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Town of Prescott Valley
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Prescott Valley, AZ 86314

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RESOLUTION NO. 1472

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PRESCOTT VALLEY, A MUNICIPAL CORPORATION OF ARIZONA, APPROVING AND ADOPTING A FINAL DEVELOPMENT PLAN (FDP05-030) FOR NAVAJO COMMONS PLANNED AREA DEVELOPMENT (PAD) COMPRISING AN APPROXIMATELY TWENTY SIX (26) ACRE PARCEL LOCATED AT THE NORTHEAST CORNER OF FLORENTINE ROAD AND NAVAJO DR.; PROVIDING FINDINGS OF FACT IN SUPPORT OF SUCH APPROVAL PER TOWN CODE SUBSECTION 13-19-060(K); PROVIDING CONDITIONS FOR SUCH APPROVAL PER SUBSECTION 13-19-060(L); AND PROVIDING THAT THIS RESOLUTION SHALL BE EFFECTIVE AFTER ITS PASSAGE AND APPROVAL ACCORDING TO LAW.

WHEREAS, the DEVELOPER owns approximately twenty-six (26) acres of real property located in Yavapai County, Arizona, described in "Exhibit A" attached hereto ("SUBJECT PROPERTY"); and

WHEREAS, the SUBJECT PROPERTY was approved for C2-PAD zoning with a Preliminary Development Plan in March, 1981 (with said approval being revised in October, 1981) and is currently zoned C2-PAD per Ordinance No. 66; and

WHEREAS, a "C2" (Commercial; General Sales and Services) District is intended to provide for retail and service establishments to meet the TOWN's needs [TOWN Code §13-14-010]; and

WHEREAS, a "PAD" (Planned Area Development) District is an overlay zoning district which can be combined with underlying zoning districts to permit single projects to be designed in accordance with PAD plans to give greater flexibility in the distribution of uses and provide maximum choice of environments, units and facilities while preserving open space and natural features [TOWN Code Article 13-19]; and

WHEREAS, Article 13-19 of the TOWN Code requires a Preliminary Development Plan ("PDP") to be approved before any use is permitted in a PAD district, showing at least (a) the relationship to surrounding areas, (b) street systems, lot lines and topography, (c) land uses, (d) site plans for buildings and common open areas; (e) preliminary plans and elevations of all building types; (f) off-street parking and circulation, (g) the number of acres and overall density per acre, and (h) CC&R's; and



WHEREAS, the DEVELOPER has submitted to the TOWN a PDP for the development of the SUBJECT PROPERTY as a commercial/retail subdivision, consistent with its C2-PAD zoning and in accordance with Article 13-19 of the Town Code; and

WHEREAS, the DEVELOPER'S PDP 05-001 was approved by the Town's Planning & Zoning Commission on April 11, 2005; and

WHEREAS, on or about November 22, 2005, Tim Hopps, Agent submitted a Final Development Plan (FDP05-030), for an approximately twenty-six (26) acres subdivision to be known as "Navajo Commons" which delineates the roadways for Navajo Commons, along with necessary public utility easements on the property; and

WHEREAS, the Mayor and Council finds that this Final Development Plan for the development of approximately twenty-six (26) acres, known as "Navajo Commons", meets or will meet the requirements for commercial PADs under the Town Code [particularly the requirements under Town Code §§13-19-060(K), (L) and (M), 14-020-050(F), and 14-04-080] upon compliance with certain conditions set forth herein;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the Town of Prescott Valley, Arizona, as follows:

1. That certain Final Development Plan (FDP05-030) for the "Navajo Commons" development, submitted on or about November 22, 2005 by Tim Hopps (said Plan being attached hereto and made a part hereof), is hereby approved and adopted as conditioned hereinafter.

2. Said approval is based upon the following findings and conclusions of the Mayor and Common Council:

- (A) This development is consistent with the purpose and intent of the General Plan and Zoning Code of the Town in promoting the health, safety, morals and general welfare of the public;
- (B) This development appears to be designed to produce an environment of stable and desirable character and the property adjacent to this proposed development will not be adversely affected thereby, particularly with regard to property values;
- (C) Every structure containing commercial units in this development does appear to have adequate access to public streets; and
- (D) The average density, excluding open areas occupied by streets, is the density required by the pre-existing zoning district regulation otherwise applicable to the site.

3. Pursuant to Town Code §§13-19-060(L) and 14-054-080(A), said approval is conditioned upon the following:



- (A) Compliance with Ordinance No, 66 and approved preliminary development plans for "Navajo Commons";
- (B) Compliance with the Development Agreement between the Town and Slade Investments, L.L.C, dated December 7, 2006; and
- (C) Approval by the Town Engineer (or his designee) of the engineering plans for the for "Navajo Commons" development, including approval as to the form and adequacy of the subdivider assurances required in Town Code §14-04-080 and otherwise (including the financial assurances).

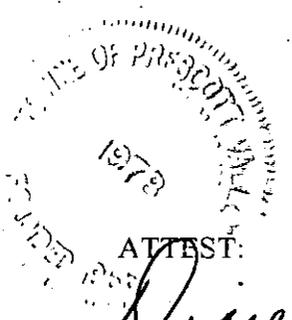
4. The Town Clerk is hereby directed to (a) transcribe a certificate of approval upon this Final Development Plan (Final Plat) pursuant to Town Code §14-02-050(F)(2), (b) ensure that all other required certifications are on said Plan (Plat), (c) record the same in the Office of the Yavapai County Recorder, and (d) file the same as an official Plan of the Town in the offices of the Town Clerk and Community Development Director only upon approval by the Town Engineer of the engineering plans and subdivider assurances for the development [See Town Code §§13-19-060(O) and 14-02-050 (F) (3) & (4)].

5. The Mayor (or, in his absence, the Vice-Mayor) is hereby authorized to sign any and all agreements and other documents necessary to ensure that the "Navajo Commons" developers provide all needed financial and other assurances as to construction of required improvements.

6. The Town hereby accepts any property interests which may have been conveyed to the Town in relation to this Final Development Plan (Final Plat) by separate deed prior to or contemporaneous with this approval.

7. This Resolution shall be effective after its passage and approval according to law.

RESOLVED by the Mayor and Common Council of the Town of Prescott Valley, Arizona, this 7th day of December 2006.



SEAL

Harvey C. Skoog
Harvey C. Skoog Mayor

ATTEST:

Diane Russell
Diane Russell, Town Clerk



B-4493 P-673
Page: 4 of 16
RESL 4122528

APPROVED AS TO FORM:


Ivan Legler, Town Attorney



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Page: 5 of 16
RESL 4122528

LEGAL DESCRIPTION

PARCEL "A25"

PARCEL "A25" of that certain Record of Survey, recorded in Book 126 of Land Surveys at Page 34, Y.C.R.O., being within Section 13, T. 14 N., R. 1 W., G.&S.R.M., Yavapai County, AZ.

CONTAINING 25.87 ACRES, MORE OR LESS



LEGAL DESCRIPTION

PARCEL "A25-2"

PARCEL "A25-2" of that certain Record of Survey, recorded in Book
of Land Surveys at Page , Y.C.R.O., being within Section 13, T. 14 N.,
R. 1 W., G.&S.R.M., Yavapai County, AZ.

CONTAINING 21,780 S.F., MORE OR LESS.



LEGAL DESCRIPTION

PARCEL "A25-3"

PARCEL "A25-3" of that certain Record of Survey, recorded in Book
of Land Surveys at Page , Y.C.R.O., being within Section 13, T. 14 N.,
R. 1 W., G.&S.R.M., Yavapai County, AZ.

CONTAINING 28,870 S.F., MORE OR LESS.



LEGAL DESCRIPTION

PARCEL "A25-4"

PARCEL "A25-4" of that certain Record of Survey, recorded in Book of Land Surveys at Page , Y.C.R.O., being within Section 13, T. 14 N., R. 1 W., G.&S.R.M., Yavapai County, AZ.

CONTAINING 17,860 S.F., MORE OR LESS.



LEGAL DESCRIPTION

PARCEL "A25-5"

PARCEL "A25-5" of that certain Record of Survey, recorded in Book of Land Surveys at Page , Y.C.R.O., being within Section 13, T. 14 N., R. 1 W., G.&S.R.M., Yavapai County, AZ.

CONTAINING 190,061 S.F., (4.3632 ACRES), MORE OR LESS.



SUBDIVISION AGREEMENT Town of Prescott Valley, Arizona

THIS SUBDIVISION AGREEMENT, enter into this 7 day of 12, 2006, by and between the TOWN OF PRESCOTT VALLEY, a municipal corporation of Arizona (hereinafter the "Town"), and Slade Investments., an Arizona limited liability company, and owner of Navajo Commons (hereinafter the "Subdivision Owner");

WITNESSETH:

WHEREAS, Subsection 14-04-080(A) of the Prescott Valley Town Code requires that, upon approval of a Final Plat by the Town Council, subdividers shall execute an agreement providing for (a) construction of subdivision improvements in practical increments of lots and/or roads (accounting for drainage, traffic movement and other services), if any, (b) Town staff approval of improvement plans, time limits for construction of each improvement increment (and conditions for any time extensions), (c) the types of assurances to be given for construction of each improvement increment [in accordance with Subsection 14-04-080(B)], (d) standards for making progress payments to subdividers from cash deposits (if any), (e) recovery of construction costs from subdividers if the Town must complete abandoned improvements, (f) Town staff inspection of improvement construction, and (g) "release" of lots from construction increments only when improvement assurances are posted; and

WHEREAS, Subsection 14-04-080(B) of the Town Code requires subdividers to provide improvement assurances by (a) depositing an amount in cash or providing an approved surety bond equal to the cost of the work of each recorded improvement increment, or (b) delivering an agreement between subdividers and an approved lending institution to the effect that (i) all funds necessary to construct the improvements are on deposit with the institution for the subdividers, (ii) the funds will only be used for the purpose of installing the improvements, (iii) the Town is a third-party beneficiary of the agreement, and (iv) the Town Engineer may approve all fund disbursements; and

WHEREAS, Article 14-04 "Street and Utility Improvement Requirements" of the Town Code indicates that certain off-street and utility improvements may be necessary as a condition of subdivision approvals; and

WHEREAS, the assurances required in Subsection 14-04-080 of the Town Code relate to any and all improvements needed for the construction of subdivision increments (both on and off-site), so that Subsection 14-04-080 provides adequate authority for the Town to require execution of a subdivision agreement and provision of necessary financial assurances for off-site improvements as well as on-site improvements; and

WHEREAS, on December 7, 2006, the Mayor and Council of the Town of Prescott Valley adopted Resolution No. ~~1472~~ approving the Navajo Commons Final Development Plan (Final Plat) FDP05-030 involving roadways and other public improvements; and

WHEREAS, Resolution No. ~~1472~~ authorized the Mayor (or, in his absence, the Vice-Mayor) to sign all documents necessary for the Subdivision Owner to provide needed financial and



other assurances as to the construction of subdivision improvements as well as off-site deferred improvements;

NOW, THEREFORE, for and in consideration of the mutual covenants and promises herein, the parties hereto agree as follows:

Section 1. Construction. Development of Navajo Commons involves the construction of the private streets shown on the Final Development Plan, construction of the on and off-site sewer collection systems needed for the property involved, and to extend public infrastructure and utilities along and in accordance with approved engineering plans.

Section 2. Plan Approvals. Prior to construction of any portion of the Navajo Commons, Final Development Plan (Final Plat) approval of the engineering plans for any and all improvements required for all construction phases shall first be obtained from appropriate Prescott Valley Town staff.

Section 3. Construction Timing. The improvements shall be completed by the Subdivision Owner (or its agents or assigns) within eighteen (18) months after the Navajo Commons Final Development Plan (Final Plat) is recorded in the Office of the Yavapai County, Arizona Recorder. Extensions of this time limitation may be granted by the Town Manager (or his/her designee), but only under the following conditions:

- a) inclement weather of such nature that construction reasonably could not continue;
- b) unavailability of construction materials which are reasonably beyond the control of the Subdivision Owner (or its agents or assigns);
- c) delays caused by utility company installation schedules which are reasonably beyond the control of the Subdivision Owner (or its agents or assigns);
- d) any other "force majeure" which, in the opinion of the Town Manager (or his/her designee), makes it physically impossible for the Subdivision Owner (or its agents or assigns) to finish construction as scheduled; or
- e) any delay or failure of the Town to (i) install or construct off-site or on-site improvements to serve Subdivision Owner's property as set forth in the Development Agreement; or (ii) timely approve Subdivision Owner's reasonable requests for permits, licenses, inspections or other requirements of the Town.

Note that financial inability or impossibility is expressly not a basis for granting any extension of this time limitation. Note also that any time extensions granted may not exceed the number of days during which the condition actually lasted.

Finally, the Subdivision Owner expressly agrees that if the required assurances for improvements in the Navajo Commons Final Development Plan (Final Plat) are not delivered as set forth in this Subdivision Agreement within five (5) years after the Navajo Commons Final



Development Plan (Plat) is recorded in the Office of the Yavapai County, Arizona Recorder, then any parcels for which the required assurances have not been delivered shall automatically revert to un-platted land, and the Subdivision Owner expressly approves in advance by its execution of this Subdivision Agreement the necessary Reversionary Plat(s) authorized by the Town Council to be recorded in the Office of the Yavapai County, Arizona Recorder to formalize such reversion.

Section 4. Construction Assurances. The types of assurances to be given for construction of off-site improvements shall only be those set forth in Subsection 14-04-080(B) of the Town Code. All assurance documents must be approved as to form by the Town Attorney, and fully-executed assurance documents for Navajo Commons must be deposited in the Office of the Town Clerk before the Clerk shall record the Navajo Commons Final Development Plan (Plat).

The assurance amounts for the respective on-site improvements for each construction phase shall be as follows:

<u>Interim Improvements for Navajo Commons</u>	<u>\$32,520.70</u>
TOTAL ASSURANCE AMT.	<u>\$32,520.70</u>
TOWN INSPECTION FEES \$	\$5,464.00
<small>(Inspection fee payment due in conjunction with assurances)</small>	

Section 5. Contingency for Town Completion. In addition to any right or remedy available to the Town in any assurance document, arrangement, or agreement, the Subdivision Owner hereby expressly agrees to indemnify and hold the Town harmless from any and all costs or liabilities incurred by the Town, its agents or assigns, over and above what the Town may recover under any assurance documents, arrangements, or agreements, because the Town constructed or finished construction of any or all improvements (on and off-site) required of Subdivision Owner as approved in the Navajo Commons Final Development Plan (Final Plat) because said improvements were abandoned, left incomplete, or never commenced by the Subdivision Owner (or its agents or assigns). Furthermore, the Subdivision Owner agrees to pay all reasonable costs of whatever nature the Town may incur (including reasonable attorneys' fees) in enforcing collection of said construction costs from the Subdivision Owner.

Section 6. Town Construction Approval. In accordance with applicable provisions of the Prescott Valley Town Code, construction of improvements for the Navajo Commons Final Development Plan (Final Plat) shall be subject to inspection and approval by appropriate Town staff.

Section 7. Lot Development Release. No lots or parcels in the Navajo Commons Final Development Plan (Final Plat) shall be "released" for sale prior to execution and delivery of this Subdivision Agreement and execution and delivery of the appropriate assurances (as provided hereinabove).

Section 8. Final Development Plan Recording. After compliance with any other requirements herein, the Navajo Commons Final Development Plan (Final Plat) shall be recorded



by the Town Clerk in the Office of the Yavapai County, Arizona Recorder within ten (10) business days after this Subdivision Agreement has been fully executed by the Subdivision Owner and deposited with the Town Clerk together with the required assurances.

Section 9. Conflicts with Development Agreement. In the event any provision of this Subdivision Agreement conflicts with any term, condition, or provision of the Development Agreement, the terms, conditions and provisions of the Development Agreement shall govern. By reference herein, the Development Agreement is hereby incorporated into this Subdivision Agreement, in its entirety.

Section 10. Successors-in-Interest and Assigns. This Subdivision Agreement shall inure to the benefit of and shall be binding upon the executors, administrators, legatees, devisees, heirs, successors-in-interest, and assigns of each of the parties hereto.

Section 11. Waiver. No waiver by any party of a breach of any of the terms, covenants or conditions of this Subdivision Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained. Furthermore, no delay in exercising any right or remedy shall constitute a waiver thereof.

Section 12. Costs and Attorneys' Fees. In the event any action shall be instituted between any of the parties in connection with this Subdivision Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs, including reasonable attorneys' fees.

Section 13. Savings Clause. In the event any phrase, clause, sentence, paragraph, section, or other portion of this Subdivision Agreement shall become illegal, null or void or against public policy for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Subdivision Agreement shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

Section 14. Merger Clause. This Subdivision Agreement together with the Navajo Commons Final Development Plan (Final Plat) constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

Section 15. Multiple Counterparts. This Subdivision Agreement may be executed in multiple counterparts, each of which when combined shall constitute one and the same instrument.

Section 16. Venue and Choice of Law. This Subdivision Agreement shall be governed by and construed under the laws of the State of Arizona, and shall be deemed made and entered into in Yavapai County, Arizona.

Section 17. Warranty of Authority. Slade Investments LLC represents and warrants that (a) it is an Arizona limited liability company duly organized and validly existing under the laws of the State of Arizona, (b) the execution, delivery and performance of this Subdivision Agreement has been duly authorized by the responsible members thereof, and it has a sufficient interest in the property within the Navajo Commons Final Development Plan (Final Plat) to permit it to develop



the same (directly or through its agents or assigns) and to perform its obligations under this Subdivision Agreement.

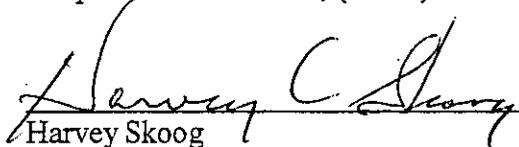
Section 18. Authority for Future Acts. Each of the parties hereto shall execute and deliver all such documents and perform all such acts as are reasonably necessary, from time to time, to carry out the matters contemplated by this Subdivision Agreement.

Section 19. No Partnership Between Parties. It is not intended by this Subdivision Agreement to, and nothing contained in this Subdivision Agreement shall, create any partnership, joint venture or other arrangement between the Subdivision Owner (or its agents) or the Town. No term or provision of this Subdivision Agreement is intended, 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.

Section 20. Conflict-of-Interest. This Subdivision Agreement may be canceled without penalty pursuant to ARS §38-511 in the event of a conflict-of-interest as described therein by any person significantly involved in negotiating this Subdivision Agreement on behalf of the Town.

IN WITNESS WHEREOF, the parties hereto have executed this Subdivision Agreement by and through their authorized representatives the day and year first-above written.

TOWN OF PRESCOTT VALLEY, a municipal Corporation of Arizona, (Town)



Harvey Skoog
Mayor

ATTEST:



Diane Russell, Town Clerk

APPROVED AS TO FORM:



Ivan Legler, Town Attorney

Slade Investments LLC., an Arizona limited liability company

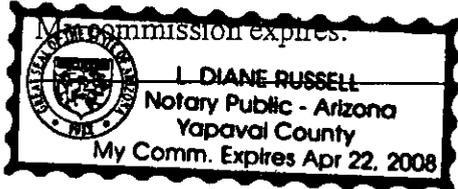
By:



By: Donna Youngsma
Its: Managing member

STATE OF ARIZONA)
)ss.
County of Yavapai)

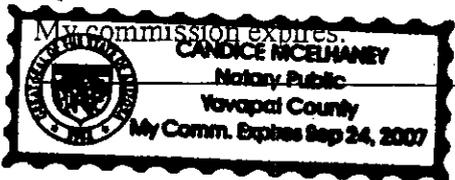
The foregoing instrument was acknowledged before me this 7 day of December, 2006, by Harvey C. Skoog the Mayor of the Town of Prescott Valley, a municipal corporation of Arizona, for and on behalf of said Town.



L. Diane Russell
Notary Public

STATE OF ARIZONA)
)ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this 3rd day of January, 2006, by Donna Youngsma the Managing member of Slade Investments LLC, an Arizona limited liability company, for and on behalf of said limited liability company.



Candice McElhany
Notary Public