

10-17-2007  
Redline Version  
by Developer

WHEN RECORDED RETURN TO:  
Paul L. Roberts, Esq.  
Roberts & Carver, PLLC - FOLDER

## **PRE-ANNEXATION DEVELOPMENT AGREEMENT**

**PRE-ANNEXATION DEVELOPMENT AGREEMENT**

THIS PRE-ANNEXATION DEVELOPMENT AGREEMENT (hereinafter "Agreement") is entered among the City of Prescott (hereinafter "City"), an Arizona municipal corporation, Granite Dells Estates Properties, Inc., an Arizona corporation, and Granite Dells Estates Properties II, Inc., an Arizona corporation (hereinafter collectively "Owner").

Deleted: I, LLC  
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**RECITALS:**

A. Owner owns certain real property located in Yavapai County, Arizona, consisting of approximately one thousand one hundred twelve acres (1,112 ac.) legally described on Exhibit A hereto (hereinafter "Existing Property").

B. Owner intends to acquire, or have acquired by another, additional property consisting of approximately sixteen and one-half acres (16 ½ ac.) legally described on Exhibit B hereto (hereinafter "Additional Property") or obtain the approval of the owner of Additional Property which is located in Yavapai County, Arizona, adjacent to the City corporate limits.

C. Owner and City desire that the Existing Property, Additional Property, and certain real property owned by others legally described on Exhibit C hereto as depicted on Exhibit C-1 hereto (hereinafter collectively "Annexation Property") be annexed into the City corporate limits.

D. The purpose of this Agreement is to provide for annexation of the Annexation Property into the City corporate limits pursuant to applicable laws, rules, ordinances and regulations and to govern entitlements and responsibilities of the Owner and the City in regard to the Existing Property and Additional Property (hereinafter collectively "Property") following annexation.

E. City and Owner acknowledge that this Agreement is consistent with portions of the City's General Plan applicable to the Property.

F. Owner plans to develop the Property as a master planned project in accord with this Agreement and subsequently approved plans and final subdivision plat for the Property. City and Owner acknowledge that development of the Property may occur in phases. City acknowledges that master planned projects are generally subject to future modification and may be subject to future development agreements.

G. City and Owner acknowledge that this Agreement is entered in accord with A.R.S. §9-500.5 and intend to provide for, among other things: (i) the conditions and terms for annexation of the Property into the City corporate limits; (ii) the permitted uses of the Property subject to the Agreement; (iii) the density and intensity of uses within the Property, (iv) the contemplated reservation or dedication of land for public purposes, (v) the conditions, terms and requirements for the construction, installation and financing of infrastructure; and (vi) other matters related to the development of the Property.

H. City and Owner acknowledge that the development of the Property pursuant to this Agreement will result in significant planning and economic benefits to the City and its residents by,

among other things: (i) requiring orderly development of the Property; (ii) increasing revenue to the City based on improvements to be constructed on the Property; (iii) providing the City with a location for needed public services; and (iv) providing for planning, design, engineering, construction, acquisition and/or installation of public infrastructure.

I. City and Owner acknowledge that the development of the Property, pursuant to this Agreement, will result in significant benefits and burdens to the City and to the Owner by, among other things: (i) providing assurance of the right to develop the Property in accord with this Agreement; (ii) by providing water allocations as set forth herein necessary to the contemplated project; (iii) by providing public infrastructure beneficial both to the Property and to the public in an expeditious manner; and (iv) providing public safety and other recurring services to the developed Property.

NOW THEREFORE, in consideration of the mutual agreements set forth herein, the adequacy of which is acknowledged by City and Owner, it is agreed as follows:

**AGREEMENT:**

1 **RECITALS.** The foregoing RECITALS are incorporated herein by this reference.

2 **DEFINITIONS.** The terms hereinafter set forth shall be defined, for purposes of this Agreement, as follows:

2.01 **"Additional Property"** shall mean real property located in Yavapai County, Arizona, adjacent to the City corporate limits, described in Exhibit B hereto.

2.02 **"Annexation Property"** shall mean the Existing Property, Additional Property and real property owned by others, described in Exhibit C hereto.

2.03 **"Agreement"** shall mean this Pre-Annexation Development Agreement.

2.04 **"City"** shall mean the City of Prescott, a duly formed municipal corporation within the State of Arizona.

2.05 **"City Council"** shall mean the City Council of the City of Prescott, Arizona.

2.06 **"Existing Property"** shall mean the real property currently owned by the Owner described on Exhibit A hereto.

2.07 **"General Plan"** shall mean the General Plan and any amendments thereto adopted by the City pursuant to A.R.S. § 9-461, dated \_\_\_\_\_.

2.08 **"Owner"** shall mean Granite Dells Estates I, LLC, an Arizona limited liability company, Granite Dells Estates II, LLC, an Arizona limited liability company, and the Owner of the Additional Property.

2.09 **"Preliminary Land-Use Plan"** (hereinafter "Preliminary Plan") shall mean the Preliminary Plan attached hereto as Exhibit D, as may be amended, which includes the Existing Property and Additional Property and shall be synonymous with the term "Master Plan".

2.10 **"Property"** shall mean collectively the Existing Property and the Additional Property. Property shall exclude the real property owned by others included in the Annexation Property.

2.11 **"Rules"** shall mean, except as otherwise set forth, the ordinances, rules, regulations, permit requirements, other requirements, and/or official policies of the City as of the Effective Date of this Agreement.

2.12 **"Dedication to City"** shall mean that the real property shall transfer in fee title, by warranty deed, and at no cost to City.

2.13 **"Potable water"** shall mean the provision of water suitable for drinking for Owner's development of the Property as depicted on the Preliminary Plan and as set forth in this Agreement.

3 **OPERATIVE DATE.** This Agreement shall become operative pursuant to A.R.S. § 9-500.05 at such time as all annexation proceedings to annex the Annexation Property into the City corporate limits are final according to Arizona law. In the event that the annexation of the Property into the City corporate limits is not approved by the City Council, or the Owner timely withdraws from this Agreement, this Agreement shall become null and void and the annexation process will be terminated and withdrawn by the Owner and City. Owner may withdraw from this Agreement at any time prior to the final operative date of annexation of the Annexation Property into the City corporate limits including any time period wherein the final operative date is extended or delayed by referendum or otherwise.

4 **ANNEXATION.** The City desires to annex the Annexation Property in compliance with the provisions of A.R.S. § 9-471, *et seq.*, and other applicable laws, rules and ordinances, including, but not limited to, the annexation procedures adopted pursuant to City Resolution No. 3735 (implementing Proposition 400). Owner shall file its Master Plan with the City's Planning and Zoning Commission (hereinafter "Commission"). Following a recommendation on the proposed Master Plan by the Commission, the City will file a blank petition for annexation with the Office of the Yavapai County Recorder, that describes the Annexation Property. The Owner will execute the petition for annexation. If, as of the date of filing the petition for annexation, the Owner does not own fee title to the Additional Property, then the Owner shall cause the then owner of the fee title to the Additional Property to execute the petition for annexation. In accord with applicable statutes and Rules, the City will hold required hearings and undertake to adopt an ordinance annexing the Annexation Property into the City corporate limits, all in conformance with applicable laws, statutes, rules and ordinances. Should it be necessary to comply with the terms of this Agreement, the City shall undertake to adopt an amendment to the General Plan designating the Property for the uses described herein subject to proper notice, public hearing and other zoning requirements.

5 **DEVELOPMENT.** Development of the Property following annexation into the City corporate limits shall take place as follows:

5.01 **Zoning.** The City, having exercised its discretion in approving this Agreement, shall, undertake all necessary steps, in conformance with applicable codes and requirements to rezone the Property to comply with the uses as set forth in the Master Plan. The City of Prescott agrees to actively support the zoning proposed in the Master Plan within the proposed annexation area. City acknowledges that the Preliminary Plan is general in nature and may be modified by Owner, any such modification made without City's written consent, shall be substantially similar to Exhibit D. City and Owner acknowledge that zoning provides the initial step necessary to implement the development of the Property in accordance with this Agreement. On approval of any future uses, densities and intensities of uses set forth in the zoning approval process for the Property, Owner shall have a vested right to develop the Property pursuant to said future uses, densities and intensities of uses. It is the intention of the parties that the parties shall actively support the proposed future uses, densities and intensities of future uses, to the fullest extent permitted by law.

5.01.01 **Residential.** Owner and City agree to a residential density of no more than five hundred fifty (550) total residential units in the residential areas set forth in the Preliminary Plan. In accord with the Rules and the limitation on total units set forth herein, Owner shall be authorized to seek preliminary and final plat approval of such residential areas in the Preliminary Plan as it deems fit. (i.e., some residential areas will have a higher density than others), and the City shall actively support and facilitate the approval of preliminary and final plats.

5.01.02 **Commercial and Industrial.** Owner and City agree that they will actively support zoning to meet the uses depicted as commercial/industrial on the Preliminary Plan subject to the City Council's discretionary zoning powers, applicable notice, public hearing and zoning requirements. The City will coordinate with Owner and shall use best efforts to expedite such approvals.

5.01.03 **Work Force Housing.** Owner may, at Owner's request and at City's discretion, be entitled to designate certain residential areas as work force housing. Any water allocation for work force housing shall be separate and distinct from allocations of water provided elsewhere in this Agreement and shall not reduce or affect other water allocations required hereunder. Water allocation for work force residential housing will not exceed that quantity required for one hundred sixty (160) units without prior approval of the City.

5.02 **Platting and Review.** Concurrent with the zoning approval process, the City will process the Owners preliminary plat for the Property so that the zoning and preliminary plat are approved simultaneously, or as closely thereto as is reasonably possible. As set forth herein, City agrees to use its best efforts to expedite and prioritize procedures, approvals and permits relating to preliminary and final plat approvals, subdivision process and infrastructure construction by Owner. The City agrees, at a minimum, unless the scheduling is delayed by a third party or entity outside of the control of the City, to comply with the scheduling set forth below. The Owner agrees to use its best efforts to ensure quality and completeness of all submittals, in accordance with applicable Rules and submittal requirements, and shall exercise good faith reasonable efforts to ensure that all resubmittals

address City review comments and requirements, at the time of each resubmittal. The Owner acknowledges that the lack of quality and completeness in its plans at the time of submittal and resubmittal may adversely impact the schedules as set forth in this agreement. The provisions of section 5.02 shall apply to each of the following subsections of section 5.02:

5.02.01 Owner shall submit a minimum three (3) construction plan sets with each final plat and all onsite design reports, including water, sewer, drainage and geotechnical.

5.02.02 Within fifteen (15) business days of submittal, City will provide comprehensive plan review and return comprehensive redlined plans to Owner.

5.02.03 Owner shall provide comprehensive corrected plans to the City which account for matters set forth in the comprehensive redlined plans returned by the City to Owner.

5.02.04 Within seven (7) days of Owner's resubmittal of corrected plans, City will provide final redlined plans.

5.02.05 City agrees to schedule final plat approval for the next scheduled City Council Study Session and Voting Session following approval of plans.

5.02.06 Within three (3) days of posting of financial assurances, City agrees to issue permits necessary to commence construction.

5.03 **Onsite Infrastructure.** Except as otherwise set forth herein, construction of onsite infrastructure, to the extent necessary for Owner's development of the Property, shall be the responsibility of Owner.

5.03.01 **Well Sites and Access.** Owner will provide, by way of dedication to the City two (2), one-quarter acre (1/4 ac.) onsite well sites, at agreed locations, within those areas designated as open space on the Preliminary Plan and access thereto.

5.03.02 **Storage Tank Site and Access.** Owner will provide, by way of dedication to the City, a water storage tank site of up to one acre (1 ac.) in size, with the actual site requirement to be determined by the final tank design, at a location agreed to by Owner, north of the roadway designated as Dells Ranch Road on the Preliminary Plan and access thereto. The water storage tank and all other improvements installed on the water storage tank site shall be installed to standards (i.e., exposure, screening, fencing, painting, etc.) acceptable to Owner, such acceptance not to be unreasonably withheld.

5.03.03 **Infrastructure.** All City infrastructure (transmission lines, electric service, etc.) located off of the well sites and water storage tank site which serve the well sites and/or water storage tank site shall be installed at the sole expense of the City within the areas to be dedicated to the City hereunder or within roadways or other easements agreed to by Owner.

5.03.04 **Improvements on Well and Storage Tank Sites .** Improvements installed at or on the well sites and/or storage tank site areas shall be installed to standards (i.e., exposure, screening, fencing, painting, etc.) acceptable to Owner, such acceptance not be unreasonably withheld.

5.03.05 **Water Production Facilities.** City shall be responsible for and pay for the drilling of wells and installation of all water production facilities on the well sites, for installation of the water storage tank on the water storage tank site and for installation of additional infrastructure therefor. No later than June 1, 2009 , the City shall have installed water production facilities or furnish potable water from an offsite source pursuant to paragraph 5.04.01 hereof to provide a flow of two thousand gallons per minute (2,000 gpm) at the northwest corner of the Property (Side Road) to support Owner's development of the Property as generally depicted on the Preliminary Plan and as set forth in this Agreement and more specifically to serve the demand associated with the approved preliminary plat. So long as City is providing potable water commensurate with development of the Property at the rate that would be allowed by the water allocation provided herein as accrued for Owner's development, City shall be authorized to use the onsite wells and water production facilities for both provision of water to the Property and for any other legally authorized purposes.

5.03.06 **Owner's Water Transmission Facilities.** Other than as set forth herein, Owner shall be responsible for installation of onsite water transmission facilities for development of the Property. Owner is authorized to connect to the City's onsite water production facilities to serve the Property, or if not available, to the water service to be provided by the City pursuant to paragraph 5.04.01. City shall be responsible to pay Owner for the cost to install any onsite water transmission facilities which are up-sized, at the request of the City, beyond that which is necessary for Owner's development needs.

5.03.07 **Dells Ranch Road.** Owner shall dedicate on the final plat, to City, a right of way one hundred feet (100') in width at the approximate location of Dells Ranch Road as depicted on the Preliminary Plan.

5.03.08 **Granite Dells Parkway.** Owner shall dedicate on the final plat, to City, a right of way one hundred twenty feet (120') in width at the approximate location of Granite Dells Parkway as depicted on the Preliminary Plan.

5.03.09 **Construction of Roadways.** Owner shall construct, at Owner's expense, Dells Ranch Road according to City Standard Detail 609P and Granite Dells Parkway according to City Standard 610P as set forth in Exhibits E and E1 hereto, within the rights-of-way described in paragraphs 5.03.07 and 5.03.08 hereof, which shall be dedicated to the City. Other roadways dedicated to the City shall be constructed in compliance with applicable City road design standards as set forth in paragraph 5.05.03. Until such time as Owner provides connectivity between Granite Dells Parkway and the Granite Dells Parkway Traffic Interchange described in paragraph 5.04.03, City shall have no

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duty to issue building permits for vertical construction (i.e.: commercial or industrial buildings) within the areas of the Property zoned for commercial/industrial uses.

5.03.10 **Private Roadways.** Owner reserves the right, at Owner's discretion, and City shall approve, in accordance with applicable city road design standards, designation of roadways, other than Dells Ranch Road and Granite Dells Parkway, within the residential areas, as depicted on the Preliminary Plan, as private. Owner is authorized to construct the private roadways to the detail set forth in Exhibit F hereto.

5.03.11 **Gated Community.** Owner reserves the right, at Owner's discretion, and City shall approve, installation of gates, for private gated communities, in some or all areas depicted as residential areas on the Preliminary Plan.

5.03.12 **Sewer Facilities.** Owner reserves the right, at Owner's discretion, and City shall approve installation of a privately operated and maintained low pressure, force main sewer system, for development of some or all of the Property.

5.03.13 **Dry Utilities.** Except for those serving the City's facilities, as set forth herein, Owner shall be responsible for installation of all onsite dry utilities (i.e., natural gas, electric, cable, telephone, etc.), as Owner deems necessary.

5.04 **Offsite Infrastructure.** Except as otherwise set forth herein, construction of offsite infrastructure shall be the responsibility of City.

5.04.01 **Water Service.** If City does not timely construct onsite water production facilities in accord with paragraphs 5.03.01 through 5.03.05 hereof, to serve development of the Property, then City shall provide water service, for development of the Property commensurate with development of the Property at the rate that would be allowed by the water allocation provided herein as accrued, to which Owner may connect, to the Property boundary no later than June 1, 2009

5.04.02 **Sewer Service.** City will provide sewer service to support Owner's development of the Property as generally depicted on the Preliminary Plan, set forth in this Agreement, and more specifically to serve the demand associated with the approved preliminary plat, to which Owner may connect, at the Property boundary no later than June 1, 2009.

5.04.03 **Granite Dells Parkway Traffic Interchange.** City shall be fully permitted for construction and shall have commenced construction of a traffic interchange to the ADOT right-of-way adequate for Owner's development at the location of the proposed intersection of Granite Dells Parkway and Highway 89A on or before July 1, 2009 and shall diligently prosecute such work to completion.

5.04.04 **Railroad Right-of-Way Easements.** City shall acquire and grant to Owner, at no cost to Owner, in a timely manner to allow for Owner's development of the Property, easements for ingress, egress and utilities over and across the railroad right-of-way (anticipated rails-to-trails use) located between the Existing Property and the

Additional Property at locations to be determined by agreement of the parties. Such easements shall accommodate trail users.

5.04.05 **Other Offsite Improvements.** Except as otherwise set forth herein, Owner shall have no further direct, financial or other responsibility for any other onsite or offsite infrastructure, including, but not limited to, the Granite Dells Parkway (Side Road) traffic interchange at SR 89A, or what is commonly known as the "Great Western" interchange.

5.05 **General Terms Applicable To Infrastructure.** Except as otherwise set forth in this Agreement, the following general terms shall apply to public infrastructure constructed by Owner:

5.05.01 All infrastructure improvements shall be constructed pursuant to plans approved by the City, or as otherwise set forth herein.

5.05.02 Construction of infrastructure shall be completed in a good and workmanlike manner.

5.05.03 Except as otherwise specifically provided in this Agreement, construction of other infrastructure to be dedicated to the City shall be constructed in accordance with standards then applicable to all other construction within the corporate limits of the City.

5.06 **Phasing of Infrastructure.** Owner and City acknowledge that certain infrastructure (i.e.: roads and Granite Dells Parkway (Side Road) traffic interchange) may be constructed in phases. Owner and City agree to cooperate so that the respective infrastructure to be constructed by each shall blend (i.e.: road widths, lanes, etc.)

5.07 **Public School.** Subject to the terms and conditions of this Agreement, for a period of one (1) year following the date of annexation of the Property into the City corporate limits, Owner shall offer for sale, to the Prescott Unified School District (hereinafter "PUSD"), for purposes of construction of a public high school, the area designated "H.S." (hereinafter "H.S. Property") on the Preliminary Plan. Should PUSD timely purchase the H.S. Property, Owner shall have no further responsibility in regard thereto. It is the intent of the parties that the H.S. Property shall be zoned commercial/industrial.

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5.08 **Police and Fire Department.** Subject to the terms and conditions of this Agreement, for a period of sixty (60) days following annexation of the Property into the City corporate limits, Owner shall offer for dedication to City a two (2) acre parcel of property located in the commercial/industrial area of the Preliminary Plan, as designated by Owner, for police and/or fire department purposes.

5.09 **Applicable Law and Regulations.** Except as otherwise set forth herein, the Rules applicable to the Property and development of the Property are those that are in effect as of the Effective Date of this Agreement as such Rules are amended by or required to be amended by this Agreement, except for the following, which shall also apply:

5.09.01 Rules specifically agreed to in writing by Owner;

5.09.02 Future land use Rules that are consistent with, and not contrary to, this Agreement and that do not limit or adversely affect the uses, number and density of units or intensity of development;

5.09.03 Future land use Rules enacted as necessary to comply with future state and federal laws and regulations, provided that in the event any such state or federal laws or regulations prevent or preclude compliance with this Agreement, such affected provisions of this Agreement shall be modified as may be necessary in order to comply with such state and federal laws and the intent of this Agreement; and

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5.09.04 Applicable future updates of, and amendments to, existing building, construction, plumbing, mechanical, electrical, drainage, and similar construction and safety-related codes, such as the International Building Code, which updates and amendments are generated by a nationally recognized construction safety organization or by the city, county, state, or federal government, or by the Yavapai Association of Governments, only as they relate to public health, safety or welfare.

5.09.05 Development of the Property will be subject to all applicable city-wide water, wastewater, traffic and other impact fees existing and payable at the time of building permit issuance. Owner may be eligible for impact fee credits for excess infrastructure capacity subject to City standards.

None of the above shall be interpreted as relieving Owner of any obligations which it may have with respect to regulations enacted by the Federal government or the State of Arizona that apply to the Property. Nothing in this Agreement shall alter or diminish the authority of the City to exercise its eminent domain powers or police powers pertaining to public safety.

5.10 **Anti-Moratorium.** No moratorium, as that term is defined in A.R.S. § 9-463.06, or other Rules imposing a limitation on the development, conditioning, rate, timing or sequencing of the development of property within the City and affecting the Property or any portion thereof shall apply to or govern the development of the Property during the term hereof whether affecting preliminary or final plats, building permits, occupancy permits or other entitlements to use issued or granted by the City or the provision of municipal services to the Property.

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5.11 **Compliance with City Ordinances, Resolutions and Covenants.** The City and Owner hereby represent that, after diligent review, to the best of its knowledge, information and belief, this Agreement is not inconsistent with or prohibited by any City ordinances, resolutions, and/or covenants, including, without limitation, all covenants in revenue bonds issued by the City. The City and Owner hereby represent that to the best of their knowledge, information and belief they have not received nor are they aware of any action which would result in a notice from any federal, state or county agency, that in any way would impair the City's or Owner's ability to fulfill its obligations under this Agreement.

**5.12 Owner's Duty to Plat the Property.** Owner shall submit plats for the Property to the City to commence the platting process as follows:

**5.12.01** Preliminary plat for the Property shall be submitted on or before December 31, 2008.

**5.12.02** Final plat for the Property shall be submitted based on the following percentages of the total Property:

**5.12.02.01** No less than twenty-five percent (25%) on or before December 31, 2009.

**5.12.02.02** No less than fifty percent (50%) on or before December 31, 2010.

**5.12.02.03** No less than seventy-five percent (75%) on or before December 31, 2011.

**5.12.02.04** No less than one hundred percent (100%) on or before December 31, 2012.

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**6 WATER PROVISION.** City represents that it has and will continue to have throughout the required time set forth in this Agreement, sufficient water in its water portfolio to meet the requirements of this Agreement. City agrees to be the water provider pursuant to its water management policy, as amended, for the Property and to commit an assured water supply for development of the Property on the following terms and conditions:

**6.01 Water Rules and Policies.** Prior to annexation of the Property into the City corporate limits, the City shall cause any necessary applicable Rules and Policies of City to be amended to allow for the allocation and approval of water set forth herein in accord with a form of Water Service Agreement attached hereto as Exhibit H, subject to future water regulations and regulatory actions as may be applicable as set forth in A.R.S. §9-1204 (A)(4).

**6.02 Residential Water.** City shall reserve, allocate, and provide a maximum of two hundred forty-eight and one-half (248.5) acre feet of potable water for residential development of the Property, fifty-six (56) acre feet of which shall be solely available for development of work force housing as defined and approved as such by the City, subject to future water regulations and regulatory actions as may be applicable as set forth in A.R.S. § 9-1204 (A)(4). The water reserved for residential development of the Property shall be available for allocation for development of Owner's Property at the rate of no less than forty (40) acre feet per year, which quantity shall begin to accrue in the year in which this Agreement is executed, subject to future water regulations and regulatory actions as may be applicable as set forth in A.R.S § 9-1204 (4). The water made available annually for allocation to residential development shall carry over from year to year.

**6.03 Commercial Water.** City represents that potable water for commercial/industrial purposes is included in residential allocations. City will provide potable water for commercial/industrial purposes to support Owner's development of the

Property as generally depicted on the Preliminary Plan, set forth in this Agreement, and more specifically to serve the demand associated with each approved preliminary plat or site development plan. Owner shall be responsible for providing any tanks, pumps, and appurtenances necessary to augment and achieve fire flow required for Owner's commercial development until such time as City's water infrastructure to or on the Property is completed as set forth in this Agreement.

6.04 **Recharge Credits.** All recharge credits resulting from the recharge of effluent generated on the Property shall belong to the City.

6.05 **Unused Water.** On expiration of fifteen (15) years following approval of the preliminary plat and water service agreement for development of the Property, if Owner has not developed the Property so as to fully use the water reserved, allocated and approved hereunder, any unused water shall revert to City ownership.

7 **MUNICIPAL SERVICES.** Subject to the terms of this Agreement and installation of necessary infrastructure on annexation, the City agrees to include the Property in any and all applicable service areas and to provide the Property with police and fire protection services, refuse collection service, and all other services provided by the City, in a manner comparable to those services provided to all landowners and occupants of the City.

8 **NOTICES.** All notices required or permitted to this Agreement shall be in writing and may be personally delivered, transmitted by certified mail, return receipt requested, or sent by facsimile and addressed to the following:

CITY: City of Prescott  
Attn: City Manager  
201 South Cortez Street  
Prescott, AZ 86303  
Facsimile: (928) 777-1325

With a copy to: Office of City Attorney  
Attn: City Attorney  
221 South Cortez Street  
Prescott, AZ 86303  
Facsimile: (928) 777-1325

OWNER: Granite Dells Estates Properties, Inc.  
Granite Dells Estates Properties II, Inc.  
Attn: Michael W. Fann  
P.O. Box 4356  
Prescott, AZ 86302  
Facsimile: (928) \_\_\_\_\_

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With a copy to: Roberts & Carver, PLLC

Attn: Paul L. Roberts  
239 South Cortez Street  
Prescott, AZ 86303  
Facsimile: (928) 445-6231

8.01 Notice given in accordance with the terms hereof shall be deemed received on the date of receipt if personally delivered or faxed prior to 5 p.m. MST (otherwise on the next business day) or three (3) business days after posting if sent by certified mail. Any party or entity named above, by giving written notice as set forth above, may change the address for notices to be sent to it.

9 **WAIVER.** Any waiver of the provisions of this Agreement must be in writing and signed by the appropriate officials or officers of the City or Owner. No delay in exercising any right or remedy shall constitute a waiver thereof and no waiver by the City or the Owner of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

10 **APPOINTMENT OF REPRESENTATIVES.** To further their commitment to cooperate in the implementation of this Agreement, the City and the Owner each shall designate a representative to act as a liaison between the City and its various departments and the Owner. The City or the Owner may change their representative at any time, but each party agrees to have a current active representative appointed for discussion, review and resolution of issues pertaining to this Agreement. The initial representative for the City shall be \_\_\_\_\_ and the initial representative for the Owner shall be \_\_\_\_\_. The representatives shall be available at all reasonable times to discuss and review the performance of the parties to this Agreement and the development of the Property pursuant to this Agreement.

11 **EXPEDITED CITY DECISIONS.** Except as otherwise set forth herein, the implementation of this Agreement shall be in accord with the development review process of the City. The City and the Owner agree that the Owner must be able to proceed rapidly with the development of the Property and that, accordingly, an expedited City review, land development, and construction inspection process has been implemented herein. It is understood that the City staffs' ability to provide expeditious review is subject to the Owners' submittal of accurate, complete and timely plans and documents in conformance with applicable codes and professional standards. The parties agree that if, at any time, Owner or the City believes that an impasse has been reached with the City staff or Owner's staff, respectively, on any issue affecting this Agreement, the Property, City and Owner shall have the right to immediately appeal to the City Representative or the Owner Representative, respectively, for an expedited decision. If the issue on which an impasse has been reached is an issue where the City staff can reach a final decision without City Council action or Owner staff can reach a final decision without consultation with Owner, the City Representative or the Owner Representative shall give Owner or City a final decision within ten (10) days after the request for an expedited decision. If the issue on which an impasse has been reached is one where a final decision requires action by the City Council or the Planning and Zoning Commission, the City Representative shall be responsible for scheduling a public hearing on the issue by the appropriate

City body to be held within four (4) weeks after Owner's request for an expedited decision. City and Owner agree to continue to use reasonable good faith efforts to resolve any impasse pending any such expedited decision.

12 **DEFAULT.** Failure by either City or Owner to perform in accordance with any term or provision of this Agreement for a period of seven (7) days after written notice thereof, shall constitute a default under this Agreement; provided, however, that if the failure or delay is such that more than seven (7) days would reasonably be required to perform such action or comply with any term or provision hereof, then such party shall have such additional time as may be necessary to perform or comply so long as such party commences performance or compliance within said seven (7) day period and diligently proceeds to complete such performance or fulfill such obligation. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. The cure period applicable to paragraph 5.02 shall be fourteen (14) days.

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**Deleted:** The cure period set forth herein shall not apply to sections of this Agreement for which an express date or time period is stated and failure of either City or Owner to perform shall constitute a default

13 **REMEDIES AND DISPUTE RESOLUTION.** The parties agree to the following remedies and dispute resolution process:

13.01 In the event a default is not cured within the cure periods set forth in paragraph 12, the non-defaulting party may institute the dispute resolution process (Process) set forth herein by providing written notice initiating the Process (Initiation Notice) to the defaulting party.

13.02 Within seven (7) days following delivery of the Initiation Notice, each party, by written notice to the other, shall appoint one (1) person to serve on an arbitration panel (Panel). Within fourteen (14) days following delivery of the Initiation Notice, the two (2) persons selected to be on the Panel by the parties shall select one (1) additional person to serve on the Panel. The third person selected to be on the Panel shall act as Chairman.

13.03 Within sixty (60) days following delivery of the Initiation Notice, the Panel shall conduct an arbitration hearing pursuant to the Center For Public Resources Institute for Dispute Resolution Rules for Non-Administered Arbitration (Rev. 2005, or then in effect) except that the terms of this Agreement and this Exhibit shall control over conflicting rules.

13.04 The Chairman shall determine the nature and scope of discovery, if any, and the manner of presentation of relevant evidence consistent with the deadlines provided herein, and the parties' objective that disputes be resolved in a prompt and efficient manner. No discovery may be had of privileged materials or information. The Chairman, upon proper application, shall issue such orders as may be necessary and permissible under law to protect confidential, proprietary or sensitive materials or information from public disclosure or other misuse. Any party may make application to the Yavapai County Superior Court to have a protective order entered as may be appropriate to confirm such orders of the Chairman.

13.05 In order to effectuate the parties' goals, the hearing, once commenced, will proceed from business day to business day until concluded, absent a showing of emergency circumstances. Except as otherwise provided herein, the Process shall be governed by the Uniform Arbitration Act as enacted in Arizona at A.R.S. §12-1501 et seq.

13.06 All remedies at law or in equity shall be available for award by the Panel. Except, Owner specifically waives any claim to loss of profits arising from a default by the City.

**Deleted:** Except as otherwise expressly set forth in this Agreement, in the event of a default hereunder, the non-defaulting party shall have all remedies available at law or in equity (including expedited equitable relief) whether under this Agreement or otherwise. Owner waives any claim to loss of profits arising from a default of the City. In any action or arbitration arising hereunder, the prevailing party shall be entitled to an award of its reasonable attorneys' fees, which shall not exceed the aggregate sum of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00), and expenses.

**Deleted:** ¶ **Alternate Dispute Resolution.** On mutual agreement, the parties may undertake either binding or non-binding alternative dispute resolution including, but not limited to, mediation or arbitration prior to the institution of litigation.

13.07 The Panel shall, within seven (7) days from the conclusion of any hearing, issue its written decision. The decision shall be rendered in accordance with the Agreement and the laws of the State of Arizona.

13.08 Either party may appeal the decision of the Panel to the Yavapai County Superior Court ("Court") for a trial de novo of the issues decided by the Panel, if such appeal is made within thirty (30) days after the Panel issues its decision. The decision of the panel shall be binding on both parties until the Court renders a binding decision. If the non-prevailing party in the Process fails to appeal to the Court within the timeframe set forth herein, the decision of the Panel shall be final and binding.

13.09 The non-prevailing party will, as provided by law and the Panel's order, pay all reasonable and actual attorneys' fees and costs of the prevailing party associated with any Process before the Panel. The determination of prevailing and non-prevailing parties, and the appropriate allocation of fees and costs, will be included in the decision by the Panel. Each party will pay its own attorneys' fees and costs associated with an appeal to the Court or any appellate court thereafter.

13.10 The Process set forth herein shall not apply to an action by the City to condemn or acquire by inverse condemnation all or any portion of the Property and, in the event of any such action by the City.

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**14 WAIVER OF JURY TRIAL.** The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit any such litigation to the Court and that the parties agree that this contract shall be deemed to have been created in Yavapai County, Arizona and to be subject to the jurisdiction of the Yavapai County Superior Court, and that any claims to alternative jurisdiction based on diversity of citizenship, corporate location, etc. are waived by the parties pursuant to this agreement.

**15 CONSTRUCTION AND HEADINGS.** The descriptive headings of the paragraphs of this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

**16 TIME.** If the last day of any time period stated herein should fall on a Saturday, Sunday, or legal holiday in the State of Arizona, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday, or legal holiday in the State of Arizona.

**17 EXHIBIT AND RECITALS.** The Recitals appearing at the beginning of this Agreement and any exhibit attached hereto shall be deemed to have been incorporated herein by this reference with the same force and effect as if fully set forth in the body hereof.

**18 FURTHER ACTS.** Owner and City shall promptly and expeditiously execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

**19 TIME OF ESSENCE.** Time is of the essence in implementing the terms of this Agreement.

20 **SUCCESSORS.** All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the City and Owner pursuant to A.R.S. § 9-500.05(D), provided, however, the Owner's rights and obligations hereunder may only be assigned to a person or entity that has acquired the Property or a portion thereof. Upon transfer of the Property by Owner, the new owner shall automatically become the Owner hereunder and the old owner shall be released from this Agreement for that portion of the Property that has been transferred.

21 **NO PARTNERSHIP; THIRD PARTIES.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the Owner and the City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

22 **ENTIRE AGREEMENT.** This Agreement and all exhibits thereto constitute the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein. In the event of a conflict between the text of this Agreement and the attached or incorporated Exhibits, the text of this Agreement shall control. In the event of a conflict among the attached or incorporated Exhibits, the more specific Exhibit shall control over the more general Exhibit, unless the context requires otherwise.

23 **AMENDMENT.** No amendment is to be made to this Agreement except by a written amendment executed by the City and the Owner. Within ten (10) days after any amendment to this Agreement, such amendment shall be recorded in the Official Records of Yavapai County, Arizona.

24 **NAMES AND PLANS.** The Owner shall be the sole owner of all names, titles, plans, drawings, specifications, ideas, programs, designs and work products of every nature at any time developed, formulated or prepared by or at the instance of the Owner in connection with the Property, provided, however, that in connection with any conveyance of portions of the Property to the City such rights pertaining to the portions of the Property so conveyed shall be assigned, to the extent that such rights are assignable, to the City. Notwithstanding the foregoing, the Owner shall be entitled to utilize all such materials described herein to the extent required for the Owner to construct, operate or maintain improvements relating to the Property.

25 **GOOD STANDING: AUTHORITY.** Each of the parties represents and warrants to the other (1) that it is duly formed and validly existing under the laws of Arizona, with respect to the Owner, or a municipal corporation within the State of Arizona, with respect to the City, (ii) that it is an Arizona limited liability company, with respect to the Owner, or municipal corporation, with respect to the City, duly qualified to do business in the State of Arizona and is in good standing under applicable State laws, and (iii) that the individual(s) executing this Agreement on behalf of the respective parties are authorized and empowered to bind the party on whose behalf each such individual is signing.

26 **UNENFORCEABILITY.** Owner and City acknowledge that if City is in default of this Agreement, Owner, as a remedy, may not be de-annexed. If any applicable law or court of

competent jurisdiction prohibits or excuses the City from undertaking any contractual commitment to perform any act hereunder, it shall constitute a default by City and Owner shall be entitled to its remedies pursuant to paragraph 13 hereof, excepting therefrom the remedy of specific performance.

27 **GOVERNING LAW.** This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of Arizona. In particular, this Agreement is subject to the provisions of A.R.S. § 38-511.

28 **RECORDATION.** This Agreement shall be recorded, by the City at its sole cost, in its entirety in the Official Records of Yavapai County, Arizona not later than ten (10) days after execution by the last party.

29 **CHALLENGES TO THIS AGREEMENT.** In the event that this Agreement or any approvals given by the City related to this Agreement are ever challenged, the Owner reserves the right to intervene in such action at Owner's sole cost and expense.

30 **FORCE MAJEURE.** Notwithstanding any other term, condition or provision hereof to the contrary, in the event the City or Owner are precluded from satisfying or fulfilling any duty or obligation imposed by the terms hereof due to labor strikes, material shortages, war, civil disturbances, weather conditions, natural disasters, acts of god, or other events beyond the control of such party, the time period provided herein for the performance of such duty or obligations shall be extended for a period equal to the delay occasioned by such events.

31 **GOVERNMENTAL POWERS.** Except as specifically provided herein, nothing in this Agreement shall be interpreted or applied to require, restrict, or limit, in any manner whatsoever, or to impinge in any way on the City's ability to exercise its police powers.

32 **The undersigned specifically acknowledges that the attached Exhibit "G" entitled CONSENT TO CONDITIONS/WAIVER FOR DIMINUTION OF VALUE, is knowingly and voluntarily executed pursuant to this Agreement, and that such waiver shall be a condition of this Development Agreement and is specifically incorporated herein.**

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the Effective Date and hereby swear and affirm that are duly authorized in accordance with law to execute this Agreement.

CITY OF PRESCOTT, an Arizona  
municipal corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_, 2007

Attest:

Elizabeth Burke, City Clerk

Approved as to form:

Gary D. Kidd, City Attorney

GRANITE DELLS ESTATES PROPERTIES, INC.,  
an Arizona corporation

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By: \_\_\_\_\_  
Its: \_\_\_\_\_

GRANITE DELLS ESTATES PROPERTIES II, LLC,  
an Arizona corporation

**Deleted:** limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
County of Yavapai        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me, the undersigned Notary Public, personally appeared **Rowle P. Simmons, Mayor of the City of Prescott**, personally known to me or proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged that he executed it.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
County of Yavapai        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me, the undersigned Notary Public, personally appeared **Michael W. Fann**, who acknowledged himself to be the President of **GRANITE DELLS ESTATES PROPERTIES, INC.**, an Arizona corporation, and that he, as such President, being authorized so to do, executed the foregoing instrument for the purpose therein contained.

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Notary Public

My Commission Expires:

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STATE OF ARIZONA     )  
  ) ss.  
County of Yavapai     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me, the undersigned Notary Public, personally appeared **Michael W. Fann**, who acknowledged himself to be the President of GRANITE DELLS ESTATES PROPERTIES II, INC., an Arizona corporation, and that he, as such President, being authorized so to do, executed the foregoing instrument for the purpose therein contained.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
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