When Recorded, Place in
Town of Prescott Valley Folder

RESOLUTION NO. 1729

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PRESCOTT VALLEY, A MUNICIPAL CORPORATION OF ARIZONA, ADOPTING A DEVELOPMENT AGREEMENT BETWEEN THE TOWN AND GRANVILLE DEVELOPMENT COMPANY, INC. OF PRESCOTT VALLEY. ARIZ. TO FACILITATE NEW DEVELOPMENT IN GRANVILLE UNITS III, IV, V, AND VI COMPRISING APPROXIMATELY TWO HUNDRED AND NINETY SIX (296) LOTS; AUTHORIZING THE MAYOR (OR IN HIS ABSENCE, THE VICE MAYOR) TO SIGN SAID DEVELOPMENT AGREEMENT AND ANY RELATED DOCUMENTS; AND PROVIDING THAT THIS RESOLUTION SHALL BE EFFECTIVE AFTER ITS PASSAGE AND APPROVAL ACCORDING TO LAW.

WHEREAS, ARS §9-500.05 provides for development agreements between municipalities and others for the purpose of providing for development on property and the financing of public infrastructure; and

WHEREAS, such development agreements are to be entered into by ordinance or resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PRESCOTT VALLEY, ARIZONA:

1. That that certain Development Agreement dated December 2, 2010, by and between the Town of Prescott Valley, a municipal corporation of Arizona ("Town"), and Granville Development Company, Inc. of Prescott Valley, Ariz., a corporation of Arizona (“Owner”), attached hereto and expressly made a part hereof, be hereby entered into, and that the Mayor (or, in his absence, the Vice Mayor) be hereby authorized to sign said Agreement on behalf of the Town.

2. That the Mayor (or in his absence, the Vice Mayor) be hereby authorized to sign on behalf of the Town all other documents reasonably necessary to further the purposes of this Development Agreement.

3. That this Resolution adopting the Development Agreement be effective thirty (30) days after its passage and approval according to law.

RESOLVED by the Mayor and Common Council of the Town of Prescott Valley, Arizona, this 2nd day of December, 2010.

_____
Harvey C. Skoog
Mayor

ATTEST:

_____
Diane Russell, Town Clerk

APPROVED AS TO FORM:

_____
Ivan Legler, Town Attorney

When Recorded, Place in
Town of Prescott Valley Folder

DEVELOPMENT AGREEMENT
GRANVILLE SUBDIVISION

THIS DEVELOPMENT AGREEMENT ("Agreement"), entered into this 2nd day of December, 2010, by and between the Town of Prescott Valley, a municipal corporation of Arizona ("Town') and Granville Development Company, Inc. of Prescott Valley, Ariz., a corporation of Arizona ("Owner");

WITNESSETH:

WHEREAS, Owner has previously developed Units III, IV, V, and VI of the Granville subdivision; and

WHEREAS, by Resolution No. 931 (dated December 16, 1999), the Town Council adopted a Development Agreement and an effluent use agreement with the Owner for the Granville subdivision; and

WHEREAS, WHEREAS, at its regular meetings held December 16, 1999 and January 13, 2000, the Town Council approved Ordinance No. 482 adopting requested re-zoning, with conditions, for the Granville Subdivision; and

WHEREAS, a special referendum election was held on May 16, 2000 which confirmed the re-zoning adopted by Ordinance No. 482; and

WHEREAS, on December 6, 2002, the Town Council adopted Resolution No. 1053 approving a Final Development Plan (Final Plat) for Granville Unit I, involving two-hundred, thirty-six (236) lots on approximately seventy-three (72.9) acres; and

WHEREAS, on August 8, 2002, the Town Council adopted Resolution No. 1107 approving a Final Development Plan (Final Plat) for Granville Unit IA, involving ninety-one (91) lots on twenty-five (25) acres; and

WHEREAS, on July 31, 2003, the Town Council adopted Resolution No. 1206 approving a Final Development Plan (Final Plat) for Granville Unit II, involving two hundred fifty (250) lots on ninety-four (94) acres; and

WHEREAS, on November 11, 2003, the Town Council adopted Resolution No. 1230 approving a Final Development Plan (Final Plat) for Granville Unit IIA, involving one hundred nineteen (119) lots on forty (40) acres; and

WHEREAS, on March 3, 2004, the Planning and Zoning Commission approved a Preliminary Development Plan (PDP04-001) for Granville Unit III; and

WHEREAS, on December 2, 2004, the Town Council adopted Resolution 1306 approving a Final Development Plan (Final Plat) for Granville Unit III, involving three hundred, thirty-nine (339) lots on ninety-four (94) acres; and

WHEREAS, on March 23, 2005, the Town Council adopted Resolution 1415 approving a Final Development Plan (Final Plat) for Granville Unit V, involving one hundred, fifty six (156) lots on approximately thirty (30) acres; and

WHEREAS, on April 27, 2006, the Town Council adopted Resolution 1424 approving a Final Development Plan (Final Plat) for Granville Unit IV, involving one hundred and two (102) lots on approximately thirty three (33) acres; and

WHEREAS, on July 13, 2007, the Town Council adopted Resolution 1449 approving a Final Development Plan (Final Plat) for Granville Unit VI, involving two hundred and six (206) lots on approximately sixty eight (68) acres; and

WHEREAS, the worldwide economic slowdown has since halted new development within the Granville subdivision; and

WHEREAS, the Owner has recently indicated that certain housing products appear to be attracting new buyers in Maricopa County, and might be successful in this area. However, it remains difficult (if not impossible) to receive bank financing for any new construction. Construction of this new housing product would likely require the Owner to use cash financing. Although the Town's development impact fees and water/wastewater connection charges only represent about eighty-five hundred dollars ($8,500) of the total cost per residential unit, paying these fees up front before there is certainty of a buyer adds to the risk involved. If that particular risk were removed, it would at least remove that deterrent from possible construction of this new residential product; and

WHEREAS, ARS §9-463.05(B)(3) permits Arizona municipalities to enter into development agreements deferring payment of development impact fees past the issuance of construction permits, with provision for appropriate security; and

WHEREAS, ARS §9-511.01 authorizes the adoption of certain water and wastewater capacity charges by municipalities, and deferral of collecting such charges within the confines of any bond covenants that may be entered into with regard to construction of needed public improvements; and

WHEREAS, in recent years the Town has used the option of deferring collection of these fees with certain developers in order to encourage needed development, including the developer of multi-unit housing in the Downtown to assist him in obtaining financing through the federal programs involved; and

WHEREAS, undeveloped lots in Units III, IV, V and VI of the Granville subdivision have been identified for potential development with the new housing type, as shown in Exhibit "B" attached hereto and expressly made a part hereof; and

WHEREAS, the Community Development Department has provided calculations of the Town's fees and charges typically applied to individual building permits to develop residential units in the Granville subdivision, as shown in Exhibit "A" attached hereto and expressly made a part hereof; and

WHEREAS, the Owner proposes in accordance with this new Agreement to pay development impact fees and water/wastewater system capacity charges ("Deferred Fees & Charges") prior to receiving a final inspection and Certificate of Occupancy (C of O) for the residential structure; and

WHEREAS, the Owners further proposes to offer as risk mitigation collateral, fully developed lots shown on Attachment "B" within the Granville Subdivision, based on an appraised value, in at least the amount of the Deferred Fees and Charges on any active building permits issued under the Agreement; and

WHEREAS, the Town Council has determined that this Agreement is consistent with the goals of *General Plan 2020*, the Affordable Housing Strategy, and is otherwise in the best interests of the health, safety, and welfare of the community:

NOW, THEREFORE, for and in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto agree as follows:

SECTION ONE. Recitals. That each of the recitals set forth above are hereby incorporated into and made a part of this Agreement and the parties acknowledge the accuracy and correctness of said recitals.

SECTION TWO. Property. That this Agreement shall apply to the real property described in Exhibit "B" attached hereto and expressly made a part hereof ("Property").

SECTION THREE. Effective Date and Term. That this Agreement shall be effective from the date of approval to and including June 30, 2012 ("Term").

SECTION FOUR. Owner Performances. The Owner agrees to do the following:

A. Finance, design, construct, and arrange for sale of approved residential structures on lots within the Property during the Term, except as provided hereinafter.

B. Pay when due all applicable fees and charges of the Town in accordance with applicable statutes, Town Code provisions and Town regulations, except as expressly set forth in SECTION FIVE below.

C. Offer as risk mitigation collateral, certain fully-developed lots within the Property, based on an appraised value provided by the Owner, in at least the amount of the Deferred Fees and Charges, using forms approved by the Town, for each Building Permit(s) issued under this Agreement; and

The parties hereto expressly acknowledge that these covenants touch and concern the Property, and that there is privity of estate between the Town and Owner. However, notwithstanding anything to the contrary herein, Owner is not obligated to actually develop any lots with new residential housing types under this Agreement.

SECTION FIVE. Town Performances. That the Town hereby agrees to do the following:

A. Defer payment of Deferred Fees and Charges as set forth in Exhibit "A", so that necessary Building Permits may be issued without prior payment of Deferred Fees and Charges, until applicable units are ready for final inspections prior to issuance of a Certificate of Occupancy, at which time Owner shall pay all applicable Deferred Fees and Charges.

SECTION SIX. Default. That failure or unreasonable delay of any party to act in accord with any provision of this Agreement for thirty (30) calendar days ("Cure Period") following written notice from any other party given in accordance with SECTION NINE hereinafter shall constitute an "Event Of Default". The notice shall specify the nature of the alleged Event of Default and the manner in which said Event of Default may be satisfactorily cured, if possible. [Note, however, that if an action under this Agreement would normally require more than 30 calendar days to complete, the responsible party shall have reasonable additional time beyond 30 days in which to comply.]

In the event of an Event Of Default where a party fails to act in accord with any substantial provision of this Agreement and such Event of Default is not cured within the Cure Period, the non-defaulting party may exercise all rights and remedies available to each of them at law or in equity including, without limitation, the right to specifically enforce any term or provision hereof and/or the right to institute an action for damages (but expressly excluding the right to unilaterally terminate this Agreement).

Any dispute arising under this Agreement may be subject to arbitration in accordance with ARS §12-1501 et seq., but only if mutually agreed to by the parties directly involved in the dispute. All disputes shall be governed by Arizona law.

SECTION SEVEN. Mutual Indemnification and Hold Harmless. That, to the fullest extent permitted by law, the Town agrees to defend, indemnify and hold the Owner and its officers, directors, members, managers, officials, employees, agents, successors, and assigns from and against any and all claims, demands, suits, settlements, judgments, losses, costs, expenses, damages, and liabilities of every kind and description (including, without limitation, attorneys' fees, court costs and the cost of appellate proceedings) relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Town, its officers, directors, members, managers, officials, employees, agents, and assigns, in the performance or non-performance of this Agreement. The Town's duty to defend, hold harmless and indemnify the Owner, its officers, directors, members, managers, officials, employees, agents, successors, and assigns shall arise in connection with any claims, demands, suits, settlements, judgments, losses, costs, expenses, damages, or liabilities that are attributable to

bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property (including loss of use resulting therefrom), caused by the acts, errors, mistakes, omissions, work or services of the Town, its officers, directors, members, managers, officials, employees, agents, and assigns, or any other person for whose acts, errors, mistakes, omissions, work or services the Town may be legally liable, in the performance or non-performance of this Agreement.

To the fullest extent permitted by law, the Owner agrees to defend, indemnify and hold harmless the Town and its officers, directors, members, managers, officials, employees, agents, successors, and assigns from and against any and all claims, demands, suits, settlements, judgments, losses, costs, expenses, damages, and liabilities of every kind and description (including, without limitation, attorneys' fees, court costs and the cost of appellate proceedings) relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Owner, its officers, directors, members, managers, officials, employees, agents, and assigns, in the performance or non-performance of this Agreement. The Owner's duty to defend, hold harmless and indemnify the Town and its officers, directors, members, managers, officials, employees, agents, successors, and assigns shall arise in connection with any claims, demands, suits, settlements, judgments, losses, costs, expenses, damages, or liabilities that are attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property (including loss of use resulting therefrom), caused by the acts, errors, mistakes, omissions, work or services of the Owner, its officers, directors, members, managers, officials, employees, agents, and assigns, or any other person for whose acts, errors, mistakes, omissions, work or services the Owner may be legally liable, in the performance or non-performance of this Agreement.

Notwithstanding any other provision of this Agreement, this SECTION SEVEN shall continue in full force and effect beyond any termination of the Agreement. The amount and type of insurance coverages required hereinafter shall not be construed as limiting the scope of the indemnity in this SECTION SEVEN.

SECTION EIGHT. Insurance. That, without limiting any liabilities or other obligations of the parties hereunder, each party shall, prior to commencing its performances under this Agreement, secure and continuously carry with insurers authorized to do business in Arizona and possessing a current A.M. Best, Inc. Rating of B++6 or better, the following insurance coverages:

A. Commercial General Liability insurance with a limit of not less than $1,000,000.00 for each occurrence, with a $2,000,000.00 Products/Completed Operations Aggregate and a $2,000,000.00 General Aggregate Limit. The policy shall include coverage for:

1. Bodily Injury

2. Broad Form Property Damage

3. Personal Injury

4. Products and Completed Operations, and

5. Blanket Contractual (including, but not limited to, the liability assumed under the indemnification provisions of this Agreement).

The coverage shall be at least as broad as Insurance Service Office, Inc. Policy Form CG 00011093 or any replacements thereof. The coverage shall not exclude X,C,U. The additional insured endorsement required hereinafter shall be at least as broad as the Insurance Office, Inc's Additional Insured, Form B, CG20101185, and shall include coverage for the party's operations and products and completed operations.

These insurance policies shall name each other party and its officers, officials, employees, agents, successors, and assigns, as Additional Insureds.

The insurance policy required herein shall be maintained in full force and effect throughout the Term of this Agreement. Failure to do so may, at the sole discretion of either party, constitute a default under SECTION SEVEN of this Agreement. The insurance policy required herein shall be primary insurance, and any insurance or self-insurance maintained by either party shall not contribute to it. The insurance policy required herein shall contain a waiver of transfer rights of recovery (subrogation) against a party, its officers, officials, employees, agents, successors, and assigns, for any claims arising out of the other party's performances under this Agreement. The insurance policy may provide coverage which contains deductibles or self-insured retentions. However, such deductibles and/or self-insured retentions shall not be applicable with respect to the coverage provided to the other party under such policy. Each party shall be solely responsible for deductibles and/or self-insured retentions and each party, at its option, may require the other party to secure the payment of more than $50,000.00 of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

Each party reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the herein-required insurance certificates and/or endorsements of the other party. Prior to commencing its performances under this Agreement, each party shall furnish the other with Certificates of Insurance, or formal endorsements as required by this Agreement, issued by each party's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect. Insurance evidenced by the Certificates of Insurance shall not expire, be canceled, or be materially changed without 30 days’ prior written notice to the other party. If a policy does expire during the term of this Agreement, a renewal certificate must be sent to the other party 30 days prior to the expiration date and/or at the time of renewal of said policy.

In the event the insurance policy required by this Agreement is written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of any work or services contemplated hereunder, as evidenced by annual Certificates of Insurance.

SECTION NINE. Notices. That, unless otherwise specifically provided herein, all notices, demands or other communications relating to this Agreement shall be in writing, and given to the other party as follows: (i) personal delivery; or (ii) established overnight commercial courier with delivery charges prepaid or duly charged; or (iii) registered or certified mail, return receipt requested, first class postage prepaid. All notices shall be addressed to the addresses set forth below, or to such addresses or addressee as any party entitled to receive notices under this Agreement shall designate, from time to time, by notice given to the parties in the manner provided in this SECTION NINE.

Town: Town of Prescott Valley
c/o Town Manager
7501 East Civic Circle
Prescott Valley, AZ 86314

Owner: Granville Development Company, Inc. of Prescott Valley, Ariz.
c/o Joseph Contadino, President
23335 N. 18th Drive, Ste. 122
Phoenix ,AZ 85027

Notices given by personal delivery shall be presumed to have been received upon tender to the applicable party at the address set forth above. Notices given by overnight courier shall be presumed to have been received upon the date of delivery as shown by the receipt from the courier. Notices given by mail shall be presumed to have been received on the third (3rd) day after deposit into the United States Postal System.

SECTION TEN. Amendments. That this Agreement may be amended only by a written agreement fully executed by each of the parties hereto.

SECTION ELEVEN. Successors-In-Interest/Assignment. That this Agreement shall inure to the benefit of and shall be binding upon the successors-in-interest of each of the parties hereto, pursuant to ARS §9-500.05(D). Either of the parties to this Agreement may assign all or any portion of its rights hereunder to any one (1) or more persons or entities, on such terms and conditions as that party may deem appropriate. Provided, however, that no party may convey all or any portion of its rights hereunder unless either (a) the corresponding obligations of that party are completely assumed by the assignee of the party's rights, the assignee accepts such obligations and demonstrates its ability to perform them, and the obligations are specifically listed in the assignment, or (b) the party remains personally obligated to perform said corresponding obligations after such assignment. Otherwise, any such assignment shall be void.

SECTION TWELVE. Waiver of Breach. That no waiver by any party of a breach of any of the terms, covenants or conditions of this 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.

SECTION THIRTEEN. Attorneys' Fees. That, in the event any action shall be instituted between the parties in connection with this Agreement, the party prevailing in such action shall

be entitled to recover from the other party all of its taxable and nontaxable costs, including reasonable attorneys' fees and expert witness fees.

SECTION FOURTEEN. Savings Clause. That, in the event any phrase, clause, sentence, paragraph, section, article or other portion of this 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 Agreement shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

SECTION FIFTEEN. Governing Law and Venue. That this 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.

SECTION SIXTEEN. Town's Warranties. That the Town represents and warrants that (a) it is a validly existing and incorporated municipal corporation of the State of Arizona, (b) its execution, delivery and performance of this Agreement has been duly authorized and entered into in compliance with its Town Code and applicable Arizona statutes, and (c) no further action needs to be taken in connection with such execution.

SECTION SEVENTEEN. Owner's Warranties and Obligations. That the Owner warrants that (a) it is a corporation of the State of Arizona, fully organized, validly existing and in good standing under the laws of the State of Arizona, (b) the execution, delivery and performance of this Agreement has been duly authorized by the Board of Directors thereof, and (c) it has or anticipates that it will have a sufficient unencumbered interest in the Property upon which the development described hereunder will be located to permit it to carry out the obligations of this Agreement.

SECTION EIGHTEEN. Force Majeure. That the obligations of the parties hereunder to perform under this Agreement are subject to prevention by sickness, accident, Act of God, fire, riot, epidemic, interruption or delay of transportation, strikes, labor difficulties, any acts or orders of any public authority having jurisdiction (other than the Town), or any similar cause beyond the parties' control. To the extent that a party's non-performance is based upon one of the above-listed reasons, the same shall not be an Event of Default under SECTION SEVEN hereinabove.

SECTION NINETEEN. Further Performances. That 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 Agreement.

SECTION TWENTY. No Partnership or Third-Party Beneficiary. That it is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other similar arrangement between or among the parties. 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.

SECTION TWENTY-ONE. Integration. That this Agreement 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 TWENTY-TWO. Multiple Counterparts. That this Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

SECTION TWENTY-THREE. Recording. That this Agreement shall be recorded in the Office of the County Recorder of Yavapai County, pursuant to ARS §9-500.05(D).

SECTION TWENTY-FOUR. Conflict-of-Interest. That this 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 Agreement on behalf of the Town or the District.

IN WITNESS WHEREOF, the parties hereto have executed this 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 C. Skoog
Mayor

ATTEST:

_____
Diane Russell, Town Clerk

APPROVED AS TO FORM:

_____
Ivan Legler, Town Attorney

GRANVILLE DEVELOPMENT COMPANY, INC. OF PRESCOTT VALLEY, ARIZ., a corporation of Arizona ("Owner")

_____

Joseph Contadino,
President

STATE OF ARIZONA)
) ss:
County of Yavapai)

The foregoing instrument was acknowledged before me this ___ day of _____, 2010, by Harvey C. Skoog, Mayor of the Town of Prescott Valley, a municipal corporation of Arizona, on behalf of said municipal corporation.

_____
Notary Public

My Commission Expires:
_____

STATE OF ARIZONA)
) ss:
County of Yavapai)

The foregoing instrument was acknowledged before me this ___ day of _____, 2010, by Joseph Contadino, President of Granville Development Company, Inc. of Prescott Valley, Ariz., a corporation of Arizona, on behalf of said corporation.

_____
Notary Public

My Commission Expires:
_____

EXHIBIT "A"

"Fees"

Granville Residential Unit Fee:

Impact fees	**$6857.00- $1716.00 Credit for parks**	**$5141.00**
Water meter	**$415.00**	**$415.00**
Water Cap	**$1,311.00 Credit for water fee**	**$ 0.00**
Water Res	**$1,526.00**	**$1526.00**
Waste Water	**$3,162**	**$3162.00**
Total Fees per Lot To Be Deferred		**$10,244.00**

EXHIBIT "B"

“Property”

Subject Unbuilt and Fully Developed Lots in Granville Master Plan

Unit 3		Unit 4		Unit 5		Unit 6	
Lot Numbers	Total Lots	Lot Numbers	Total Lots	Lot Numbers	Total Lots	Lot Numbers	Total Lots
696	1	1045-1046	2	1144-1157	14	1293-1301	9
728-733	6	1048-1051	4	1181-1213	33	1305-1321	17
820-822	3	1053	1	1218-1241	24	1340-1345	6
825	1	1055-1062	8	1246-1251	6	1364-1372	9
829-830	2	1082-1125	44	1266-1281	16	1382-1384	3
854	1			1288-1291	4	1388-1452	65
						1454	1
						1460	1
						1473-1479	7
						1481-1485	5
						1493-1494	2
						1498	1
	14		**59**		**97**		**126**