AGENDA 3:00 P.M.

CITY COUNCIL SPECIAL MEETING **REVISED** TUESDAY, SEPTEMBER 10, 2024

NOTES:

- Meeting room is wheelchair accessible. American Disabilities Act (ADA) accommodations are available upon request. Please phone 928-282-3113 at least two (2) business days in advance.
- City Council Meeting Agenda Packets are available on the City's website at:

  www.SedonaAZ.gov

GUIDELINES FOR PUBLIC COMMENT

PURPOSE:

- To allow the public to provide input to the City Council on a particular subject scheduled on the agenda.
- This is not a question/answer session.
- The decision to receive Public Comment during Work Sessions/Special City Council meetings is at the discretion of the Mayor.

PROCEDURES:

- Fill out a "Comment Card" and deliver it to the City Clerk.
- When recognized, use the podium/microphone.
- State your:
  1. Name and
  2. City of Residence
- Limit comments to **3 MINUTES.**
- Submit written comments to the City Clerk.

1. CALL TO ORDER

2. ROLL CALL

3. EXECUTIVE SESSION

LINK TO DOCUMENT =

Upon a public majority vote of the members constituting a quorum, the Council may hold an Executive Session that is not open to the public for the following purposes:

a. **Discussion and consultation** to consider its position and instruct its attorneys and designated representatives regarding contract negotiation and negotiations for the purchase, sale or lease of real property in the area between SR 179 and Canyon Drive and just north of SR 179 and Copper Cliffs Drive, in the area south of SR 89A just west of Brewer Road, and in the area north of SR 89A between Madole Road and Stutz Bearcat Drive. This matter is brought in executive session pursuant to A.R.S. § 38-431.03(A)(4) & (7).

b. **Discussion and consultation** for legal advice with the City Attorney, to consider the City's position, and instruct its attorneys regarding pending or contemplated litigation or settlement discussions in order to avoid or resolve litigation in the matter of Axys Capital Total Return Fund, LLC's A.R.S. 12-1134 notice of claim regarding Coconino County APN 408-08-002A, 408-08-006A, 401-09-001A, 401-09-001B, 401-009-001C, 401-13-059, 401-14-015, 401-14-016, and 401-14-017. This matter is brought in executive session pursuant to A.R.S. § 38-431.03(A)(3) and (A)(7).

c. Return to open session. **Discussion/possible action** regarding executive session items including adoption of a resolution waiving partial enforcement of Ordinance 2023-03 on Coconino County APN 408-08-002A, 408-08-006A, 401-09-001A, 401-09-001B, 401-009-001C, 401-13-059, 401-14-015, 401-14-016, and 401-14-01.

4. ADJOURNMENT

Posted: 9/04/24

By: DJ

JoAnne Cook, CMC, City Clerk

Note: Pursuant to A.R.S. § 38-431.02(B) notice is hereby given to the members of the City Council and to the general public that the Council will hold the above open meeting. Members of the City Council will attend either in person or by telephone, video, or internet communications. The Council may vote to go into executive session on any agenda item, pursuant to A.R.S. § 38-431.03(A)(3) and (4) for discussion and consultation for legal advice with the City Attorney. Because various other commissions, committees and/or boards may speak at Council meetings, notice is also given that four or more members of these other City commissions, boards, or committees may be in attendance.

A copy of the packet with material relating to the agenda items is typically available for review by the public in the Clerk's office after 1:00 p.m. the Thursday prior to the Council meeting and on the City's website at www.SedonaAZ.gov. City Hall is accessible to people with disabilities, in compliance with the Federal 504 and ADA laws. Those with needs for special typeface print, may request these at the Clerk's Office. All requests should be made **forty-eight hours** prior to the meeting.

SEDONA CITY HALL
102 ROADRUNNER DRIVE, SEDONA, AZ

The mission of the City of Sedona government is to provide exemplary municipal services that are consistent with our values, history, culture and unique beauty.

Axys Capital Total Return Fund, LLC
c/o Timothy A. Birch
1900 St James Place, Suite 300
Houston, Texas 77056

August 26, 2024

VIA PROCESS SERVER AND EMAIL
City of Sedona
c/o JoAnne Cook, City Clerk
102 Roadrunner Drive
Sedona, AZ 86336
jcook@sedonaaz.gov

Re: Request for Binding Waiver of Enforcement to Land Use Law
A.R.S. § 12-1134 Diminution in Value Claim
Coconino APNs: 401-08-002A; 401-08-006A; 401-09-001A; 401-09-001B; 401-09-001C; 401-13-059; 401-14-015; 401-14-016; 401-14-017

Dear City of Sedona,

Axys Capital Total Return Fund, LLC, a Delaware limited liability company ("Axys"), hereby submits the following Request for Binding Waiver of Enforcement to Land Use Law pursuant to A.R.S. § 12-1134.

As required by statute, Axys hereby makes its written demand in a specific amount for just compensation to the City of Sedona, an Arizona municipality (the "City") pursuant to A.R.S. § 12-1134, for the reduction in the fair market value of the Property caused by the City's amendments to its Land Development Code adopted via Ordinance No. 2023-03 on April 25, 2023 (the "Downzoning").

Specifically, the Downzoning removed "Lodging, Fewer than Seven Units" as a permitted use for the real property (the "Property") owned by Axys currently zoned CO and legally described in **Exhibit A** attached hereto, commonly known as Coconino APNs: 401-08-002A; 401-08-006A; 401-09-001A; 401-09-001B; 401-09-001C; 401-13-059; 401-14-015; 401-14-016; 401-14-017. This has caused a documented reduction in the fair market value of the Property, as evidenced below.

A.R.S. § 12-1134(A) provides:

> If the existing rights to use, divide, sell or possess private real property are reduced by the enactment or applicability of any land use law enacted after the date the property is transferred to the owner and such action reduces the fair market value of the property the owner is entitled to just compensation from this state

4872-6534-0377

or the political subdivision of this state that enacted the land use law.

Background. In early 2024, Dutchman's Cove LLC, an Arizona limited liability company, contracted to purchase APNs 401-08-002A; 401-08-006A; 401-09-001A; 401-09-001B; 401-09-001C; 401-13-059 (the "Dutchman's Cove Parcels") from Axys. The parcels are uniquely situated along Highway 89A, near Art Barn Road and Owenby Way, with stunning views and access to Oak Creek, and are perfectly matched for a hotel. Additionally, Axys owns 401-14-015; 401-14-016; 401-14-017 (the "Axys Parcels") west of SR 89A.

Current Zoning. On August 13, 2024, the Sedona City Council, by unanimous vote, adopted Ordinance 2024-02 (PZ 24-00008), attached hereto as **Exhibit B**, reverting the zoning on the Property[1] to its former zoning, which is CO (Commercial) based on the 2018 LDC conversion chart, pursuant to A.R.S. § 9-462.01(E) and LDC § 8.6(B)(3)(g)(2), effective as of the date of the PD (Planned Development) rezoning in 1998 adopted by Sedona City Council Ordinance 98-15 and Resolution 98-38.

Due to the reversionary zoning, the following is clear with respect to the City Council's adoption of Ordinance 2023-03 on April 25, 2023: (1) the City Council's adoption of Ordinance 2023-03 constitutes a land use law within the meaning of the Private Property Rights Protection Act (A.R.S. § 12-1131 *et. seq.*); (2) the Property was downzoned via Ordinance 2023-03 by removing "Lodging Fewer than Seven Units" as a permitted use within the CO zoning district; and (3) the downzoning caused a provable reduction in the fair market value of the Property for which just compensation is owed by the City.

A.R.S. § 12-1134 Written Demand for Just Compensation. Pursuant to A.R.S. § 12-1134, it is hereby demanded that the City pay just compensation to Dutchman's Cove resulting from the diminution in fair market value of the Property caused by the downzoning in the amount of:

Eight million dollars ($8,000,000)

This demand for just compensation is supported by the purchase contract between Dutchman's Cove and Axys, which independently values the Dutchman's Cove Parcels at $13,000,000, contingent on the zoning of the Property allowing "Lodging, Fewer than Seven Units" as a permitted use for each parcel, along with other development rights thereunder. The value of the Property after the downzoning would be $8,000,000. Accordingly, the loss in value caused by the downzoning is $5,000,000. Likewise, the CO-zoned Axys Parcels west of SR 89A have a corresponding $3,000,000 reduction in value caused by Ordinance 2023-03 on April 25, 2023, removing "Lodging, Fewer than Seven Units" as a permitted use.

[1] Note: Ordinance 2024-02 (PZ 24-00008) reverted additional parcels to RM-2 and RS-35, which parcels are not included in this Diminution in Value Waiver Request.

Binding Waiver of Enforcement in Lieu of Just Compensation. In lieu of payment of just compensation, the City may simply exempt the Property from the downzoning as permitted by statute:

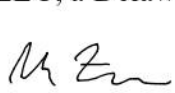
> If a land use law continues to apply to private real property more than ninety days after the owner of the property makes a written demand in a specific amount for just compensation to this state or the political subdivision of this state that enacted the land use law, the owner has a cause of action for just compensation in a court in the county in which the property is located, unless this state or political subdivision of this state and the owner reach an agreement on the amount of just compensation to be paid, or unless this state or political subdivision of this state amends, repeals, or *issues to the landowner a binding waiver of enforcement of the land use law on the owner's specific parcel*. A.R.S. § 12-1134(E) (emphasis added).

Authorization to Communicate with Attorneys for Dutchman's Cove. Axys hereby authorizes the City to communicate with Stephen W. Polk, Esq. and Nicholas J. Wood, Esq., attorneys for Dutchman's Cove, regarding all aspects of this request.

CONCLUSION:

Axys has a statutory right under A.R.S. § 12-1134 to the payment of just compensation from the City due to the diminution in fair market value caused to its Property by the City Council's adoption of Ordinance 2023-03. In lieu of payment of just compensation, under A.R.S. § 12-1134(E), the City may issue a binding waiver of enforcement of Ordinance 2023-03. If the City chooses to respond to Axys's claim by issuing a binding waiver of enforcement, we request that the City Council schedule the adoption of the Resolution approving the binding waiver of enforcement at the City Council's regular meeting on September 10, 2024.

Sincerely,
AXYS CAPITAL TOTAL RETURN FUND LLC, a Delaware limited liability company



By: Michael Zislis
Its: Manager

cc: Annette Spickard, Sedona City Manager (*aspickard@sedonaaz.gov*)
Kurt Christianson, Sedona City Attorney (*kchristianson@sedonaaz.gov)*
Stephen W. Polk, Esq., BPCWS Law Firm, attorney for Dutchman's Cove (*spolk@bpcws.com*)
Nicholas J. Wood, Esq., Snell & Wilmer LP, attorney for Dutchman's Cove (*nwood@swlaw.com*)

EXHIBIT A
LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF COCONINO, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

Parcel No. 1 (401-08-002A)

A parcel of land in the Northwest quarter of Section 8, Township 17 North, Range 6 East, of the Gila and Salt River Base and Meridian, Coconino County, Arizona, described as follows:

BEGINNING at the Northeast corner of the Southwest quarter of the Northeast quarter of the Northeast quarter of the Northwest quarter, of said Section 8;

thence South 00° 58' 45" East, a distance of 333.55 feet to the Southeast corner of said Southwest quarter of the Northeast quarter of the Northeast quarter of the Northwest quarter of said Section 8;

thence South 89° 20' 42" West, a distance of 325.38 feet to the Southwest corner of said Southwest quarter of the Northeast quarter of the Northeast quarter of the Northwest quarter of said Section 8;

thence South 00° 50' 56" East, a distance of 665.72 feet to the Southeast corner of the Southwest quarter of the Northeast quarter of the Northwest quarter, of said Section 8;

thence continuing South 00° 50' 56" East, a distance of 104.48 feet to the Northeast corner of the parcel of land described in Docket 1375, page 865;

thence South 89° 34' 57" West, a distance of 290.20 feet to the Northwest corner of last said parcel;

thence North 33° 47' 57" East, a distance of 53.80 feet to the most Easterly corner of the parcel of land described in Docket 1563, page 391;

thence North 63° 11' 53" West, a distance of 108.86 feet to the most Southerly corner of the parcel of land described in Docket 683, page 559;

thence North 24° 52' 13" East, a distance of 305.80 feet to the most Easterly corner of last said parcel;

thence North 51° 22' 47" West, a distance of 204.59 feet to the most Northerly corner of last said parcel and a point on the Southeasterly right-of-way of U.S. Highway 89-A;

thence along said right-of-way of the following courses and distances:

thence along the arc of a curve in a Northeasterly direction, said curve being concave to the Northwest, having a radius of 640.00 feet, arc length of 95.92 feet, central angle of 08° 35' 15", a chord bearing of North 36° 21' 51" East, to Highway Sta. 95+00, 40.00 feet right;

thence South 56° 06' 16" East, along a non-tangent line, a distance of 40.00 feet to Highway Sta. 95+00, 80.00 feet right;

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EXHIBIT A
(Continued)

thence along the arc of a non-tangent curve in a Northeasterly direction, said curve being concave to the Northwest, having a radius of 680.00 feet, arc length of 4.81 feet, central angle of 00° 24' 18", a chord bearing of North 33° 41' 35" East, to C.S. Sta. 95+04,24, 80.00 feet right;

thence along an offset line, 80.00 feet from the centerline spiral said offset line having a chord bearing of North 29° 23' 20" East, a distance of 139.55 feet to S.T. Sta. 96+35.14 BK and Sta. 96+34.79 AHD., 80.00 feet right;

thence North 27° 14' 26" East, a distance of 165.21 feet to Sta. 98+00, 80.00 feet right; .

thence North 62° 45' 34" West, a distance of 14.00 feet to Sta. 98+00, 66.00 feet right; .

thence North 27° 14' 26" East, a distance of 112.46 feet to the Southwest corner of the parcel of land described in Docket 1601, page 70;

thence leaving said right-of-way, South 62° 45' 34" East, a distance of 35.00 feet to the Southeast corner of last said parcel;

thence North 27° 14' 26" East, a distance of 50.00 feet to the Northeast corner of last said parcel;

thence North 62° 45' 34" West, a distance of 35.00 feet to the Northwest corner of last said parcel and to said Southeasterly right-of-way;

thence North 27° 14' 26" East, along said right-of-way, a distance of 87.36 feet to Sta. 100+50, 66.00 feet right;

thence North 62° 45' 34" West, along said right-of-way, a distance of 33.00 feet to Sta. 100+50, 33 feet right;

thence North 27° 14' 26" East, a long said right-of-way, a distance of 41.18 feet to the North line of the Southeast quarter of the Northwest quarter of the Northeast quarter of the Northwest quarter of said Section 8;

thence North 89° 13' 22" East, a distance of 366.08 feet to the TRUE POINT OF BEGINNING.

Parcel No. 2 (401-08-006A)

A Tract of land in the Northeast quarter of the Northwest quarter of Section 8, Township 17 North, Range 6 East, of the Gila and Salt River Base and Meridian, Coconino County, Arizona, BEGINNING at Corner No.1 which is a point on the East right of way line of 89A that lies North 30° 53' 52" East, 1236.88 feet (which point is the PC on the centerline of 89A at Station 1146 +38.6);

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EXHIBIT A
(Continued)

Thence North 51° 7' East, 785 feet;

Thence South 38° 43' East, 40 feet from the West ½ corner of Section 8;

Thence North 51° 17' East, 180.6 feet to Corner No. 2 which is a concrete highway marker at Station 1156+04.2 which is part of curvature;

Thence North 48° 22' East, a cord distance of 168.5 feet on a spiraled curve to the left to Corner No. 3;

Thence South 51° 43' East, 203.65 feet to Corner No. 4;

Thence South 24° 32' West, 305.80 feet to Corner No. 5;

Thence North 63° 28' West, 290.50 feet to Corner No. 6;

Thence North 38° 43' West, 63.70 feet to the POINT OF BEGINNING;

EXCEPTING therefrom that portion conveyed to the City of Sedona in Document No. 3872373, records of Coconino County, Arizona described as follows:

That portion of the Northwest quarter of Section 8, Township 17 North, Range 6 East, of the Gila and Salt River Base and Meridian, Coconino County, Arizona, more particularly described as follows:

Commencing at Bureau of Land Management brass cap in a hand hole marking the West quarter corner of said Section 8, from which a brass cap in asphalt 2 inches below grade marking the Northwest corner of said Section 8 bears North 0°28'11" West a distance of 2629.66 feet;

Thence North 40°49'53" East, a distance of 2018.63 feet to the Southeasterly right of way of SR89A and to the POINT OF BEGINNING, said point being North 51°22'11" East, a distance of 324.72 feet from a found nail in concrete with a tag marked "LS 29263" marking the Northwesterly corner of Parcel 2 as described in Document No. 3596392, records of Coconino County, Arizona;

Thence along said Southeasterly right of way, North 51°22'11" East, a distance of 146.29 feet to the point of curvature of a spiral curve;

Thence along the right of way, along said spiral curve whose chord bears North 51°17'33" East, a distance of 25.34 feet;

Thence leaving said right of way south 11°35'06" West, a distance of 74.80 feet to a point on a non-tangent curve to the right having a radius of 65.00 feet, a central angle of 77°33'52" and a chord that bears South 59°39'36" West 81.43 feet;

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EXHIBIT A
(Continued)

Thence along the arc of said curve a distance of 87.99 feet;

Thence North 81° 33' 28" west, a distance of 49.29 feet to the southeasterly right of way of SR89A and to the POINT OF BEGINNING.

Parcel No. 3 (401-09-001A)

A tract of land in the Southeast quarter of the Northwest quarter of Section 8, Township 17 North, Range 6 East, of the Gila and Salt River Base and Meridian, Coconino County, Arizona, describes as follows:

COMMENCING at the West quarter corner of said Section 8; thence along the West line of said Section 8, North 0°33'30" East, 999.8 feet; thence South 89°27' East, 1426 feet to the POINT OF BEGINNING for the herein described Tract, being also the POINT OF BEGINNING for Parcel 1 of Cove Enterprises, Inc. property;

thence along the Westerly and Northerly lines of said Parcel 1, North 28°00' East, 113.0 feet;

thence North 62°00' East, 107.0 feet;

thence North 34°13' East, 100.0 feet;

thence East 280.0 feet to the East line of the West half of the East half of said Northwest quarter of Section 8;

thence Southwesterly in a straight line to a point that bears South 64°00' East, 370 feet from the POINT OF BEGINNING;

thence North 64°00' West, 370 feet to the POINT OF BEGINNING.

Parcel No. 4 (401-09-001B)

A tract of land in the Southeast quarter of the Northwest quarter of Section 8, Township 17 North, Range 6 East, of the Gila and Salt River Base and Meridian, Coconino County, Arizona, described as follows:

COMMENCING at the West quarter corner of said Section 8, then along the West line of said Section 8, North 0°33'30" East, 999.8 feet;

thence South 89°27' East, 1465 feet to the POINT OF BEGINNING for the description of Parcel 1 of Cove Enterprises, Inc. property;

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EXHIBIT A
(Continued)

thence South 64°00' East, 175 feet;

thence South 26°00' West, 125 feet;

thence North 64°00' West, 175 feet to the westerly line of said Cove Enterprises Inc. property;

thence along said property line, North 26°00' East, 125 feet to the POINT OF BEGINNING.

Parcel No. 5 (401-09-001C)

A tract of land in the Southeast quarter of the Northwest quarter Section 8, Township 17 North, Range 6 East of the Gila and Salt River Base and Meridian, Coconino County, Arizona, more particularly described as follows:

COMMENCING at the West quarter corner of said Section 8; thence North 0°33'30" East, 999.8 feet along the West line of said Section 8; thence South 89°27' East, 1465 feet to the POINT OF BEGINNING.

thence North 38°00' East, 113.0 feet;

thence North 62°00' East, 107.0 feet;

thence North 34°13' East, 100.0 feet;

thence East, 280.0 feet to the East line of the West half of the East half of the Northwest quarter of Section 8;

thence South, 560 feet more or less along said East line to the Southeast corner of the Southeast quarter of the Northwest quarter of the Southeast quarter of the Northwest quarter of Section 8;

thence West 330.0 feet more or less to the Southeast corner of the Southeast quarter of the Northwest quarter of the Southeast quarter of the Northwest quarter of said Section 8;

thence South 108 feet;

thence West 257.9 feet;

thence North 264.0 feet;

thence North 26°00' East, 200.0 feet to the POINT OF BEGINNING;

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EXHIBIT A
(Continued)

EXCEPTING THEREFROM the following described parcels:
Parcel A
A tract of land in the Southeast quarter of the Northwest quarter of Section 8, Township 17 North, Range 6 East, Gila and Salt River Base and Meridian, Coconino County, Arizona, more particularly described as follows:
COMMENCING at the West quarter corner of said Section 8; thence North 0°33'30" East, 999.8 feet along the West line of said Section 8;
thence South 89°27' East, 1465 feet;
thence South 26°00' West, 200 feet;
thence South 115 feet to the POINT OF BEGINNING;
thence South 149 feet;
thence East 60 feet;
thence North 119 feet;
thence North 62°00' West, 67.1 feet to the POINT OF BEGINNING.
Parcel B
A tract of land in the Southeast quarter of the Northwest quarter of Section 8, Township 17 North, Range 6 East, Gila and Salt River Base and Meridian, Coconino County, Arizona, described as follows:
COMMENCING at the West quarter corner of said Section 8, then along the West line of said Section 8, North 0°33'30" East, 999.8 feet;
thence South 89°27' East, 1465 feet to the POINT OF BEGINNING for the description of Parcel 1 of Cove Enterprises, Inc. property;
thence South 64°00' East, 175 feet;
thence South 26°00' West, 125 feet;
thence North 64°00' West, 175 feet to the westerly line of said Cove Enterprises Inc. property;
thence along said property line, North 26°00' East, 125 feet to the POINT OF BEGINNING.
Parcel C
A tract of land in the Southeast quarter of the Northwest quarter of Section 8, Township 17 North, Range 6 East, Gila and Salt River Base and Meridian, Coconino County, Arizona, describes as follows:
COMMENCING at the West quarter corner of said Section 8; thence along the West line of said Section 8, North 0°33'30" East, 999.8 feet; thence South 89°27' East, 1426 feet to the POINT OF BEGINNING for the herein described Tract, being also the POINT OF BEGINNING for Parcel 1 of Cove Enterprises, Inc. property;
thence along the Westerly and Northerly lines of said Parcel 1, North 28°00' East, 113.0 feet;
thence North 62°00' East, 107.0 feet;
thence North 34°13' East, 100.0 feet;
thence East 280.0 feet to the East line of the West half of the East half of said Northwest quarter of Section 8;
thence Southwesterly in a straight line to a point that bears South 64°00' East, 370 feet from the POINT OF BEGINNING;
thence North 64°00' West, 370 feet to the POINT OF BEGINNING.

Parcel No. 6 (401-13-059)

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EXHIBIT A
(Continued)

A tract of land in the Northwest quarter of Section 8, Township 17 North, Range 6 East, of the Gila and Salt River Base and Meridian, Coconino County, Arizona, more particularly described as follows:

BEGINNING at a point on the Southeasterly line of Highway 89A, a distance of North 1323.79 feet and East 1067.93 feet from the West quarter corner of said Section 8, said Point of Beginning is also distant along said highway line, North 51° 17' 00" East, a distance of 119.01 feet from the most Northerly corner of the H.H. Neninger property as described in Book 41 of Official Records, pages 576-577;

thence along the Northeasterly Line of Sedona Art Center property, South 51° 41' 00" East, (Record South 63° 07' 13" East) a distance of 143.5 feet and South 53° 18' 00" East, (Record South 54° 44' 13" East), a distance of 64.37 feet;

thence leaving said Art Center property South 62° 09' 00" East, a distance of 289.2 feet to the Northwesterly line of the Arizona Water Company property;

thence along said Northwesterly line, North 37° 03' 00" East (Record North 38° 00' 00" East), a distance of 20 feet, and North 61° 13' 00" East, (Record North 62° 00' 00" East), a distance of 107 feet and North 33° 26' 00" East (Record North 34' 13' 00" East), a distance of 100 feet;

thence leaving said Arizona Water Company property North 33° 26' 00" East, a distance of 53.2 feet;

thence North 63° 28' 00" West, along a Southerly prolongation of, and along the Westerly boundary of that parcel described in Book 50 of Official Records, page 291, a distance of 398.9 feet to the most Easterly corner of the Vue Motel property;

thence along the Vue Motel boundary line, South 30° 36' 00" West, a distance of 139.97 feet;

thence North 38° 43' 00" West, a distance of 20 feet;

thence South 31° 37' 00" West, a distance of 90.7 feet;

thence North 61° 53' 00" West, a distance of 135.0 feet to a point on the Southeasterly line of Highway 89A;

thence along said Highway, South 51° 17' 00" West, a distance of 21.35 feet to the POINT OF BEGINNING;

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AMERICAN LAND TITLE ASSOCIATION

Exhibit "A"

PARCEL NO. 7 (APN 401-14-015)

That portion of the Northwest quarter of the Northwest quarter of Section 8, Township i7 North, Range 6 East of the Gila and Salt River Base and Meridian, Coconino County, Arizona, described by metes and bounds as follows:

BEGINNING at Corner No. 1, which is a point on the West right-of-way line of Highway 89A that lies North 29 ° 04' East, 1260.34 feet;

thence North 51 ° 17' East, 374 feet from the West quarter corner of said Section 8;

thence North 38 ° 43' West, 84.70 feet to Corner No. 2;

thence North 52 ° 43' East, 110 feet to Corner No. 3;

thence South 38 ° 43' East, 81.8 feet to Corner No. 4, which is a point on the West right-of-way line of Highway 89A;

thence South 51 ° 17' West, 110 feet to the PLACE OF BEGINNING.

PARCEL NO. 8 (APN 401-14-016)

That portion of the Northwest quarter of Section 6, Township 17 North, Range 6 East of the Gila and Salt River Bass and Meridian, Coconino County, Arizona, described as follows:

BEGINNING at a point on the West right-of-way line of U.S. Highway 89A, that lies North 29 ° 04' East, 1260.34 feet;

thence North 51 ° 17' East, 484.0 feet from the West quarter corner of said Section 8;

thence North 38 ° 43' West, 81.8 feet;

thence North 48 ° 41' East, 52.07 feet;

thence South 29 ° 15' 30" East, 85.32 feet to a point on said right-of-way line;

thence South 51 ° 17' West, 38.0 feet along said right-of-way line to the Point of Beginning.

Exhibit "A" (Continued)

PARCEL NO. 9 (APN 401-14-017)

That portion of the Northwest quarter of the Northwest quarter of Section 8, Township 17 North, Range 6 East of the Gila and Salt River Base and Meridian, Coconino County, Arizona, described as follows:

BEGINNING at Corner No. 1, which is a point on the West right-of-way line of Highway 89A that lies North 29 ° 4' East, 1260.34 feet (which point is the point of tangency at the West right-of-way marker at station 1:46+38.6);

thence North 51° 17' East, 522 feet from the West quarter corner of said Section 8;

thence North 29 ° 15' 30" West, 85.32 feet to Corner No. 2;

thence North 48° 2' East, 50 feet to Corner No. 3;

thence South 38 ° 43' East, 87 Feet to Corner No. 4;

thence South 51 ° 17' West, 63.95 feet to the PLACE OF BEGINNING.

EXHIBIT B

ORDINANCE NO. 2024-02
THE PRESERVE AT OAK CREEK CONDOMINIUMS ZONING REVERSION
PZ 24-00008 (ZC)

AN ORDINANCE OF THE OF THE CITY OF SEDONA, ARIZONA, REZONING THAT PROPERTY DESCRIBED HEREIN FROM ITS PRESENT DESIGNATION OF PD (PLANNED DEVELOPMENT) TO CO (COMMERCIAL), RS-35 (SINGLE FAMILY RESIDENTIAL, AND RM-2 (MULTIFAMILY RESIDENTIAL) IN CONFORMANCE WITH A.R.S. 9-462.01(E); DIRECTING THE AMENDMENT OF THE ZONING MAP UPON COMPLETION OF ALL ZONING CONDITIONS SET FORTH HEREIN; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND ESTABLISHING AN EFFECTIVE DATE.

RECITALS:

WHEREAS, the Planning and Zoning Commission and City Council approved zoning reversion as one of the options for a failure to construct the development per the Planned Development timeline adopted in O2006-04/R2006-10.

WHEREAS, on April 22, 2008, City Council, pursuant to A.R.S. § 9-462.01(E) and LDC § 8.6(B)(3)(g)(2), previously granted a two-year extension for the commencement of construction of the PD.

WHEREAS, the owner failed to construct the PD and is now requesting a reversion of the zoning.

WHEREAS, pursuant to A.R.S. 9-462.01(E), reversionary rezoning is a legislative act to be taken at the discretion of the Sedona City Council.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SEDONA, ARIZONA AS FOLLOWS:

Section 1. Description and Reversionary Rezoning

The subject property consists of Coconino County Assessor's Parcels 401-08-002A; 401-08-006A; 401-09-001A; 401-09-001B; 401-09-001C; 401-13-059; 401-14-015; 401-14-016; 401-14-017; 401-14-064; 401-14-065; 401-14-075A; 401-14-163; 401-14-164, and is located in the vicinity of W State Route 89A, Art Barn Road, and Owenby Way between in Sedona, Arizona, a legal description, depiction, and zoning map of which is provided in "**Exhibit A**" attached hereto and incorporated by this reference. The owner/applicant desires to rezone the property from PD (Planned Development) to CO (Commercial), RS-35 (Single Family Residential), and RM-2 (Multifamily Residential).

The subject property that is currently zoned PD (Planned Development) is hereby rezoned to CO (Commercial), RS-35 (Single Family Residential), and RM-2 (Multifamily Residential), based on conformance with the requirements for reversionary rezoning of A.R.S. § 9-462.01(E) and LDC § 8.6(B)(3)(g)(2) .

Section 2. Zoning Map

The zoning map of the City of Sedona is hereby amended to reflect this rezoning, and at least three (3) copies of the map shall be kept in the office of the City Clerk for public use and inspection.

Section 3. Repeal

All ordinances and parts of ordinances in conflict with this Ordinance are repealed to the extent of such conflict.

Section 4. Effective Date

This ordinance shall become effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona, this 13th day of August, 2024.

_____
Scott M. Jablow, Mayor

ATTEST:

_____
JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:

_____
Kurt W. Christianson, City Attorney

Exhibit A (Page 1 of 2): PZ24-00008 (ZC)

Preserve at Oak Creek Legal Description and Zoning Map

APNs: 401-08-002A; 401-08-006A; 401-09-001A; 401-09-001B; 401-09-001C; 401-13-059; 401-14-015; 401-14-016; 401-14-017; 401-14-064; 401-14-065; 401-14-075A; 401-14-163; 401-14-164

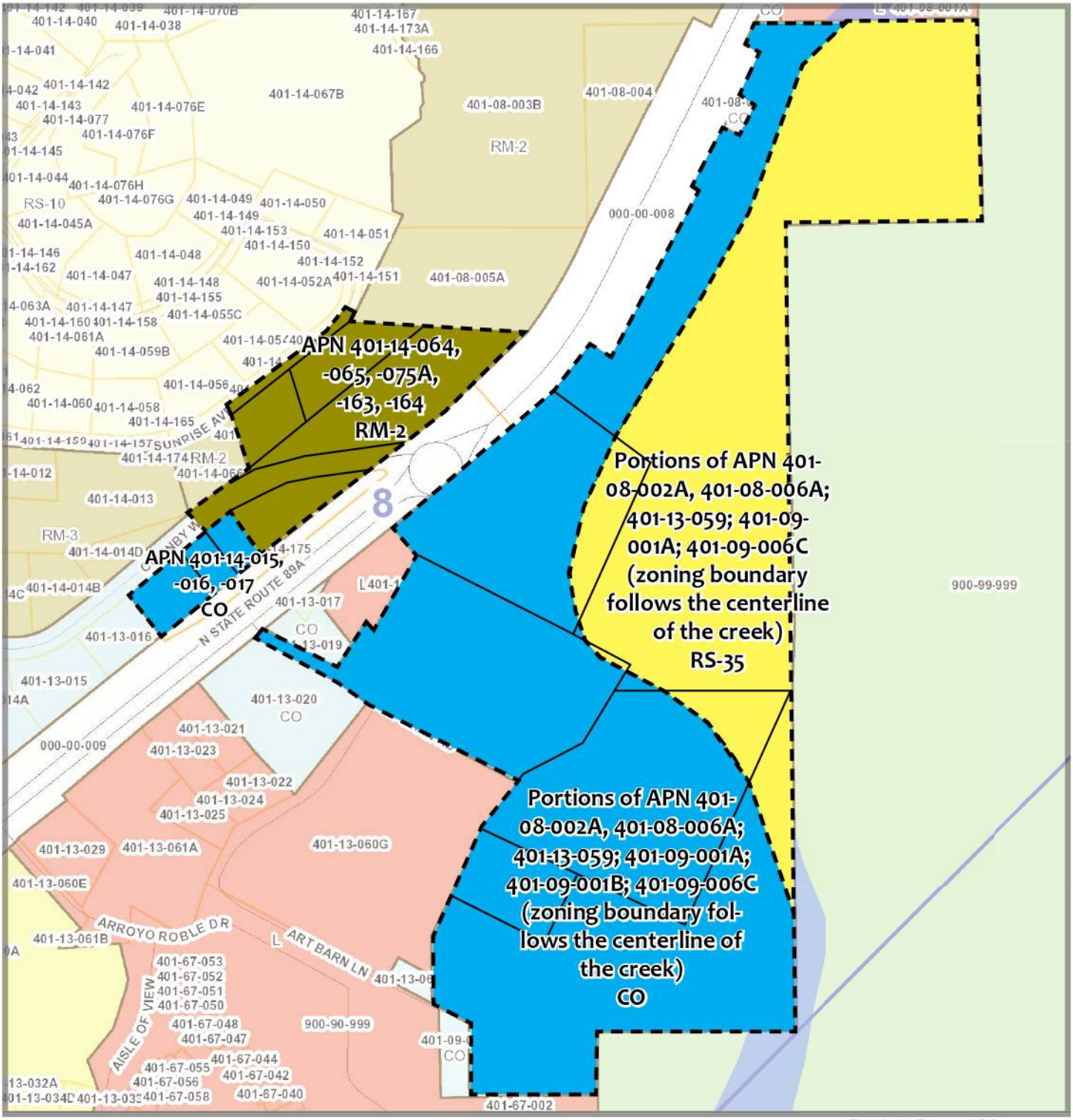
Zone Change Reversion: PD (Planned Development) to CO (Commercial), RS-35 (Single Family Residential), and RM-2 (Multifamily Residential)

Exhibit A (Page 2 of 2): PZ24-00008 (ZC)

Preserve at Oak Creek Legal Description and Zoning Map

APNs: 401-08-002A; 401-08-006A; 401-09-001A; 401-09-001B; 401-09-001C; 401-13-059; 401-14-015; 401-14-016; 401-14-017; 401-14-064; 401-14-065; 401-14-075A; 401-14-163; 401-14-164

Zone Change Reversion: PD (Planned Development) to CO (Commercial), RS-35 (Single Family Residential), and RM-2 (Multifamily Residential)



RESOLUTION NO. 2024-__

A RESOLUTION OF THE SEDONA CITY COUNCIL APPROVING A BINDING WAIVER OF ENFORCEMENT FOR CERTAIN PROPERTIES WITHIN THE CORPORATE LIMITS OF THE CITY OF SEDONA

RECITALS:

WHEREAS, on April 25, 2023, the Sedona City Council adopted Ordinance 2023-03, which, among other changes, removed "Lodging, Fewer than Seven Units" from Sedona Land Development Code Section 3.2.E Table of Allowed Uses for Commercial and Mixed-Use zoning districts; and

WHEREAS, the owner identified in Exhibit A, attached hereto, owned its respective parcels of land ("Properties") when Ordinance 2023-03 took effect; and

WHEREAS, Arizona Revised Statutes §12-1134 ("Prop 207") allows a property owner to seek just compensation when a city adopts a land use law that reduces the property owner's existing rights to use, divide, sell, or possess private real property and such action reduces the fair market value of the property; and

WHEREAS, the property owner identified in Exhibit A filed a claim for just compensation under Prop 207, asserting that the amendment to the Sedona Land Development Code removing "Lodging, Fewer than Seven Units" from Sedona Land Development Code Section 3.2.E Table of Allowed Uses for Commercial and Mixed-Use zoning districts reduced its rights to use the Properties and thereby reduced the fair market value of the Properties; and

WHEREAS, in response to a claim for just compensation under Prop 207, the City may issue to the property owner a binding waiver of enforcement of the land use law on the owner's specific parcels.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF SEDONA, ARIZONA AS FOLLOWS:

SECTION 1. That the Binding Waiver of Enforcement, which is attached hereto as Exhibit A, is hereby approved and the Mayor is authorized to execute the Binding Waiver of Enforcement, partially waiving enforcement of Ordinance 2023-03 as set forth therein.

APPROVED AND ADOPTED by the Mayor and City Council of the City of Sedona, Arizona this 12th day of September, 2024.

_____
Scott M. Jablow, Mayor

ATTEST:

_____
JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:

_____
Kurt W. Christianson, City Attorney

WHEN RECORDED, MAIL TO:
Sedona City Clerk
City of Sedona
102 Roadrunner Drive
Sedona, AZ 86336

BINDING WAIVER OF ENFORCEMENT

THIS BINDING WAIVER OF ENFORCEMENT (this "Waiver") is granted by the City of Sedona, an Arizona municipal corporation (the "City").

RECITALS:

A. On April 25, 2023, the Sedona City Council adopted a land use law, Ordinance 2023-03, which made various amendments to the Sedona Land Development Code.

B. The respective owners of the following parcels in Sedona (collectively the " Properties") owned the Properties on the date Ordinance 2023-03 took effect:

	Coconino County APN	Property Owner	Address
1.	The portion of 408-08-002A commercially zoned (west of the center of Oak Creek)	Axys Capital Total Return Fund, LLC	586 N SR 89A Sedona, AZ 86336
2.	The portion of 408-08-006A commercially zoned (west of the center of Oak Creek)	Axys Capital Total Return Fund, LLC	520 N SR 89A Sedona, AZ 86336
3.	The portion of 401-09-001A commercially zoned (west of the center of Oak Creek)	Axys Capital Total Return Fund, LLC	400 Art Barn Road Sedona, AZ 86336
4.	401-09-001B	Axys Capital Total Return Fund, LLC	181 Art Barn Road Sedona, AZ 86336
5.	The portion of 401-09-001C commercially zoned (west of the center of Oak Creek)	Axys Capital Total Return Fund, LLC	40 Art Barn Road Sedona, AZ 86336
6.	The portion of 401-13-059 commercially zoned (west of the center of Oak Creek)	Axys Capital Total Return Fund, LLC	40 Art Barn Road Sedona, AZ 86336
7.	401-14-015	Axys Capital Total Return Fund, LLC	129 Owenby Way Sedona, AZ 86336
8.	401-14-016	Axys Capital Total Return Fund, LLC	115 Owenby Way Sedona, AZ 86336
9.	401-14-017	Axys Capital Total Return Fund, LLC	100 Owenby Way Sedona, AZ 86336

C. Arizona Revised Statutes §12-1134 ("Prop 207") allows a property owner to seek just compensation when a city adopts a land use law that reduces the property owner's existing rights to use, divide, sell, or possess private real property and such action reduces the fair market value of the property.

D. On August 26, 2024, the owner of the Properties filed with the City a request for just compensation pursuant to Prop 207.

E. In response to a claim for just compensation under Prop 207, a city may issue to the property owner a binding waiver of enforcement of the land use law on the owner's specific parcels.

NOW, THEREFORE, the City of Sedona does hereby declare as follows:

1) Incorporation of Recitals. The recitals stated above are true and correct and are incorporated herein.

2) Properties Binding Waiver of Enforcement. That the amendment to the Sedona Land Development Code removing "Lodging, Fewer than Seven Units" from Sedona Land Development Code Section 3.2.E Table of Allowed Uses for Commercial and Mixed-Use zoning districts adopted by Ordinance 2023-03 shall not be enforced nor applicable to the entirety, or any portion of the Properties.

3) Recordation. This Binding Waiver of Enforcement shall be adopted by Resolution of the Sedona City Council and shall be recorded in its entirety in the Official Records of Yavapai County, Arizona.

4) Covenants Running with Land; Inurement. The covenants, conditions, terms, and provisions of this Waiver relating to use of the Properties shall run with the Properties.

5) Governing Law. This Waiver, and all rights and obligations created hereby, shall be determined and governed by the laws of the State of Arizona.

IN WITNESS WHEREOF, this Waiver is approved by the Sedona City Council through the adoption of Resolution 2024-____.

City of Sedona

_____

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney