AGREED BY CDRI SUBSIDIARIES:

CDR LAND INVESTORS I, LLC,
an Arizona limited liability company

By: 
Robert M. Semple, Manager

CDR LAND INVESTORS II, LLC,
an Arizona limited liability company

By: 
Robert M. Semple, Manager

CDR LAND INVESTORS III, LLC,
an Arizona limited liability company

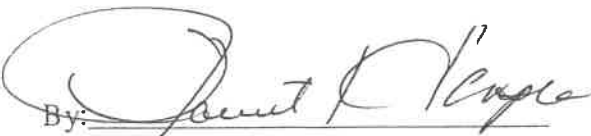
By: 
Robert M. Semple, Manager

EXHIBIT A

ORIGINAL

SETTLEMENT AND RELEASE AGREEMENT

THIS SETTLEMENT AND RELEASE AGREEMENT ("Agreement") is made and entered into as of the 19 day of MAY, 2013 ("Execution Date"), by and between: (i) CANYON DEL RIO INVESTORS, LLC, an Arizona limited liability company ("CDR"); and (ii) THE CITY OF FLAGSTAFF, an Arizona municipal corporation ("City"). CDR and the City will be referred to collectively in the Agreement as the "parties," or each individually as a "party".

RECITALS

A. In May 2002, CDR purchased a parcel of real property ("Initial Property") from the Arizona State Land Department ("ASLD"), at public auction. The Initial Property is located within the City.

B. Between 2002 and 2006, CDR sold portions of the Initial Property to third party purchasers. That portion of the Initial Property held by CDR (or CDR's wholly owned subsidiaries) as of the Execution Date ("CDR Property") is described in Table Four, below.

C. In 2008, CDR filed suit against the City in Coconino County Superior Court, CV 2008-0245 ("Coconino County Action"), seeking, *inter alia*, declaratory relief, monetary damages, and injunctive relief relating to CDR Property.

D. In 2010, the City filed suit against CDR in Maricopa County Superior Court, CV 2010-017142, seeking, *inter alia*, monetary damages relating to CDR Property, and CDR filed Counterclaims (collectively, "Maricopa County Action").

E. The Coconino County Action and the Maricopa County Action (collectively, "Lawsuits") have not been resolved and remain pending.

F. Each party to this Agreement has made a careful and independent investigation into all of the facts deemed by such party to be material. Because of the expense and uncertain outcome of any litigation involving the claims asserted in the Lawsuits, the parties desire to enter into this Agreement in order to forever resolve all past, and present disputes or claims existing between them which relate to the Lawsuits or the CDR Property.

G. Each party acknowledges this Agreement is the product of arm's length negotiation and the compromise and settlement of disputed claims. The parties further agree and acknowledge that this Agreement is not intended to be, and shall not be construed as, a confession or admission of liability by any party or an admission of any fact. Without

limiting the foregoing, the parties further agree that this Agreement does not manifest an acceptance of the factual or legal positions taken or asserted by the other party in the Lawsuits.

IN CONSIDERATION OF the mutual representations, warranties, covenants, agreements and releases set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. **Recitals.** The foregoing Recitals are incorporated as a part of this Agreement, and the parties represent and warrant the truth of all that is contained in the Recitals. The parties agree the Recitals are contractual and not mere recitals.

2. **Development of CDR Property.** CDR and the City have agreed to settle and resolve the Lawsuits by implementing a comprehensive zoning and development plan for the CDR Property. CDR and the City shall use their best efforts to negotiate and implement the settlement using the following framework:¹

a. **Specific Plan Amendment.** The Canyon del Rio 1984 Specific Plan ("1984 Plan") will be amended as required to make the 1984 Plan compatible and consistent with the terms and provisions of this Agreement and the City's current 2011 zoning code ("2011 Zoning Code"). The 1984 Plan, as amended ("Amended 1984 Plan"), will be re-confirmed as the applicable planning document governing the development on those portions of the Canyon del Rio project currently owned by CDR ("CDR Property"), in conjunction with the MRPA and the DA. CDR, through the adoption of the Amended 1984 Plan, will be identified as the successor to the ASLD with respect to the CDR Property. In case of conflict between the Amended 1984 Plan and the 2011 Zoning Code, the Amended 1984 Plan will control as to the non-rezoned parcels identified in Table Four, and the 2011 Zoning Code will control as to the rezoned parcels identified in Table Four. In all cases, the terms and conditions of this Agreement will control.

b. **Development Agreement.** The Development Agreement ("DA") will be a separate component of the Entitlement Documents and will identify physical and financial responsibilities for specific and necessary public improvements, project phasing, and other related items, as outlined in this Agreement.

¹ The Amended 1984 Plan, the Zoning Application, the DA, the MRPA and the Block Plats (all as defined in this Agreement) will be referred to collectively as the "Entitlement Documents."

c. **Regional Plan Amendment.** A Minor Regional Plan Amendment (“MRPA”) that modifies the existing Regional Plan as required to accommodate the Amended 1984 Plan, the DA and the Final Zoning will be processed for COF Council action.

d. **Zoning Application.** An application and supporting documentation (“Zoning Application”) which proposes to implement the Final Zoning will be submitted by CDR and processed by the City. The Zoning Application will reflect the terms and conditions set forth in this Agreement, will meet the threshold requirements for a “Large Scale Zoning Map Amendment” and will be processed by the City concurrently with the balance of the Entitlement Documents.

e. **Timing and Procedures.** The DA, the MRPA, the Zoning Application, the Amended 1984 Plan, and all ancillary zoning and land use documents will be completed for submission to the COF Council within 180 days following CDR’s formal submission of the rezoning applications. The COF Council will then have 60 days to approve or reject the entire settlement package. The 240 day aggregate period described in the preceding two sentences (“Final Approval Period”) may be extended by the mutual written agreement of CDR and the City if, notwithstanding the parties’ diligent and good faith efforts, additional time is required to complete any required task. If, for any reason, the COF Council has not granted final approval to the entire settlement package within the Final Approval Period (including any extensions), the Settlement Agreement will be null and void and the parties will resolve their disputes through the Lawsuits.

3. **Substantive Provisions of the Entitlement Documents.** The Entitlement Documents, as applicable, will contain and/or incorporate the following concepts and/or provisions:

a. **Resource, Open Space & Easement Requirements.** The forest and slope resources (collectively, “Resources”) previously calculated by Nasser Turk and Shepard Wesnitzer (“Resource Report”) may be used by CDR and incorporated in the DA and the Zoning Application and used as the basis for the Resource Report. The Resources may exist in the two “resource banks” and will be allocated by CDR within CDR Property as Parcels are sold and/or developed. This “banking” will allow Resources within residential areas to be transferred and reallocated to other residential areas and, similarly, Resources within commercial areas to be transferred and reallocated to other commercial areas. Accordingly, while Resource allocations for specific Parcels may vary from applicable zoning requirements, the aggregate Resource allocations for the residential and commercial areas within the CDR Property will be consistent with the City’s 1991 Zoning Code or the 2011 Zoning Code, at CDR’s election, and the resource plan approved as part of the zoning. CDR and the City will incorporate a specific

“Resource Plan” for the CDR Property in the Amended 1984 Plan, MRPA and as part of the Zoning Application, and that Resource Plan will govern resource allocation within the CDR Property. CDR anticipates granting a deed of conservation easement to the Nature Conservancy (or similar non-profit organization) as part of the overall Resource Plan, which may (in CDR’s discretion) include the establishment of a public park, open spaces and/or City’s trail system. In addition, CDR (or CDR’s successors) will grant and/or reconfirm existing and future easements for utilities, drainage, FUTS, *etc.*, which will be included in the final recorded plat for each Parcel within the CDR Property (each, a “Final Plat”).

b. **Block Plat Approval.** Subject to the terms and conditions set forth in this Agreement, the Amended 1984 Plan, the Zoning Application and the DA will be based on a block plat concept for the CDR Property, with specific zoning and densities applied to each Parcel. The Block Plats will reflect spine infrastructure and large development tracts (*i.e.*, Parcels). The final Block Plats will be consistent with the structure outlined in this Agreement and the Zoning Application and will be incorporated in the Amended 1984 Plan and, as applicable, the MRPA. The City will not unreasonably withhold, delay or condition approval of Final Plats that are submitted in substantial accordance with this Agreement and the City’s Subdivision Ordinance. As used in this Agreement, the term “Block Plat” means plats for the individual Parcels listed in Table Four, below, that are consistent with the City’s Subdivision Ordinance, but do not include or reflect internal roadway or utility plans or lot, building or amenity locations.

c. **Zoning Confirmation.** City Staff will support the zoning and, as applicable, the residential densities set forth in the following Table Four, which will be incorporated in the Zoning Application:

Table Four

Parcel	Zoning	Use	Development Units²
E-1*	UC-Commercial	Office / Retail	N/A
E-2*	UC-	Office / Retail	N/A

² Notwithstanding the maximum densities set forth in Table Four, CDR will retain the right to make minor density transfers between/among residential Parcels, provided that any proposed density transfer by CDR complies with the underlying zoning.

	Commercial		
F*	UC-Commercial	Office / Retail	N/A
G*	MR-Med Density	Attached Residential	50
H*	UC-Commercial	Office / Retail	N/A
I	R1-SFR	Detached Residential	50
J-1*	HR-High Density	Attached Residential / Multi-Family/Apartments	240
J-2*	HR-High Density	Attached Residential / Multi-Family/Apartments	432
K-1*	UC-Commercial	Retail	N/A
K-2*	UC-Commercial	Retail	N/A
N*	MR-Med Density	Attached Residential / Duplex Units	42
O*	MR-Med Density	Attached Residential / Church or School	49
P*	MR-Med Density	Attached Residential / Church or School	40
Q-1	R1-SFR	Detached Residential	41

Q-2	R1-SFR	Detached Residential	21
Q-3	MR-Med Density	Attached Residential / Duplex Units	80
R 1-5	MR-Med Density	Planned Community	367
S	SR-LG Lot Residential	Detached Residential	14

1426 TOTAL

All zoning relating to the CDR Property as set forth above (“Final Zoning”) will be confirmed and approved in connection with the adoption and approval of the Entitlement Documents by the COF Council. Parcels marked with an * in Table Four, above, are to be re-zoned. A future Parcel owner may elect to seek a change to the zoning of any Parcel from the Final Zoning set forth above. If that occurs, the zoning change will be subject to the City’s then applicable rules and procedures. CDR acknowledges that the City may not “pre-commit” to grant the Final Zoning and that approval and implementation of the Final Zoning is subject to the COF Council final approval in accordance with the 2011 Zoning Code, the Amended 1984 Plan and this Agreement. The City, however, acknowledges that implementation of the Final Zoning (and all of the Entitlement Documents) is a condition precedent to the implementation of the final settlement.

d. **Parcels I, Q-1, Q-2, R & S.** CDR will be permitted to develop Parcels I, Q-1, Q-2, R and S (collectively, “Residential Parcels”) as residential properties, with no required attached residential product, based on the zoning designations and densities set forth in Table Four, above. Final Plat approval for the Residential Parcel(s) may be considered as part of a separate subdivision application concurrently with the final adoption of the Entitlement Documents or following the settlement, as CDR or future purchasers may determine. The Amended 1984 Plan will reflect the densities set forth in Table Four, above. As outlined above, the City will not unreasonably withhold, delay or condition approval of Final Plats that are submitted in substantial accordance with the Block Plats and the Amended 1984 Plan.

e. **Parcels G, N, O & P.** The 1984 Plan provides an alternative medium density residential zoning classification for Parcels G, N, O and P (collectively, “Med-Den Reserve Parcels”). CDR will be permitted to develop the Med-Den Reserve Parcels as attached single-family residential properties, based on the zoning designations and densities set forth in Table 4, above. Final Plat approval for the Med-Den Reserve

Parcel(s) may be considered as part of a separate application concurrently with the final adoption of the Entitlement Documents or following the settlement, as CDR or future purchasers may determine. The Amended 1984 Plan will reflect the densities set forth in Table Four, above. As outlined above, the City will not unreasonably withhold, delay or condition approval of Final Plats that are submitted in substantial accordance with the Block Plats and the Amended 1984 Plan.

f. ***Parcels J-1 and J-2.*** The 1984 Plan provides an alternative high density residential zoning classification for Parcels J-1 and J-2 ("High-Den Reserve Parcels"). CDR will develop the High-Den Reserve Parcels as multi-family residential properties (apartments), based on the zoning designations and densities set forth in Table Four, above. Final Plat approval for the High-Den Reserve Parcels may be considered as part of a separate application concurrently with the final adoption of the Entitlement Documents or following the settlement, as CDR or future purchasers may determine. The Amended 1984 Plan will reflect the densities set forth in Table Four, above. As outlined above, the City will not unreasonably withhold, delay or condition approval of Final Plats that are submitted in substantial accordance with the Block Plats and the Amended 1984 Plan.

g. ***Parcels E-1, E-2, F, H, K-1 & K-2.*** CDR and the COF Staff agree that the Urban Commercial ("UC") zoning is the appropriate zoning under the 2011 Zoning Code for Parcels E-1, E-2, F, H, K-1 and K-2 (collectively, "UC Parcels"). Final Zoning of the UC Parcels will occur concurrently with the final adoption of the Entitlement Documents. Final Plat approval for the UC Parcel(s) may be considered as part of a separate application concurrently with the final adoption of the Entitlement Documents or following the settlement, as CDR or future purchasers may determine. As outlined above, the City will not unreasonably withhold, delay or condition approval of Final Plats that are submitted in substantial accordance with the Block Plats and the Amended 1984 Plan.

h. ***Transfer of Parcel Q3 to the City.*** The DA will include the transfer of Parcel Q3 ("COF Residential Parcel") to the City, at no cost to the City, for its use in providing affordable housing ("AH"). The COF Residential Parcel represents approximately five percent (5%) of the overall residential density for CDR and satisfies the AH requirement for the CDR Property as a whole. CDR recognizes the City target for receiving AH incentives is ten percent (10%) of the overall residential density; therefore, if any developer of portions of the CDR Property (other than Q3) elects to include additional AH, the City will credit 5% or one-half of the 10% requirement when making its incentive calculations. AH development in addition to Parcel Q3 will not, however, be a prerequisite or condition to the development of any portion(s) of the CDR Property or the issuance of Final Plats in accordance with the terms and conditions set forth in this memo and the Entitlement Documents. The COF Residential Parcel will be

provided on an unimproved basis with the Q-3 Utility Infrastructure (as defined below) brought to the COF Residential Parcel property line. CDR will also be responsible for dedicating the Harold Ranch Road ROW and for the completion of the Q-3 Roadway Improvements (as defined below). The term "Q-3 Utility Infrastructure" will mean improvements identified by the Impact Studies (as defined below) that meet City's municipal requirements and are of sufficient size and capacity to accommodate the development of Parcel Q-3 for AH purposes and extending these water, sewer, traffic and drainage etc. improvements for that portion of Harold Ranch Road which is located on the CDR Property. The term "Q-3 Roadway Improvements" will mean the dedication of the Harold Ranch Road ROW and completing the roadway improvements required to finish that portion of Harold Ranch Road which is located on the CDR Property in a manner consistent with the City's Engineering Standards, the Impact Studies and the Final Zoning. The exact size and scope of the Q-3 Utility Infrastructure and the Q-3 Roadway Improvements will be set forth in the DA, provided, however, that the Q-3 Roadway Improvements East of Parcel Q-3 shall be limited to one lane of pavement in each direction installed to meet ten-year storm requirements, with no curb and gutter required. CDR's obligation to install the Q-3 Utility Infrastructure and the Q-3 Roadway Improvements will be subject to the Phasing Plan (to be developed in the rezoning case, as outlined below) and will be triggered by the recordation of a Final Plat for Parcel R-4 within the CDR Property.

i. ***Infrastructure; Development Phasing & Drainage.*** CDR will provide the infrastructure improvements required for the development of the CDR Property on a phased basis. City and CDR will work together in good faith to prepare, as part of the Zoning Application, a development and infrastructure phasing plan ("Phasing Plan") which is consistent with the Amended 1984 Plan and the Final Zoning. The Phasing Plan will be incorporated in the DA and/or the Amended 1984 Plan, as appropriate. CDR anticipates completing specific infrastructure improvements for the CDR Property at the point(s) required for the development of individual Parcels, based on sales and the overall demand for property in the Flagstaff market. The Phasing Plan will include applicable requirements for fire access, water and sewer service, and other public facilities. The City's current ordinances impose a rainwater harvesting regulation and an LID (low impact design) regulation of one inch (1") on-site storm water retention. The 1984 Plan does not include LID or rainwater harvesting provisions. CDR has agreed to comply with the City's LID requirements up to (but not exceeding) on-site stormwater retention of one-half inch ($\frac{1}{2}$ "). CDR requests COF Council approval of: (i) an exemption from the rainwater harvesting regulations for the CDR Property; and (ii) application of a one-half inch ($\frac{1}{2}$ ") maximum LID requirement to the CDR Property (collectively "Waiver"). In all cases, CDR will obtain a Drainage Impact Analysis ("DIA") based on the City's LID/Stormwater standards at the time of preparation, as part of the Impact Studies. Drainage for the CDR Property will be handled, and LID calculations will be made, on a master-planned basis, with the use of regional drainage

facilities. The Waiver will be submitted to the COF Council for approval as part of the Settlement Agreement.

j. ***Butler Avenue / Butler & Fourth Street Intersection.*** CDR will agree to make all remaining payments relating to the existing Butler Avenue and Fourth Street Assessment (“Existing Assessment”) immediately upon final approval and adoption of the Entitlement Documents and all associated zoning. The DA will include a budget for, and an allocation of, costs associated with anticipated future improvements to Butler Avenue, the Butler & Fourth Street intersection (“Intersection”) and any other off-site/regional improvements reasonably required by the City and accepted by CDR as part of the approved DA (collectively, “Off-Site Improvements”) based on the following structure:

- (A) Promptly following execution of this Agreement, CDR will obtain an updated Traffic Impact Analysis, Water and Sewer Impact Analysis and DIA (collectively, “Impact Studies”), as reasonably required based on the Final Zoning.
- (B) Subject to terms approved by the City and CDR, the DA will impose an obligation on CDR to pay for its proportionate share of the actual cost of the Off-Site Improvements attributable to the CDR Property’s anticipated impact on public infrastructure as determined by the Impact Studies (“CDR Share”).
- (C) CDR will not be required to pay for (and the CDR Share will not include) Off-Site Improvements that are required to:
 - (i) elevate the existing Butler Avenue and Fourth Street intersection;
 - (ii) elevate the existing Butler Avenue roadway leading to or from the Butler Avenue and Fourth Street intersection;
 - (iii) elevate the existing north leg of Fourth Street roadway leading to or from the Butler Avenue and Fourth Street intersection;
 - (iv) Off-Site Improvements that are not necessitated by the CDR Property’s anticipated impact on public infrastructure as determined by the Impact Studies; and

- (v) Any drainage features or infrastructure required to convey stormwater under Butler Avenue and/or the Butler Avenue and Fourth Street intersection.

CDR understands and acknowledges the Final Zoning may require a new calculation of the CDR Share based on the Impact Studies. The revised CDR Share and the Phasing Plan will be an Exhibit to the DA in order to avoid any potential for future dispute.

k. ***Fourth Street South of Butler Avenue.*** With respect to the Fourth Street roadway south (from Butler Avenue through Parcel M), CDR will agree to pay for those improvements attributable to the CDR Property's anticipated impact on public infrastructure as determined by the Impact Studies. CDR also acknowledges that the City's Engineering Standards may require certain improvements to the Fourth Street roadway extending south from the Butler and Fourth Street intersection which otherwise exceed the CDR Property's anticipated impact on public infrastructure as determined by the Impact Studies and the City agrees, in connection with the preparation of the DA, to work with CDR, in good faith, to minimize any expense CDR may be required to incur in connection with the Fourth Street roadway south of the Butler and Fourth Street intersection which otherwise exceed the CDR Property's anticipated impact on public infrastructure and/or the CDR Share ("Additional Expense"). CDR will not be obligated to construct any other east-half roadway or edge improvements adjacent to Parcels D and L. CDR shall be free to seek a contribution agreement from the ASLD for the Additional Expense or any other aspect of the existing (or expected future) improvement of the Fourth Street roadway south of the Butler and Fourth Street intersection.

1. ***Parcel O & P Sale.*** CDR and the City agree Parcels O and P may be sold to, and developed as, a church – using the City's CUP process. Otherwise, the zoning for Parcels O and P will be as outlined in **Paragraphs 3(c) and (e)**, above.

4. **Settlement Implementation.** CDR and the COF Staff have approved the terms of this Agreement. CDR and the COF Staff will act diligently to submit this Agreement to the COF Council for approval at the earliest possible date (anticipated to be during the month of May 2013). Upon COF Council approval (including the Waiver), CDR and the City will promptly execute this Agreement, and CDR will promptly make the Deposit required by **Paragraph 5**, below. Upon execution of this Agreement ("Effective Date"), the parties will take the following actions to implement and carry out the terms of this Agreement as expeditiously as possible:

- (A) CDR and the City will begin work on the MRPA and the DA;
- (B) CDR will obtain the Impact Studies and initiate and diligently pursue the Zoning Application; and

- (C) once finalized, the MRPA, the Zoning Applications, the DA and any other Entitlement Documents reasonably required to obtain final COF Council approval will be submitted to the City Planning and Zoning Commission for review and recommendation, and thereafter to the COF Council for final approval.

5. **Existing Butler Avenue Assessment.** Within ten (10) days of the Effective Date, CDR shall deposit, by wired or cashiered funds, the sum of \$123,781.50 ("Deposit"), representing the remaining principal amount of the Butler Avenue assessment at issue in the Maricopa County Action, in a mutually-agreed interest bearing escrow account ("Account") with First American Title Insurance Company, Phoenix, Arizona ("Escrow Agent"), to be disbursed by Escrow Agent (with accrued interest) upon the first of the following events to occur:

- (A) To the City upon the COF Council's formal and final approval of the Entitlement Documents;
- (B) In accordance with written mutual instructions to the Escrow Agent executed by the City and CDR; or
- (C) By order of the Court in the Maricopa County Action, in accordance with **Paragraph 6**, below.

CDR and the City will enter into Escrow Agent's standard form escrow instructions with respect to the Account. Any fees charged by Escrow Agent in connection with the Account will be deducted from the Account.

6. **Disposition of the Lawsuits.**

a. ***Interim Stay.*** Following the Effective Date and upon CDR's delivery of the Deposit to Escrow Agent pursuant to **Paragraph 5**, above, CDR and the City shall authorize and instruct their respective counsel to jointly file with the Courts in both the Coconino County Action and the Maricopa County Action, a Notice of Tentative Settlement and Stipulation to Stay Action, in substantially the form of Exhibit "A" to this Agreement. CDR and the City, through their respective counsel, will take any and all necessary and appropriate actions to obtain an order of the Court to stay the Lawsuits pending the COF Council's formal and final approval of the Entitlement Documents. If either Court declines to issue such an order, CDR and the City agree to enter into an appropriate tolling agreement with respect to and to preserve their respective claims and defenses in that action, pending final approval of the Entitlement Documents.

b. ***Final Dismissal.*** Upon the formal and final approval of the Entitlement Documents and the Escrow Agent's disbursement of the Deposit to the City as contemplated in **Paragraph 5(A)**, above, and provided that CDR and the City have each fully performed their respective obligations under this Agreement, CDR and the City shall authorize and direct their respective counsel to file with the Courts in the Maricopa County Action and the Coconino County Action a Stipulation for Dismissal With Prejudice.

c. ***Return to Litigation.*** If, despite the good faith and diligent efforts of COF Staff and CDR, final approval of the Entitlement Documents has not occurred within the time provided in **Paragraph 2(e)**, above, or such additional period as the parties agree to in writing, CDR and the City shall authorize and instruct their respective counsel to jointly file a motion to reinstate the Lawsuits on the Courts' active calendars in order to determine the merits of the parties' respective claims and defenses, including, but not limited to, the disposition of the Deposit. CDR and the City shall further authorize and instruct their respective counsel to work in good faith to establish a revised scheduling order that will permit the disclosure, discovery and motion practice reasonably required to properly and efficiently adjudicate the Lawsuits. In addition to awarding the Deposit to the appropriate party, the Court may award any other relief to which a party is entitled at law or in equity, including, but not limited to interest, attorneys' fees, and costs.

7. **Mutual Release of Claims.** Effective upon the COF Council's final approval of the Entitlement Documents and dismissal of the Lawsuits in accordance with **Paragraph 6(b)**, above, the parties mutually release each other as follows:

a. ***Release by CDR.*** Except as otherwise expressly provided in this Agreement or the Entitlement Documents, CDR, hereby irrevocably releases and discharges the City, and its current and former mayors, council members, department managers, employees, agents, representatives, and attorneys, from any claim, cause or right of action, liability, or obligation of any kind, type, or nature, whether presently known or unknown, accrued or not accrued, which arises out of or which in any manner relate to the CDR Property, the zoning of the CDR Property, the 1984 Plan, and/or the existing Butler Avenue assessment, including, but not limited to any claims which were or which could have been asserted in either of the Lawsuits.

b. ***Release by City.*** Except as otherwise expressly provided in this Agreement or the Entitlement Documents,, the City hereby irrevocably releases and discharges CDR, and its current and former members, agents, subsidiaries, employees, managers, partners, shareholders, representatives, and attorneys, from any claim, defense, cause or right of action, liability, or obligation of any kind, type, or nature, whether presently

known or unknown, accrued or not accrued, which arises out of or which in any manner relate to the CDR Property, the zoning of the CDR Property, the 1984 Plan, and/or the existing Butler Avenue assessment, including, but not limited to any claims which were or which could have been asserted in either of the Lawsuits.

Notwithstanding anything to the contrary, no provision of this Agreement shall constitute a release of any claim arising out of a breach of this Agreement; all such claims being expressly reserved.

8. **Time is of the Essence.** Time is of the essence of this Agreement and each term and provision hereof.

9. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, representatives and assigns (and, in the case of CDR, its subsidiaries that hold legal title to the CDR Property).

10. **Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement except: (i) those persons identified in the release provisions of this Agreement (**Paragraph 7**, above) who are expressly designated as actual and intended third-party beneficiaries of such release provisions; and (ii) CDR's wholly owned subsidiaries that hold legal title to the CDR Property.

11. **Attorneys' Fees.** Should any litigation be commenced between the parties concerning the terms of this Agreement, or the rights and duties of CDR or the City under this Agreement, the prevailing party or parties in such proceeding or litigation shall be entitled, in addition to such other relief as may be granted, to payment of all of its costs, expenses (including, but not limited to, expert fees), and reasonable attorneys' fees incurred in connection with the dispute.

12. **Entire Agreement.** This Agreement is a fully integrated document, containing the entire understanding among the parties, and supersedes and integrates any prior understandings or written or oral agreements among the parties including, without limitation, the Settlement Memorandum dated March 29, 2013 (and all earlier drafts and versions of that document).

13. **Representations, Warranties and Covenants.** Each party to this Agreement represents, warrants and covenants to the other parties as follows:

- (A) This Agreement is the result of arm's length negotiations between parties experienced in business and financial affairs who have equal access to information concerning this transaction. They have obtained legal advice concerning the meaning and effect of this Agreement and

that they had sufficient time to consider the meaning and effect of this Agreement;

- (B) They have taken all necessary action to authorize the execution, delivery, and performance of this Agreement and have the authority to execute, deliver and perform this Agreement and all the transactions contemplated hereby, including, without limitation, the releases provided for in **Paragraph 7**, above;
- (C) The enforceability of this Agreement is not affected by the provisions of any other agreement to which such party is a party and will not conflict with any provision of any law or regulation to which such party is subject;
- (D) CDR has the full power and authority to bind its subsidiaries and the CDR Property to the terms and provisions of this Agreement; and
- (E) Except for the Lawsuits, there are no actions, suits or proceedings pending or threatened against either party in any court or by or before any governmental agency or instrumentality and no existing judgments, orders or other restraints, which would materially affect the ability of such party to carry out the transactions contemplated by this Agreement.

14. **Controlling Law and Choice of Forum.** This Agreement and all questions relating to its validity, interpretation, performance, and inducement shall be governed by and construed, interpreted, and enforced in accordance with the substantive laws of the State of Arizona (without reference to conflict of law principles). Any action pertaining to this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona, in and for the County of Maricopa, and all parties irrevocably consent to exclusive jurisdiction and venue in such court for such purposes.

15. **Indulgences Not Waivers.** Neither any failure nor any delay on the part of any party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver; nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of any other right, remedy, power or privilege.

16. **Construction.** This Agreement is the result of negotiations between the parties and was initially drafted by the attorneys for the City as a matter of convenience only and shall not be construed for or against any party on account thereof, but shall be construed according to its plain meaning.

17. **Additional Instruments and Acts.** Without limiting the provisions of Paragraphs 2 through 7 of this Agreement, the parties shall promptly execute and deliver all such other instruments and take all such other action as any party may reasonably request from time to time, before or after the execution of this Agreement, in order to effectuate the transactions contemplated by this Agreement.

18. **Modifications and Amendments.** There shall be no amendments or modifications to this Agreement unless any such amendment or modification is in writing and signed by all parties to this Agreement. Any alleged or purported amendment or modification shall be void and unenforceable unless it is in writing and signed by all parties to this Agreement. This provision concerning amendments or modifications cannot be waived or otherwise made unenforceable except by a written document signed by all parties to this Agreement.

19. **Exhibits.** All Exhibits attached to this Agreement are fully incorporated herein and are made a part of this Agreement whether the Exhibits are executed by any or all of the parties.

20. **Miscellaneous.**

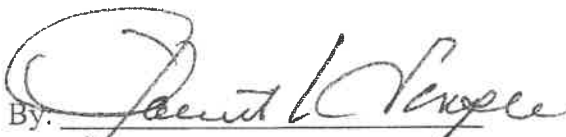
a. The headings used in this Agreement are used for administrative purposes only and do not constitute substantive matter to be considered in construing the terms of this Agreement.

b. Words used in this Agreement, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, or other gender, masculine, feminine or neuter, as the context requires; the words "including," "includes" and "include" shall mean without limitation, by reason of enumeration.

The parties have executed this Agreement as of the Execution Date.

CANYON DEL RIO INVESTORS, LLC

CITY OF FLAGSTAFF

By: 
Robert M. Semple, Manager

By: _____

Its: _____

APPROVED AS TO FORM AND CONTENT BY COUNSEL:

DICKINSON WRIGHT/MARISCAL WEEKS

By: Michael S. Rubin
Michael S. Rubin
Attorneys for City of Flagstaff

DATED: 4/18/13

CHESTER & SHEIN, P.C.

By: David E. Shein
David E. Shein
Attorneys for Canyon del Rio Investors, LLC

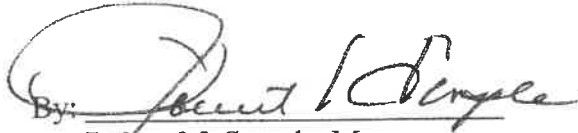
DATED: 4/16/13

ACKNOWLEDGED AND AGREED BY CDR SUBSIDIARIES:

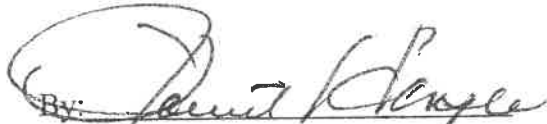
CDR LAND INVESTORS I, LLC,
an Arizona limited liability company

By: 
Robert M. Semple, Manager

CDR LAND INVESTORS II, LLC,
an Arizona limited liability company

By: 
Robert M. Semple, Manager

CDR LAND INVESTORS III, LLC,
an Arizona limited liability company

By: 
Robert M. Semple, Manager

PHOENIX 53876-3 51331v1
4/11/2013

EXHIBIT A

1 Michael S. Rubin (#005131)
2 Nicole Felker Bergstrom (#025475)
3 **DICKINSON WRIGHT / MARISCAL WEEKS**
4 2901 North Central Avenue, Suite 200
5 Phoenix, Arizona 85012-2705
6 Phone: (602) 285-5000
7 Fax: (602) 285-5100
8 *Attorneys for City of Flagstaff*

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

~ COCONINO COUNTY ~

CITY OF FLAGSTAFF, a municipal
corporation,

Plaintiff,

vs.

CANYON DEL RIO INVESTORS, L.L.C., an
Arizona limited liability company,

Defendant.

No. CV2008-0245

**STIPULATION AND REQUEST TO
PLACE CASE ON INACTIVE
CALENDAR**

(Assigned to the Hon. Mark R.
Moran)

The parties have entered into a Settlement Agreement, a copy of which is attached to this Stipulation as **Exhibit A**. As outlined in the Settlement Agreement, the settlement structure involves significant engineering and entitlement work, and associated municipal approvals. Accordingly, the full and final implementation of settlement may require up to 365 days.

For these reasons, the parties request this case be placed on the inactive calendar for up to 365 days, and the parties will advise the Court promptly if (i) the settlement becomes final; or (ii) the settlement fails during the implementation process. If the settlement becomes final, the case will be dismissed with prejudice. If the settlement fails, the case will be placed back on

1 the active calendar for litigation and the parties will promptly prepare and
2 submit a proposed form of Scheduling Order to the Court for approval.

3 A proposed form of Order is attached.

4 DATED this ____ day of _____, 2013.

5 **DICKINSON WRIGHT / MARISCAL WEEKS**

6
7
8 By: _____
9 Michael S. Rubin, Esq.
10 Nicole Felker Bergstrom, Esq.
11 2901 North Central Avenue, Suite 200
12 Phoenix, Arizona 85012
13 *Attorneys for City of Flagstaff*

14 **BURCH & CRACCHIOLO, P.A.**

15
16 By: _____
17 Edwin D. Fleming, Esq.
18 Daryl Manhart, Esq.
19 Jessica Conaway, Esq.
20 702 East Osborn Road, Suite 200
21 Phoenix, Arizona 85014
22 *Attorneys for Canyon Del Rio Investors, LLC*

23
24
25
26

1 Michael S. Rubin (#005131)
2 Nicole Felker Bergstrom (#025475)
3 **DICKINSON WRIGHT / MARISCAL WEEKS**
4 2901 North Central Avenue, Suite 200
5 Phoenix, Arizona 85012-2705
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7 Fax: (602) 285-5100
8 *Attorneys for City of Flagstaff*

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
~ COCONINO COUNTY ~

CITY OF FLAGSTAFF, a municipal
corporation,

Plaintiff,

vs.

CANYON DEL RIO INVESTORS, L.L.C., an
Arizona limited liability company,

Defendant.

No. CV2008-0245

ORDER

(Assigned to the Hon. Mark R.
Moran)

Upon reviewing the Stipulation and Request to Place Case on Inactive Calendar,
and good cause appearing,

IT IS HEREBY ORDERED that this matter is continued on the inactive calendar
for up to 365 days, or until _____, 201__.

DATED: _____

Judge of Superior Court

1 Michael S. Rubin (#005131)
2 Nicole Felker Bergstrom (#025475)
3 **DICKINSON WRIGHT / MARISCAL WEEKS**
4 2901 North Central Avenue, Suite 200
5 Phoenix, Arizona 85012-2705
6 Phone: (602) 285-5000
7 Fax: (602) 285-5100
8 *Attorneys for City of Flagstaff*

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

~ MARICOPA COUNTY ~

CITY OF FLAGSTAFF, a municipal
corporation,

Plaintiff,

vs.

CANYON DEL RIO INVESTORS, L.L.C., an
Arizona limited liability company,

Defendant.

No. CV 2010-017142

**STIPULATION AND REQUEST TO
PLACE CASE ON INACTIVE
CALENDAR**

(Assigned to the Hon. Sally Schneider
Duncan)

The parties have entered into a Settlement Agreement, a copy of which is attached to this Stipulation as Exhibit A. As outlined in the Settlement Agreement, the settlement structure involves significant engineering and entitlement work, and associated municipal approvals. Accordingly, the full and final implementation of settlement may require up to 365 days.

For these reasons, the parties request this case be placed on the inactive calendar for up to 365 days, and the parties will advise the Court promptly if (i) the settlement becomes final; or (ii) the settlement fails during the implementation process. If the settlement becomes final, the case will be dismissed with prejudice. If the settlement fails, the case will be placed back on

1 the active calendar for litigation and the parties will promptly prepare and
2 submit a proposed form of Scheduling Order to the Court for approval.

3 A proposed form of Order is attached.

4 DATED this ____ day of _____, 2013.

5 **CHESTER & SHEIN, P.C.**

6

7

8

By: /s/ David E. Shein

9

David E. Shein, Esq.

10

Sonia M. Phanse, Esq.

11

8777 N. Gainey Center Drive, Suite 191

12

Scottsdale, Arizona 85258-2106

13

Attorneys for Canyon Del Rio Investors, LLC

14

DICKINSON WRIGHT / MARISCAL WEEKS

15

16

By: /s/ Michael S. Rubin, Esq.

17

Michael S. Rubin, Esq.

18

Nicole Felker Bergstrom, Esq.

19

2901 North Central Avenue, Suite 200

20

Phoenix, Arizona 85012

21

Attorneys for City of Flagstaff

22

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1 Michael S. Rubin (#005131)
2 Nicole Felker Bergstrom (#025475)
3 **DICKINSON WRIGHT / MARISCAL WEEKS**
4 2901 North Central Avenue, Suite 200
5 Phoenix, Arizona 85012-2705
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8 *Attorneys for City of Flagstaff*

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
~ MARICOPA COUNTY ~

CITY OF FLAGSTAFF, a municipal
corporation,

Plaintiff,

vs.

CANYON DEL RIO INVESTORS, L.L.C., an
Arizona limited liability company,

Defendant.

No. CV 2010-017142

ORDER

(Assigned to the Hon. Sally Schneider
Duncan)

Upon reviewing the Stipulation and Request to Place Case on Inactive Calendar,
and good cause appearing,

IT IS HEREBY ORDERED that this matter is continued on the inactive calendar
for up to 365 days, or until _____, 201__.

DATED: _____

Honorable Sally Duncan