



CITY COUNCIL SPECIAL MEETING AGENDA

**PRESCOTT CITY COUNCIL
SPECIAL MEETING
Friday, November 30, 2007
3:00 PM**

**Council Chambers
Prescott City Hall
201 S. Cortez Street
Prescott, Arizona**

The Prescott City Council will be holding a **SPECIAL MEETING**, to be held in the Council Chambers at Prescott City Hall, 201 S. Cortez Street, Prescott, Arizona, pursuant to the Prescott City Charter, Article II, Section 13. Notice of this Prescott City Council Special Meeting is given pursuant to Arizona Revised Statutes, Section 38-431.02.

PLEASE NOTE: Comments from the public regarding any item on the agenda will be limited to five (5) minutes. Please refer to the Clerk's desk for the timing sequence of the lighting signals: **GREEN** at the beginning of comments, **YELLOW** with one minute remaining, and **RED** when time has ended.

- I. Call to Order.
- II. Roll Call.

MAYOR AND CITY COUNCIL:

Mayor Wilson

Councilman Bell

Councilman Lamerson

Councilwoman Lopas

Councilman Luzius

Councilman Roecker

Councilwoman Suttles

III. Granite Dells Estates I & II

1. Reconsider Adoption of Resolution No. 3864-0832 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott to enter into a Pre-Annexation Development Agreement with Granite Dells Estates Properties, Inc. and Granite Dells Estates Properties II, Inc. and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.
2. Reconsider Adoption of Ordinance No. 4632-0834 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, extending and increasing the corporate limits of the City of Prescott by annexing 1,142 acres of land located south of Highway 89A and bounded on the West by the Peavine Trail, on the East by the Prescott/Prescott Valley IGA line and Granite Dells to the South and also a 16.6 acre parcel west of the Peavine Trail, which is owned by Granite Dells Estates Properties, Inc. and Granite Dells Estates Properties II, Inc., Mike Fann, and assigning zoning classifications thereto.
3. Approval of Water Service Agreement with Granite Dells Estates Properties, Inc. and Granite Dells Estates Properties II, Inc.

- IV. Adjournment.

COUNCIL AGENDA MEMO – (10/23/2007)	
DEPARTMENT:	City Manager
AGENDA ITEM:	Reconsideration of Fann Annexation / Development Agreement – Granite Dells Estates

Approved By:	Date:
Department Head:	
Finance Director: Mark Woodfill	
City Manager: Steve Norwood	

Background

The attached development agreement is essentially the same version of the one Council received on Tuesday, with one primary exception. As it relates to review and turnaround regarding subdivision plats...reasonable and best efforts were inserted. This removes a contractual obligation on the part of the City and further works to our favor. The other issues stay the same, such as how water is allocated; staff review of plans merely follows the Land Development Code. Also, Mike Fann is required to build the public improvements and the City is to reimburse Fann for these costs. These public improvements must be publicly bid.

The remedies section stays the same, but the primary risk to the City is as it relates to reimbursing Fann for the public improvements and the allocation of the water, per the density we have agreed to. I am 100% confident that the City will reimburse Mike Fann and the City will allocate water based on what is in the agreement. Overall this is much improved and I am comfortable recommending that the Mayor and City Council approve the development agreement, annexation and water service agreement.

Staff and the City Attorney will be ready to address any questions should they arise.

Recommended Action: (1) **MOVE** to adopt Resolution No. 3864-0832; (2) **MOVE** to adopt Ordinance No. 4632-0834; and (3) **MOVE** to approve the Water Service Agreement with Granite Dells Estates Properties, Inc. and Granite Dells Estates Properties II, Inc.

RESOLUTION NO. 3864-0832

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE CITY OF PRESCOTT TO ENTER INTO A PRE-ANNEXATION DEVELOPMENT AGREEMENT WITH GRANITE DELLS ESTATES PROPERTIES, INC. AND GRANITE DELLS PROPERTIES II, INC., AND AUTHORIZING THE MAYOR AND STAFF TO TAKE ANY AND ALL STEPS NECESSARY TO ACCOMPLISH THE ABOVE

RECITALS:

WHEREAS, Granite Dells Estates Properties, Inc. and Granite Dells Estates Properties II, Inc. are the owners of certain real property in the City limits; and

WHEREAS, the parties wish to enter into a Pre-Annexation Development Agreement, pursuant to ARS Section 9-500.05 relating to the development of that property.

ENACTMENTS:

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PRESCOTT AS FOLLOWS:

Section 1. THAT the City of Prescott hereby approves the Pre-Annexation Development Agreement with Granite Dells Estates Properties, Inc. and Granite Dells Estates Properties II, Inc., attached hereto as Exhibit "A".

Section 2. THAT the Mayor and staff are hereby authorized to execute the attached Pre-Annexation Development Agreement and to take any and all steps deemed necessary to accomplish the above.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 30th day of November, 2007.

ROWLE P. SIMMONS, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A. BURKE, City Clerk

GARY D. KIDD, City Attorney

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").

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 “Reimbursement Amount” means those amounts defined in this Agreement including, but not limited to those amounts, in Sections 5.02.15, 5.02.16 through 5.02.18 which is intended to include all offsite public improvements constructed by Owner pursuant to this Agreement.

2.12 “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.

2.13 “Dedication to City” shall mean that the real property shall transfer in fee title, by warranty deed, and at no cost to City.

2.14 “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.

5.01.04 **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 process all plans, permits and subdivision plats in accordance with the schedule and time frames set forth in the City of Prescott's Land Development Code and applicable City of Prescott policies and time frames applicable to similar developments. 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.

5.02 **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.

5.02.01 **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.

5.02.02 **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.

5.02.03 **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.

5.02.04 **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.

5.02.05 **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. Except for the Owner's duty to construct Public Improvements as set forth in paragraph 5.02.15, City shall have installed water production facilities or furnish potable water from an offsite source pursuant to paragraph 5.02.21 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.

5.02.06 **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 5.02.01. 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.

5.02.07 **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.

5.02.08 **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.

5.02.09 **Construction of Roadways.** Owner shall construct, at Owner's expense, Dells Ranch Road and Granite Dells Parkway, within the rights-of-way described in paragraphs 5.02.07 and 5.02.08 hereof in a three (3) lane configuration as mutually agreed to between Owner and City, which shall be dedicated to the City. At such time as the level of service on Dells Ranch Road and Granite Dells Parkway falls below mid-segment level of service C, Owner shall oversize the roads according to City Standard 609P as set forth in Exhibit E. Owner's duty to oversize shall expire fifteen (15) years after the date of this Agreement. Other roadways dedicated to the City shall be constructed in compliance with applicable City road design standards as set forth in paragraph 5.02.26. Until such time as Owner provides connectivity between Granite Dells Parkway and the Granite Dells Parkway Traffic Interchange described in paragraph 5.02.16, City shall have no 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.

5.02.10 **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. Owner, or any of its successor and assigns shall, at its sole cost and expense, shall maintain the Private Roadways, Right of Ways, and Drainage facilities to City Standards.

5.02.11 **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.

5.02.12 **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.

5.02.13 **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.

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

5.02.15 **Owner Construction of Offsite Public Improvements.** In connection with its development of the Property, Owner will construct or install or cause to be constructed or installed, to City standards, certain offsite public street and utilities improvements (collectively, the "Public Improvements"), as set forth in paragraph 5.02.16. Except as otherwise set forth in this Agreement, including, but not limited to paragraph 5.02.09, Owner shall have no further duty to construct Public Improvements nor shall the City withhold building permits of any type on the Property based on construction of additional infrastructure. The Public Improvements must be publicly bid by Owner and otherwise comply with the applicable provisions of Title 34, Arizona Revised Statutes, pursuant to plans and specifications approved by the City and all applicable provisions of City ordinances and regulations. City shall secure any necessary rights-of-way, easements, construction easements, licenses or permits required in connection with the construction of the Public Improvements. To enable the City to budget and arrange financing, not later than March 15 of each year following approval of this Agreement, Owner shall provide written notice to the City setting forth its intent to construct, and identifying the specific Public Improvements to be constructed during the subsequent period commencing July 1 of said year and extending through June 30 of the following year.

5.02.16 **Public Improvements; City Reimbursement.** Subject to the conditions set forth in Paragraphs 5.02.17 and 5.02.18 below, in consideration of the public benefits which will accrue, the City will reimburse Owner for the following Public Improvements:

(a) The "Airport Zone 18" Second Feed (SR 89/89A to Chino 12" Main)" project connecting to the City's main transmission line in the vicinity of Piñon Oaks/Pioneer Parkway and extending easterly to the SR 89/89A intersection.

(1) No later than June 30, 2008, engineering, design, specifications and bid ready plans will be completed by the City, and provided to the Owner

(2) estimated construction cost (FY 08 budget) \$1,287,000

(3) construction completion July 1, 2009

(b) The "Airport Zone 12" Main (SR 89/89A to Side Road Connector)" project connecting to the abovementioned Airport Zone 18" Second Feed project, and extending southerly to the Side Road Connector

- (1) No later than June 30, 2008, engineering, design, specifications and bid ready plans will be completed by the City and provided to the Owner for bidding and construction
- (2) estimated construction cost (FY 08 budget) \$1,125,00
- (3) construction completion target July 1, 2009

(c) the "SR 89A/Granite Dells Parkway Traffic Interchange" project, the preliminary scope of which consists of a bridge across SR 89A, intersections at each of the ramp termini on the north and south sides of 89A, and a 2-lane roadway segment to connect the traffic interchange to existing Side Road south of SR 89A

(1) No later than January 15, 2009, engineering, design, specifications and bid ready plans will be completed by the City and provided to the Owner Construction. The City will be obtain through ADOT any approval of such plans and initial permits necessary to commence the designed plans. Thereafter Owner shall be responsible for construction permits in accordance with standard construction practices.

- (2) Estimated construction cost (FY 08 budget) \$10,560,000
- (3) The City will acquire and provide the right-of-way
- (4) Construction commencement date June 30, 2009

Costs of the Owner eligible for reimbursement (the "Reimbursable Costs") means all actual, reasonable, and customary costs incurred by Owner in connection with the construction of the Public Improvements, which costs shall consist of, but not be limited to, payments to contractors and/or subcontractors and other related, costs and fees.

5.02.17 **Reimbursement Prerequisites.** The City's obligation to reimburse Owner is expressly subject to the following terms and conditions:

- (a) Award of contracts and commencement of construction by the Owner of the off-site public projects described herein.
- (b) Delivery to the City of written certification by Owner that the Public Improvements were constructed in compliance with all applicable public bidding and public notice requirements, along with written documentation of all Reimbursable Costs.
- (c) City approval (which shall not be unreasonably withheld or delayed) of all documentation provided by Owner pursuant to subsection (b) above.

The City shall have no further obligation to reimburse Owner under this Agreement unless and until all of the conditions set forth in this Section have been satisfied.

5.02.18 **Reimbursement Schedule.** The City will reimburse Owner for the Public Improvements as hereinabove described. Owner shall be entitled to submit Draw Requests to City on a monthly basis to pay all costs of construction completed and billed as of the date the draw request is submitted by Owner, less applicable retention. Reimbursement shall be based on the statutory payment provisions for public improvements set forth in A.R.S. § 34-221 *et seq.* Retention shall be held in conformance with State statutes with the final five percent (5%) released upon satisfactory completion by the Owner and acceptance of the projects by the project engineer for paragraphs 5.02.16 (a) and (b) and by ADOT for paragraph 5.02.16(c).

5.02.19 **Maintenance of Public Improvements.** Upon acceptance, City will assume responsibility for maintenance of the Public Improvements described herein which are located within City's jurisdictional limits. All warranties applicable to the construction shall inure to the benefit of the City.

5.02.20 **Mutual Benefits.** The City and Owner agree that in making the promises contained in this Agreement that certain benefits and advantages will accrue to both parties as a result of the performance of this Agreement, and that therefore this Agreement is being entered into in reliance upon the mutual benefits afforded each of the parties.

5.02.21 **Water Service.** If City does not timely construct onsite water production facilities in accord with paragraph 5.02.05 hereof, to serve development of the Property, then, except as set forth in paragraph 5.02.15, 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.

5.02.22 **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.

5.02.23 **Granite Dells Parkway Traffic Interchange.** City will obtain necessary ADOT approval of engineering design and initial ADOT permitting. Thereafter Owner shall be responsible for the normal permitting under standard construction practices pursuant to the owners' offsite construction and reimbursement provisions set forth herein.

5.02.24 **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.

5.02.25 **Other Offsite Improvements.** Except for Owner's construction of Public Improvements as specifically set forth herein, Owner shall have no further direct, financial or other responsibility for any other onsite or offsite infrastructure.

5.02.26 **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:

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

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

5.02.26.03 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.

5.02.27 **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.).

5.03 **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.

5.04 **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.

5.05 **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:

5.05.01 Rules specifically agreed to in writing by Owner;

5.05.02 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;

5.05.03 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

5.05.04 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.

5.05.05 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.

5.06 **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.

5.07 **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.

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.

Providing, however, that in the event that in any given calendar year the Property shall fail to be developed and, therefore, under existing residential subdivision allocation standards less than one-half (½) of the forty (40) acre feet will be utilized during that calendar year, the portion of the annual forty (40) acre feet available for residential development not fully utilized in that calendar year shall be retained in the City of Prescott's portfolio and carried over and shall be part of the ensuing calendar years forty (40) acre feet allotment. In the event that all or a portion of this residential allotment is not utilized during the following year, the unutilized amounts shall be returned to the portfolio pending the next years allocation. This same "rollover" process of returning unused residual amounts of the annual residential forty (40) acre feet per calendar a year allotment shall occur on an annual basis during the term of this agreement and any unused water after the 15th calendar year of this agreement shall be returned to the City as provided herein.

Notwithstanding anything to the contrary set forth herein, City agrees that no unused residual amount shall be returned to the City water portfolio which would reduce the amount of residential water available to the Owner below eighty (80) acre feet, as of the first day of each year. Additionally, return of unused residual amounts of water shall not apply to commercial water as described in paragraph 6.03.

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) _____
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, the City will use its best reasonable efforts to implement the development review process in accord with the City of Prescott's' Land Development Code and applicable city policies and timeframes applicable to similar developments. 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 5.01.04 shall be fourteen (14) days.

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. Owner specifically waives claims to damages for: (1) consequential damages limited to: (a) loss of profits; (b) loss of inventory value; (c) physical and emotional pain and suffering; (2) civil rights claims pursuant to 42, U.S.C.A. § 1983; and (3) exemplary and punitive damages.

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. 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.

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 conduct of the other party, 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

By: _____
Its: _____

GRANITE DELLS ESTATES PROPERTIES II, LLC,
an Arizona corporation

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.

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 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:

EXHIBIT A

Existing Property

ALL of Section 6, Township 14 North, Range 1 West of the Gila and Salt River Meridian, Yavapai County, Arizona, lying Easterly of the Easterly right of way of the former Atchison-Topeka and Santa Fe Railroad.

EXCEPTING from the East half of said Section 6 that portion described in Deed, Book 3895, page 269 of Official Records, Yavapai County, Arizona, being more particularly described as follows:

COMMENCING at the Northeast corner of Section 6;

Thence along the East line of Section 6, South 00°01'08" West, a distance of 1946.17 feet to a point on the South line of the right of way for Old 89A extinguished by ADOT as detailed in Book 47 of Maps and Plats, pages 3-8 of Official Records, Yavapai County, Arizona, said point being the TRUE POINT OF BEGINNING;

Thence South 00°02'08" West, a distance of 707.64 feet;

Thence South 78°03'58" West, a distance of 228.02 feet;

Thence North 07°18'58" West, a distance of 730.68 feet;

Thence North 84°34'31" East, a distance of 318 feet to the TRUE POINT OF BEGINNING.

ALL of Section 5, Township 14 North, Range 1 West of the Gila and Salt River Meridian, Yavapai County, Arizona;

EXCEPTING from the Northeast quarter that portion of Old Highway 89A abandoned to Yavapai County as detailed in Book 47 of Maps and Plats, pages 3-8 of Official Records, Yavapai County, Arizona, being more particularly described as follows:

COMMENCING at the Northeast corner of Section 5;

Thence along the East line of Section 5, South 01°11'45" East, a distance of 33.01 feet to the TRUE POINT OF BEGINNING;

Thence South 00°03'31" West, a distance of 104.47 feet;

Thence South 73°14'31" West, a distance of 40.46 feet;

Thence North 16°45'45" West, a distance of 100.00 feet;

Thence North 73°14'15" East, a distance of 70.69 feet to the TRUE POINT OF BEGINNING.

ALSO EXCEPTING from the West half of said Section 5 that portion described in Deed, Book 3895, Page 269 of Official Records, Yavapai County, Arizona, being more particularly described as follows:

COMMENCING at the Northwest corner of Section 5;

Thence along the West line of Section 5, South 00°01'08" West, a distance of 1946.17 feet to a point on the South line of the right of way for Old 89A extinguished by ADOT as detailed in Book 47 of Maps and Plats, pages 3-8 of Official Records, Yavapai County, Arizona, said point being the TRUE POINT OF BEGINNING;

Thence South 11°42'16" East, a distance of 692.26 feet;

Thence South 78°03'56" West, a distance of 143.98 feet;

Thence North 00°02'07" East, a distance of 707.64 feet to the TRUE POINT OF BEGINNING.

EXHIBIT B

Additional Property

ALL THAT PORTION OF GOVERNMENT LOT 4 AND THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 14 NORTH RANGE 1 WEST OF THE GILA AND SALT RIVER MERIDIAN, YAVAPAI COUNTY, ARIZONA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHWEST CORNER OF SECTION 6 BEING MONUMENTED BY A U.S.G.L.O. BRASS CAP AND PIPE DATED 1926, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE ALONG THE NORTH LINE OF SAID SECTION 6, ALSO BEING THE NORTH LINE OF SAID GOVERNMENT LOT 4, S.89°56'09"E., A DISTANCE OF 1,252.78 FEET TO THE NORTHEAST CORNER OF SAID LOT 4;

THENCE CONTINUE S.89°56'09"E. ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 6, A DISTANCE OF 301.30 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY OF THE FORMER ATCHISON, TOPEKA AND SANTA FE RAILROAD;

THENCE LEAVING SAID NORTH LINE AND ALONG SAID WESTERLY RIGHT OF WAY, S.13°15'58"W., A DISTANCE OF 41.69 FEET;

THENCE CONTINUE ALONG SAID RIGHT OF WAY, N.76°40'11"W., A DISTANCE OF 50.00 FEET;

THENCE CONTINUE ALONG SAID RIGHT OF WAY, S.13°15'58"W., A DISTANCE OF 483.67 FEET;

THENCE LEAVING SAID RIGHT OF WAY, N.89°56'09"W., A DISTANCE OF 133.52 FEET TO THE EAST LINE OF GOVERNMENT LOT 4;

THENCE CONTINUE N.89°56'09"W., A DISTANCE OF 1,251.94 FEET TO A POINT ON THE WESTERLY LINE OF SAID LOT 4 AND THE WESTERLY LINE OF SAID SECTION 6;

THENCE N.00°04'04"E., A DISTANCE OF 500.00 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 723,853.17 SQUARE FEET OR 16.62 ACRES, MORE OR LESS.

EXHIBIT C

Annexation property

ANNEXATION DESCRIPTION

THOSE PORTIONS OF SECTION 5 AND SECTION 6, TOWNSHIP 14 NORTH RANGE 1 WEST OF THE GILA AND SALT RIVER MERIDIAN, YAVAPAI COUNTY, ARIZONA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT THE NORTHEAST CORNER OF SECTION 5 BEING A $\frac{1}{2}$ " PIPE IN A RING OF ROCKS SAID POINT BEING THE POINT OF BEGINNING;

THENCE ALONG THE EAST LINE OF SECTION 5, S.00°03'29"W., A DISTANCE OF 34.03 FEET;

THENCE LEAVING SAID EAST LINE, S.73°27'27"W., A DISTANCE OF 69.70 FEET;

THENCE S.16°45'45"E., A DISTANCE OF 100.00 FEET;

THENCE N.73°14'15"E., A DISTANCE OF 39.55 FEET TO A POINT ON THE EAST LINE OF SAID SECTION 5;

THENCE ALONG THE EAST LINE OF SECTION 5, S.00°03'29"W., A DISTANCE OF 4,995.56 FEET TO A BRASS CAP RLS 16292 MARKING THE SOUTHEAST CORNER OF SAID SECTION 5;

THENCE ALONG THE SOUTH LINE OF SAID SECTION 5, S.89°05'55"W., A DISTANCE OF 5,277.94 FEET TO A BRASS CAP RLS 16292 MARKING THE SOUTHWEST CORNER OF SAID SECTION 5;

THENCE ALONG THE SOUTH LINE OF SECTION 6, S.89°22'12"W., A DISTANCE OF 2,633.24 FEET TO AN ALUMINUM CAP RLS 33861 MARKING THE SOUTH QUARTER CORNER OF SAID SECTION 6;

THENCE CONTINUE ALONG THE SOUTH LINE FO SAID SECTION 6, S.89°21'53"W., A DISTANCE OF 1,316.62 FEET;

THENCE CONTINUE ALONG THE SOUTH LINE OF SAID SECTION 6, S.89°10'19"W., A DISTANCE OF 493.13 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF THE FORMER ATCHISON, TOPEKA AND SANTA FE RAILROAD, SAID POINT BEING THE POINT OF CURVE OF A NON TANGENT CURVE TO THE RIGHT, OF WHICH THE RADIUS POINT LIES

N.82°51'25"E., A RADIAL DISTANCE OF 1,944.69 FEET; THENCE
NORTHERLY ALONG THE ARC OF SAID WESTERLY RIGHT OF WAY,
THROUGH A CENTRAL ANGLE OF 08°53'13", A DISTANCE OF 301.63 FEET;

THENCE CONTINUE ALONG SAID RIGHT OF WAY, N.07°35'57"E., A
DISTANCE OF 2,857.46 FEET;

THENCE CONTINUE ALONG SAID RIGHT OF WAY, N.07°35'56"E., A
DISTANCE OF 1,124.17 FEET TO THE POINT OF CURVE OF A NON
TANGENT CURVE TO THE RIGHT, OF WHICH THE RADIUS POINT LIES
S.82°24'02"E., A RADIAL DISTANCE OF 2,964.45 FEET; THENCE
NORTHERLY ALONG THE ARC OF SAID RIGHT OF WAY, THROUGH A
CENTRAL ANGLE OF 05°40'00", A DISTANCE OF 293.19 FEET;

THENCE N.13°15'58"E., A DISTANCE OF 246.33 FEET TO A POINT 500 FEET
SOUTHERLY OF THE NORTH LINE OF THE NORTHWEST QUARTER OF
THE NORTHWEST QUARTER OF SAID SECTION 6;

THENCE LEAVING SAID RIGHT OF WAY AND ALONG A LINE THAT IS
SOUTHERLY 500 FEET AND PARALLEL WITH THE NORTH LINE OF THE
NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID
SECTION 6, N.89°56'09"W., A DISTANCE OF 133.52 FEET;

THENCE CONTINUE ALONG SAID LINE, N.89°56'09"W., A DISTANCE OF
1,251.94 FEET TO A POINT ON THE WEST LINE OF SAID SECTION 6;

THENCE ALONG THE WEST LINE OF SECTION 6, N.00°04'04"E., A
DISTANCE OF 500.00 FEET TO THE NORTHWEST CORNER OF SECTION 6
MARKED BY A U.S.G.L.O. BRASS CAP DATED 1926;

THENCE ALONG THE NORTH LINE OF SAID SECTION 6, S.89°56'09"E., A
DISTANCE OF 1,252.78 FEET;

THENCE CONTINUE EASTERLY ALONG SAID NORTH LINE S.89°56'09"E., A
DISTANCE OF 1,318.70 FEET TO AN ALUMINUM CAP RLS 33861 MARKING
THE NORTH QUARTER CORNER OF SAID SECTION 6;

THENCE S.89°55'57"E., A DISTANCE OF 2,637.40 FEET TO THE
NORTHEAST CORNER OF SECTION 6 MARKED BY ¾" PIPE IN A RING OF
ROCKS;

THENCE ALONG THE NORTH LINE OF SECTION 5, S.89°57'41"E., A
DISTANCE OF 2,639.62 FEET TO AN ALUMINUM CAP RLS 33861 MARKING
THE NORTH QUARTER CORNER OF SECTION 5;

**THENCE CONTINUE ALONG THE NORTH LINE OF SAID SECTION 5,
S.89°57'29"E., A DISTANCE OF 2,639.62 FEET TO THE TRUE POINT OF
BEGINNING.**

**CONTAINING 49,748,052.43 SQUARE FEET OR 1,142.05 ACRES, MORE OR
LESS.**



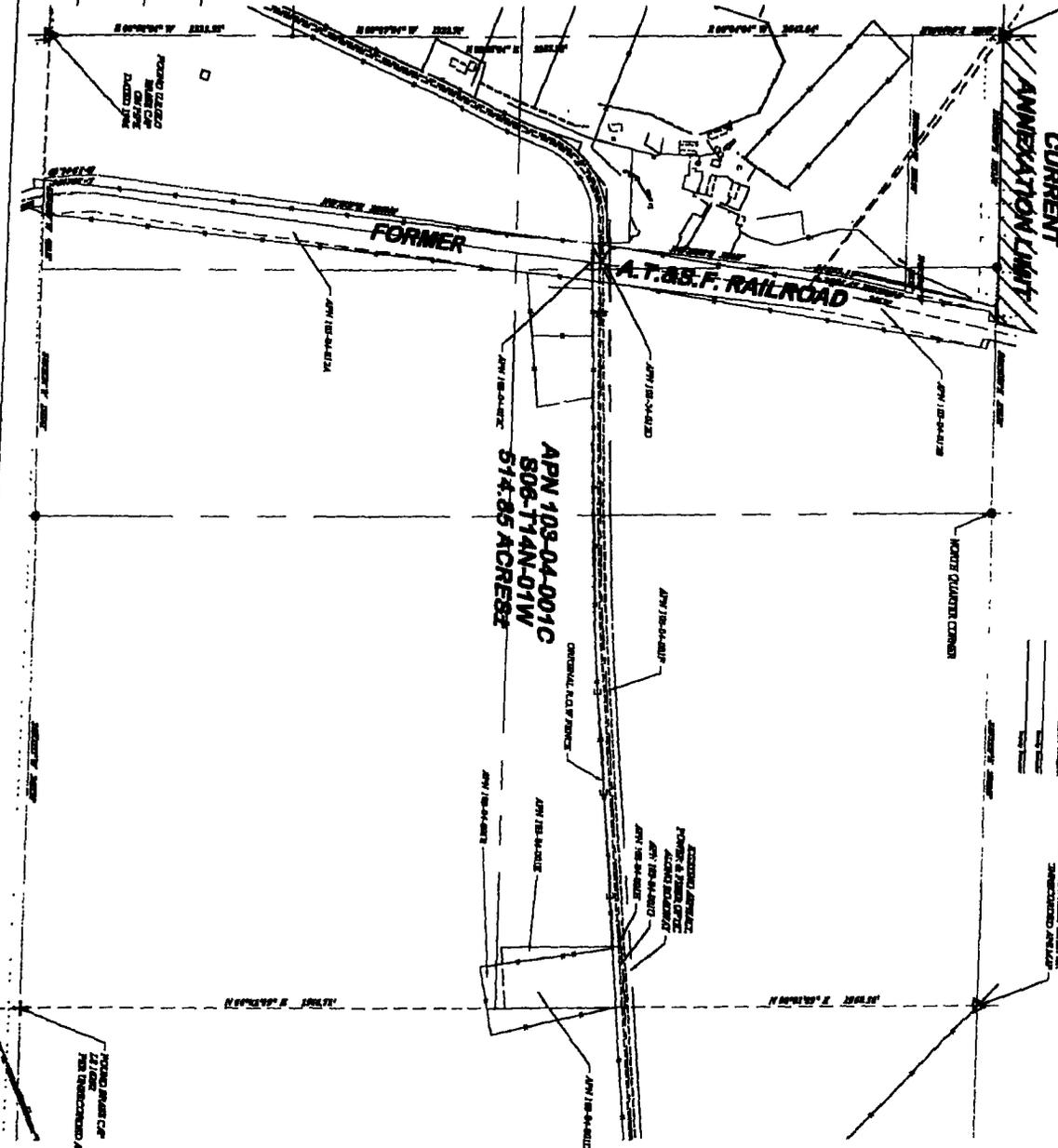
APPROVED FOR THE CITY OF PRESCOTT
BY RESOLUTION NO. _____
AT A MEETING OF THE CITY COUNCIL OF THE CITY OF PRESCOTT,
THIS _____ DAY OF _____, 2007

PLAT OF ANNEXATION TO THE CITY OF PRESCOTT
PORTION OF SECTION 8, TOWNSHIP 14 NORTH, RANGE 1 WEST
OF THE GILA & SALT RIVER BASIN AND MESAQUITA, YAVAPAI COUNTY, ARIZONA

NOTICE OF RESOLUTION
THIS RESOLUTION IS MADE ON BEHALF OF THE CITY OF PRESCOTT
AND IS EFFECTIVE FROM THE DATE OF THE CITY COUNCIL MEETING
AT WHICH IT WAS PASSED. THE CITY OF PRESCOTT IS HEREBY
ANNEXING TO ITS CITY LIMITS THE PORTION OF SECTION 8,
TOWNSHIP 14 NORTH, RANGE 1 WEST, OF THE GILA & SALT RIVER
BASIN AND MESAQUITA, YAVAPAI COUNTY, ARIZONA, AS SHOWN
ON THE ATTACHED MAP. THE CITY OF PRESCOTT SHALL BE
RESPONSIBLE FOR THE MAINTENANCE OF ALL UTILITIES AND
INFRASTRUCTURE WITHIN THE ANNEXED AREA.
THE CITY OF PRESCOTT SHALL BE RESPONSIBLE FOR THE
PROTECTION OF THE ENVIRONMENT AND THE WELL-BEING OF
THE CITIZENS OF THE CITY OF PRESCOTT.
THE CITY OF PRESCOTT SHALL BE RESPONSIBLE FOR THE
PROTECTION OF THE CITY'S INTERESTS AND THE WELL-BEING
OF THE CITIZENS OF THE CITY OF PRESCOTT.
THE CITY OF PRESCOTT SHALL BE RESPONSIBLE FOR THE
PROTECTION OF THE CITY'S INTERESTS AND THE WELL-BEING
OF THE CITIZENS OF THE CITY OF PRESCOTT.

APPROVALS
MAYOR _____ DATE _____
CITY CLERK _____ DATE _____
SUPERINTENDENT OF STREETS _____ DATE _____

APPROVED: BY RESOLUTION NO. _____ AT A
MEETING OF THE CITY COUNCIL OF THE CITY OF PRESCOTT,
THIS _____ DAY OF _____, 2007



SEE SHEET 1 OF TWO

DATE	02-08-07
SCALE	1"=200'
SHEET	2
OF TWO	

RS&A
Land Surveying, Inc.
1720 N. BURNETT ROAD STE 8
PRESCOTT VALLEY, AZ 86314
TEL: (928) 776-8880 FAX: (928) 776-8881

PLAT OF ANNEXATION; CITY OF PRESCOTT
PORTIONS OF SECTION 8, TWP 14 NORTH
RANGE 1 WEST, GASRM, YAVAPAI CTY. AZ.
SECTION 8, TOWNSHIP 14 NORTH, RANGE 1 WEST

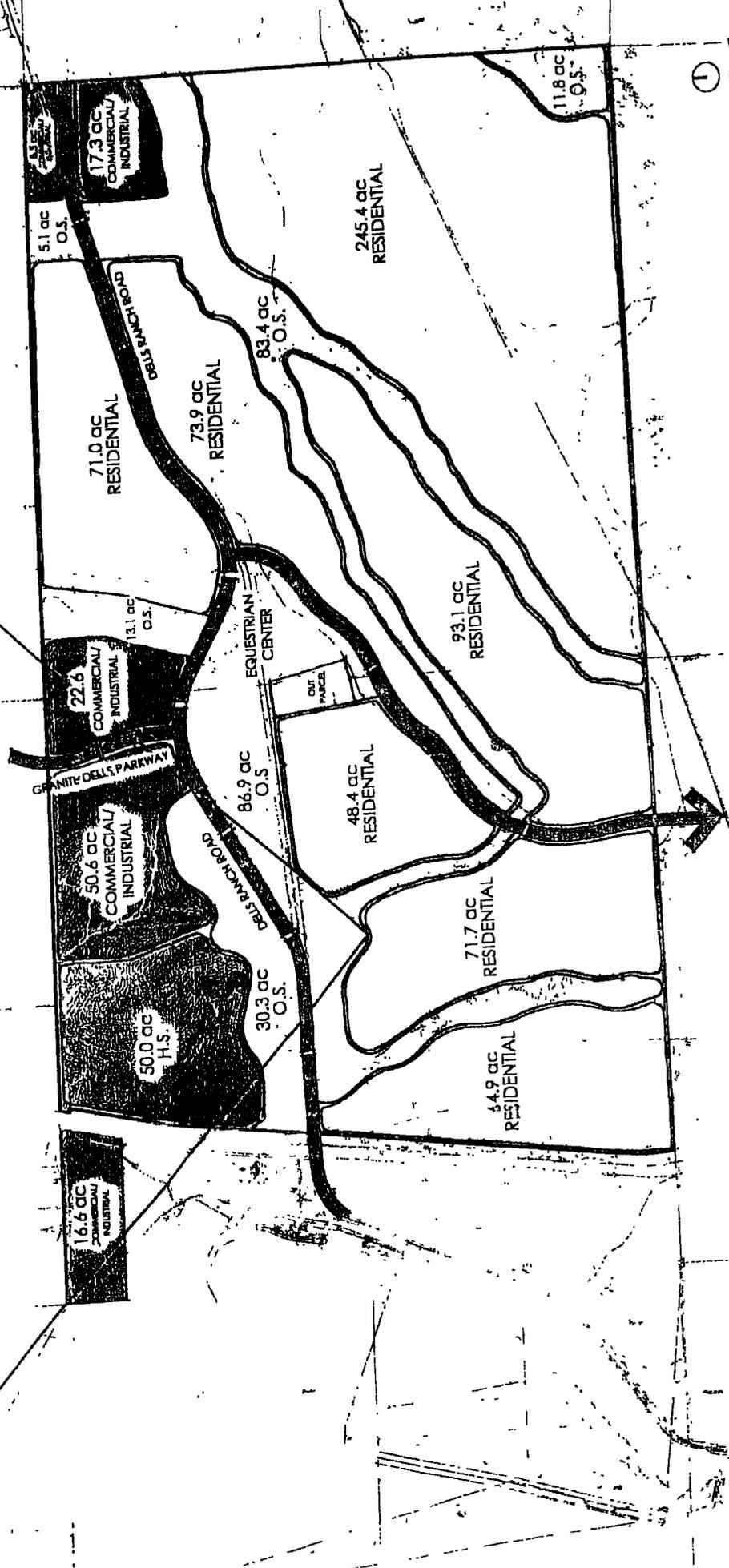
WORK REQUESTED BY:
GRANITE DELLS ESTATES
I&I, L.L.C.
1405 INDUSTRIAL WAY
PRESCOTT, ARIZONA 86302

REVISIONS

EXHIBIT D

Preliminary Plan

LAND USE SUMMARY	
<input type="checkbox"/> HIGH SCHOOL	50.0 AC.
<input type="checkbox"/> COMMERCIAL / INDUSTRIAL	115.6 AC.
<input type="checkbox"/> RESIDENTIAL	668.4 AC.
<input type="checkbox"/> OPEN SPACE	230.6 AC.
OPEN SPACE WITHIN PARCELS	47.4 AC.
TOTAL OPEN SPACE	278.0 AC. (25.0%)
PROPERTY TOTAL:	1,112.0 AC.



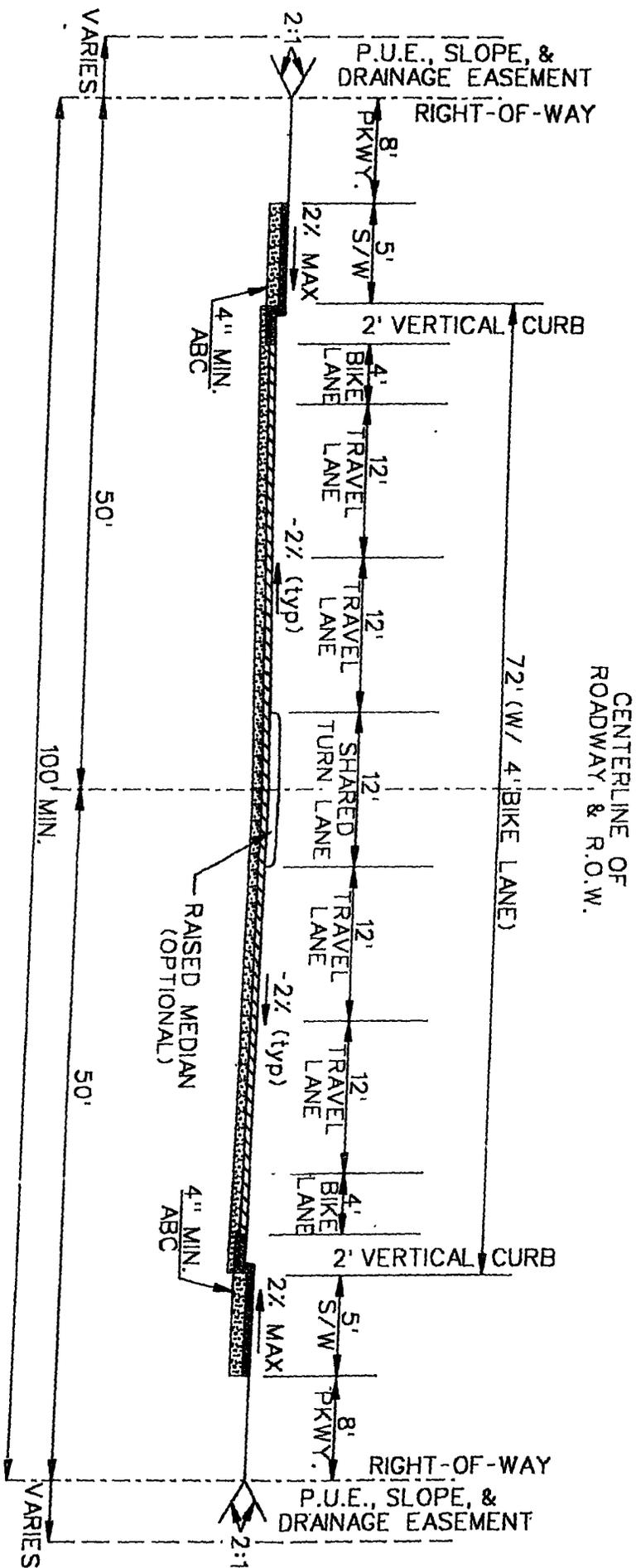
GRANITE DELLS

PRELIMINARY LAND-USE PLAN

EXHIBIT D

EXHIBIT E

**Public Roadway Construction Specification
(609P)**



NOTE:
PAVEMENT THICKNESS TO BE BASED
UPON SOILS ANALYSIS AND REQUIRED
MINIMUM STRUCTURAL SECTION.

CITY ENGINEER	DATE	MAJOR ARTERIAL 4 LANE TYPICAL SECTION	CITY OF PRESCOTT ENGINEERING SERVICES
			609P

EXHIBIT E

EXHIBIT F

Private Roadway Construction Specification

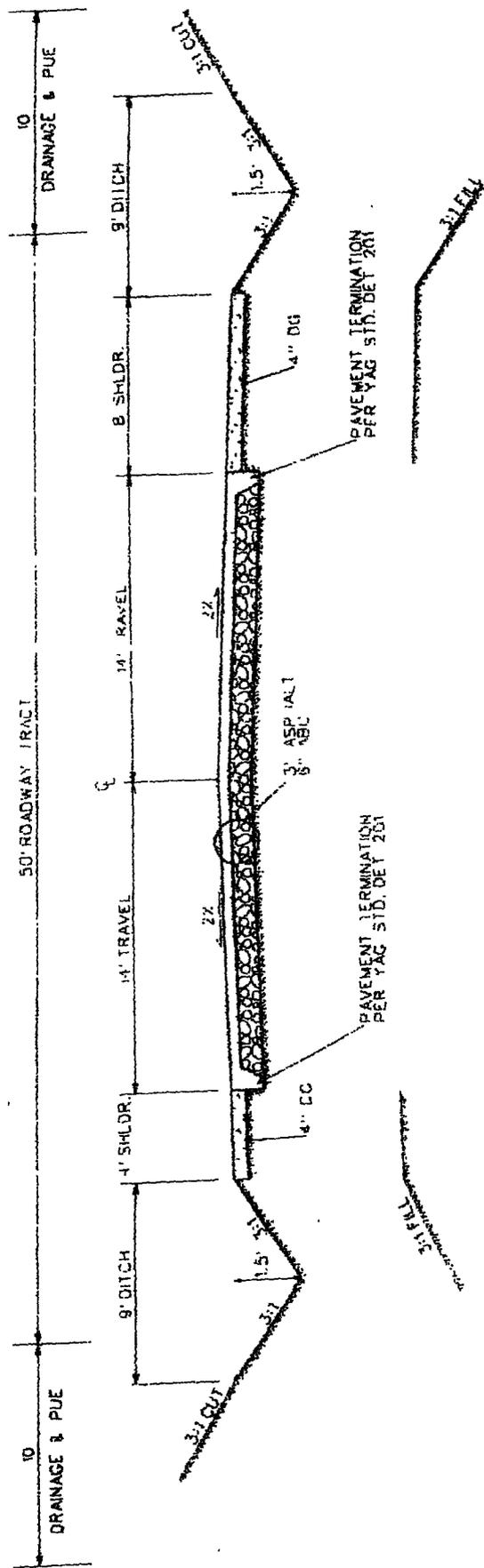


EXHIBIT F

PRIVATE ROADWAY EXHIBIT

Not to Scale

EXHIBIT G

Consent to Conditions/Waiver for Diminution of Value

CONSENT TO CONDITIONS/WAIVER FOR DIMINUTION OF VALUE

The undersigned is the owner of the real property described in Exhibit A to the Pre-Annexation Development Agreement ("Agreement") to which this Consent is attached and which is the subject of the Agreement. By signing this document, the undersigned agrees and consents to all the conditions imposed by the Prescott City Council, the Prescott Planning and Zoning Commission, and all agencies, officers and employees of the City of Prescott set forth within such Agreement. The undersigned agrees to and does knowingly waive any and all rights to compensation for diminution in value pursuant to Arizona Revised Statutes § 12-1134 that may now or in the future exist as a result of the approval of the Agreement, and all conditions, terms and agreements contained in this Agreement.

Dated this _____ day of _____, _____.

GRANITE DELLS ESTATES PROPERTIES,
INC., an Arizona corporation

By: _____
Its: _____

GRANITE DELLS ESTATES PROPERTIES II,
INC., an Arizona corporation

By: _____
Its: _____

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.

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 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:

EXHIBIT H

Water Service Agreement

AGREEMENT FOR POTABLE WATER #WSA07-028
Granite Dells Estates
Granite Dells Estates Properties, Inc., and Granite Dells Estates Properties II, Inc.

WHEREAS, Granite Dells Estates Properties, Inc., and Granite Dells Estates Properties II, Inc. (hereinafter collectively "Applicant"), are the owners of certain real property ("the Property") commonly referred to as Granite Dells Estates, the legal description for which is provided in the attached Exhibit "A"; and

WHEREAS, the Applicant wishes to secure approval for the provision of potable water for the foregoing property from the City of Prescott (hereinafter referred to as "City"); and

WHEREAS, the Applicant contemplates subdividing and developing the foregoing property to include a maximum of 550 "market" residential dwelling units as defined by the City of Prescott Water Management Policy 2005-2010, as amended, plus a maximum of 160 "work force" residential dwelling units as also defined by said policy, and commercial/industrial uses as generally depicted on the Preliminary Land-Use Plan (hereinafter collectively "the Development"), Exhibit D to that certain Pre-Annexation Development Agreement for the Property; and

WHEREAS, the Applicant, successor(s), and/or assign(s) intend to develop the Property as set forth by said Preliminary Land-Use Plan; and

WHEREAS, PCC Section 2-1-12(H) requires that an agreement be reached between the City and the Applicant in order to provide potable water for the Development ; and

WHEREAS the City Council finds that compliance with this Agreement by the Applicant shall result in:

1. The Development and this Agreement being consistent with, conforming to, and furthering the implementation of the City of Prescott Water Management Policy 2005-2010, as amended; and
2. The Development being consistent with, conforming to, and furthering the implementation of the City of Prescott General Plan; and
3. The Development being consistent with, conforming to, furthering the implementation of, and not being contrary to any applicable adopted plans, including but not limited to Specific Area Plans, Circulation Plans, Capital Improvement Plans, Open Space and Trail Plans, Neighborhood Plans, Local Historic District Plans, growth planning or growth management plans, and redevelopment plans.

NOW, THEREFORE, in consideration of the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the other, it is hereby agreed as follows:

1. That this Agreement shall relate to the Property, as more particularly described in the attached Exhibit "A".

EXHIBIT H

2. That the City will reserve and incrementally allocate a maximum of 248.5 acre feet of potable water annually to serve the residential portion of the Development, which development shall be accomplished in strict accordance with the approved preliminary plat, and thereafter the approved final plats, site plans, and construction plans, subject to the following:

a. "Year" and "Water Budget Year," as used herein, mean the calendar year beginning on January 1 and ending on December 31

b. The quantity of 40.00 acre feet will be allocated by the City in the current Water Budget Year (2007) for the "market" residential component of the Development.

c. The additional quantity of 152.5 acre feet will be reserved by the City for the balance of the "market" residential component of the Development and allocated in increments of 40.00 acre feet in each subsequent Water Budget Year, beginning in 2008 and continuing until said additional quantity of 152.5 acre feet has been fully allocated.

d. The separate quantity of 40.00 acre feet will be allocated by the City in the current Water Budget Year (2007), and additional quantity of 16.00 acre feet reserved and allocated in Water Budget Year 2008, all of which shall be available for the "work force" residential component of the Development.

e. The water made available annually for allocation to residential development shall carry over from year to year providing, however, that in the event that in any given calendar year the Property shall fail to be developed and therefore under existing residential subdivision allocation standards less than one-half (1/2) of the forty (40) acre feet will be utilized during that calendar year, the portion of the annual forty (40) acre feet available for residential development not fully utilized in that calendar year shall be retained in the Water Portfolio of the City and carried over, and shall be part of the ensuing calendar year's forty (40) acre feet allotment. In the event that all or a portion of this residential allotment is not utilized during the following year, the unutilized amounts shall be returned to the Water Portfolio pending the next year's allocation. This same "rollover" process of returning unused residual amounts of the annual residential forty (40) acre feet per calendar allotment shall occur on an annual basis during the term of this agreement. Notwithstanding anything to the contrary set forth herein, no unused residual amount shall be returned to the City Water Portfolio which would reduce the amount of residential water available for allocation to the Owner below eighty (80) acre feet, as of the first day of each year. Additionally, return of unused residual amounts of water shall not apply to commercial water as described herein.

f. The City will furnish potable water for the commercial/industrial component of the Development provided, however, that pursuant to the City of Prescott Water Management Policy 2005-2010, as amended, City approval of a water service agreement will be required for each non-residential project request with demand over five acre feet per year.

g. The Applicant, successor(s), and/or assign(s) shall have the right to the potable water reserved and allocated for the Development as set forth herein for a term of fifteen (15) years after the effective date of this Agreement. In the event any amounts of the water quantities for "market" and "work force" specified herein remain unused for any reason at the end of said fifteen (15) year term, this Agreement shall expire and the Applicant, successor(s), and/or assign(s) shall have no further entitlement to potable water for the Property.

h. Unless otherwise provided by the Pre-Annexation Development Agreement, the Applicant shall be solely responsible for the costs of any water and sewer main extensions or upgrades required to serve the Property.

i. The Applicant shall connect the Property onto the City's Sanitary Sewer System, and shall be responsible for any and all costs associated therewith unless otherwise provided by the Pre-Annexation Development Agreement, before water service to the property is initiated

j. That any change in use of the Property exceeding 550 "market" and 160 "work force" residential dwelling units shall result in the termination of this Agreement.

k. That the installation of any well on the Property by other than the City, or the use of water on the Property from any exempt well (less than 35 gpm), shall result in the termination of this Agreement.

l. That there shall be no divisions of the Property other than those approved by the City

3. This Agreement shall run with the land, and shall be binding upon the Applicant's successor(s) in interest and assign(s).

4. Pursuant to A.R.S Section 38-511, the City of Prescott may cancel this agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this agreement on behalf of the City is, at any time while the agreement or any extension of the agreement is in effect, an employee or agent of any other party to the agreement in any capacity or a consultant to any other party of the agreement with respect to the subject matter of the agreement. In the event of the foregoing, the City of Prescott further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this agreement on behalf of the City of Prescott from any other party to the agreement arising as a result of this agreement.

5. That the Applicant hereby agrees to indemnify and hold harmless the City, its departments and divisions, its employees and agents, from any and all claims, liabilities, expenses or lawsuits as a result of this agreement, providing said claims, liabilities, expenses or lawsuits arise by the acts or omissions of the Applicant or its agents or employees.

6. This Agreement is the result of negotiations by and between the parties. Although it has been drafted by the Prescott City Attorney, it is the result of the negotiations between the parties. Therefore, any ambiguity in this Agreement is not to be construed against either party.

7. Time is of the essence in this Agreement. The failure of either party to require strict performance of any provision of this agreement shall not be deemed a waiver of the right of said party thereafter to require strict performance of that or any other provision of this Agreement in accordance with the terms hereof, and without notice.

8. 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 to a trial before the Court

9. Except as provided in the Pre-Annexation Development Agreement, the parties hereto expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorneys fees, either, pursuant to ARS Section 12-341 01(A) and (B), or pursuant to any other state or federal statute.

10. Any conflict between this Agreement and the Pre-Annexation Development Agreement shall be controlled by the Pre-Annexation Development Agreement.

DATED this _____ day of _____, 2007.

APPLICANT:
GRANITE DELLS ESTATES PROPERTIES, INC
an Arizona corporation

BY:
Its:

GRANITE DELLS ESTATES PROPERTIES II, INC.
an Arizona corporation

BY:
Its:

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Prescott this ____ day of _____, 2007.

ROWLE P. SIMMONS, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A BURKE
City Clerk

GARY D. KIDD
City Attorney

STATE OF ARIZONA)
)ss.
COUNTY OF YAVAPAI)

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by 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 within the instrument, and acknowledged that he executed it.

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.

[Seal]

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 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.

[Seal]

Notary Public

My Commission Expires:

ALL of Section 6, Township 14 North, Range 1 West of the Gila and Salt River Meridian, Yavapai County, Arizona, lying Easterly of the Easterly right of way of the former Atchison-Topeka and Santa Fe Railroad.

EXCEPTING from the East half of said Section 6 that portion described in Deed, Book 3895, page 269 of Official Records, Yavapai County, Arizona, being more particularly described as follows:

COMMENCING at the Northeast corner of Section 6;

Thence along the East line of Section 6, South $00^{\circ}01'08''$ West, a distance of 1946.17 feet to a point on the South line of the right of way for Old 89A extinguished by ADOT as detailed in Book 47 of Maps and Plats, pages 3-8 of Official Records, Yavapai County, Arizona, said point being the TRUE POINT OF BEGINNING;

Thence South $00^{\circ}02'08''$ West, a distance of 707.64 feet;

Thence South $78^{\circ}03'58''$ West, a distance of 228.02 feet;

Thence North $07^{\circ}18'58''$ West, a distance of 730.68 feet;

Thence North $84^{\circ}34'31''$ East, a distance of 318 feet to the TRUE POINT OF BEGINNING.

ALL of Section 5, Township 14 North, Range 1 West of the Gila and Salt River Meridian, Yavapai County, Arizona;

EXCEPTING from the Northeast quarter that portion of Old Highway 89A abandoned to Yavapai County as detailed in Book 47 of Maps and Plats, pages 3-8 of Official Records, Yavapai County, Arizona, being more particularly described as follows:

COMMENCING at the Northeast corner of Section 5;

Thence along the East line of Section 5, South $01^{\circ}11'45''$ East, a distance of 33.01 feet to the TRUE POINT OF BEGINNING;

Thence South $00^{\circ}03'31''$ West, a distance of 104.47 feet;

Thence South $73^{\circ}14'31''$ West, a distance of 40.46 feet;

Thence North $16^{\circ}45'45''$ West, a distance of 100.00 feet;

Thence North $73^{\circ}14'15''$ East, a distance of 70.69 feet to the TRUE POINT OF BEGINNING.

ALSO EXCEPTING from the West half of said Section 5 that portion described in Deed, Book 3895, Page 269 of Official Records, Yavapai County, Arizona, being more particularly described as follows:

COMMENCING at the Northwest corner of Section 5;

Thence along the West line of Section 5, South $00^{\circ}01'08''$ West, a distance of 1946.17 feet to a point on the South line of the right of way for Old 89A extinguished by ADOT as detailed in Book 47 of Maps and Plats, pages 3-8 of Official Records, Yavapai County, Arizona, said point being the TRUE POINT OF BEGINNING;

Thence South $11^{\circ}42'16''$ East, a distance of 692.26 feet;

Thence South $78^{\circ}03'56''$ West, a distance of 143.98 feet;

Thence North $00^{\circ}02'07''$ East, a distance of 707.64 feet to the TRUE POINT OF BEGINNING.

ALL THAT PORTION OF GOVERNMENT LOT 4 AND THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 14 NORTH RANGE 1 WEST OF THE GILA AND SALT RIVER MERIDIAN, YAVAPAI COUNTY, ARIZONA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHWEST CORNER OF SECTION 6 BEING MONUMENTED BY A U.S.G.L.O. BRASS CAP AND PIPE DATED 1926, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE ALONG THE NORTH LINE OF SAID SECTION 6, ALSO BEING THE NORTH LINE OF SAID GOVERNMENT LOT 4, S.89°56'09"E., A DISTANCE OF 1,252.78 FEET TO THE NORTHEAST CORNER OF SAID LOT 4;

THENCE CONTINUE S.89°56'09"E. ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 6, A DISTANCE OF 301.30 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY OF THE FORMER ATCHISON, TOPEKA AND SANTA FE RAILROAD;

THENCE LEAVING SAID NORTH LINE AND ALONG SAID WESTERLY RIGHT OF WAY, S.13°15'58"W., A DISTANCE OF 41.69 FEET;

THENCE CONTINUE ALONG SAID RIGHT OF WAY, N.76°40'11"W., A DISTANCE OF 50.00 FEET;

THENCE CONTINUE ALONG SAID RIGHT OF WAY, S.13°15'58"W., A DISTANCE OF 483.67 FEET;

THENCE LEAVING SAID RIGHT OF WAY, N.89°56'09"W., A DISTANCE OF 133.52 FEET TO THE EAST LINE OF GOVERNMENT LOT 4;

THENCE CONTINUE N.89°56'09"W., A DISTANCE OF 1,251.94 FEET TO A POINT ON THE WESTERLY LINE OF SAID LOT 4 AND THE WESTERLY LINE OF SAID SECTION 6;

THENCE N.00°04'04"E., A DISTANCE OF 500.00 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 723,853.17 SQUARE FEET OR 16.62 ACRES, MORE OR LESS.

ORDINANCE NO. 4632-0834

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, EXTENDING AND INCREASING THE CORPORATE LIMITS OF THE CITY OF PRESCOTT BY ANNEXING 1,142 ACRES OF LAND LOCATED SOUTH OF HIGHWAY 89A AND BOUNDED ON THE WEST BY THE PEAVINE TRAIL, ON THE EAST BY THE PRESCOTT/PRESCOTT VALLEY IGA LINE AND GRANITE DELLS TO THE SOUTH AND ALSO A 16.6 ACRE PARCEL WEST OF THE PEAVINE TRAIL, WHICH IS OWNED BY GRANITE DELLS ESTATES PROPERTIES, INC. AND GRANITE DELLS ESTATES PROPERTIES II, INC., MIKE FANN, AND ASSIGNING ZONING CLASSIFICATIONS THERETO

RECITALS:

WHEREAS, a petition for annexation of 1,142 acres of land to be developed south of highway 89A and bounded on the west by the Peavine Trail on the east by the Prescott/Prescott Valley IGA line and Granite Dells to the South and also a 16.6 acre parcel west of the Peavine Trail, which is owned by Granite Dells Estates Properties, Inc. and Granite Dells Estates Properties II, Inc., Mike Fann, more particularly described herein by the preliminary site plan attached herein as Exhibit "A" has been presented in writing to the Mayor and Council of the City of Prescott; and

WHEREAS, Granite Dells Estates' representatives and City staff have heretofore entered into a Development Agreement prescribing responsibilities associated with the annexation and development of the property; and

WHEREAS, the City Council of the City of Prescott has held a public hearing regarding said annexation and complied with all statutory legal requirements for annexation; and

WHEREAS, the City Council of the City of Prescott has determined that it would be in the best interest of public necessity, interest, convenience or general welfare to annex certain property; and

WHEREAS, the City Council has adopted Resolution No. 3735 implementing Proposition 400, which has been incorporated into the City Charter in Article I, Section. 4, and has duly complied with these requirements; and

WHEREAS, the requirements of ARS Section 9-471 have been complied with.

ENACTMENTS:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PRESCOTT AS FOLLOWS:

SECTION 1. THAT the real property located and more particularly described in the attached Exhibit "A", consisting of 1,142 acres and 16.6 acres, shall be and is hereby annexed into the corporate limits of the City of Prescott.

SECTION 2. THAT the property described in Exhibit "A" was earlier zoned by Yavapai County as R1L-70. Corresponding zoning in the City is Rural Estate 2 acre minimum and upon annexation shall be designated as said zoning classification. Specific rezoning will be required for the industrial, commercial and higher density residential areas.

SECTION 3. THAT a copy of this Ordinance, together with an accurate map of the property hereby annexed, be forthwith filed and recorded in the Office of the Yavapai County Recorder.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 30th day of November, 2007.

ROWLE P. SIMMONS, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A. BURKE, City Clerk

GARY D. KIDD, City Attorney