

SUBDIVISION AGREEMENT

Town of Prescott Valley, Arizona

THIS SUBDIVISION AGREEMENT, entered into this 8th day of December, 2022, by and between the TOWN OF PRESCOTT VALLEY, a municipal corporation of Arizona (hereinafter the "Town"), and ASH-Dorn LLC, an Arizona Limited Liability Company (hereinafter the "Subdivision Owner");

WITNESSETH:

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

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

WHEREAS, Subdivision Owner and the Town entered into that certain Restated Development Agreement dated May 27, 1999 and recorded July 10, 1997, in Book 3439, Page 230 of the Official Records of the Yavapai County, Arizona Recorder (the "Development Agreement") that further defines the rights and obligations of the Subdivision Owner and the Town; and

WHEREAS, the Development Agreement provides that certain off-site utilities and other improvements shall be constructed or provided to serve the Subdivision Owner's property at the Town's cost; and

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

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

WHEREAS, on December 8th, 2022, the Mayor and Council of the Town of Prescott Valley adopted Resolution No. 2022-2231 approving the Mingus West Unit 6 Final Development Plan FDP21-014 involving 48 lots on 39 acres; and

WHEREAS, Resolution No. 2022-2231 authorized the Mayor (or, in his absence, the Vice-Mayor) to sign all documents necessary for the Subdivision Owner to provide needed financial and other assurances as to the construction of subdivision improvements;

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

Section 1. Construction. Development of Mingus West Unit 6 involves 48 Lots, along with construction of, Cowboy Way, Britania, Mockingbird, Roxanna, Brokton, Remmington, Anna, Sophia, (St, Rd, Ln,) construction of the on and off-site sewer collection systems needed for the lots involved, construction of the on and off-site water systems needed for the lots involved, and construction of other on and off-site utilities needed for the lots involved (in accordance with approved engineering plans).

Section 2. Plan Approvals. Prior to construction of any portion of the Mingus West Unit 6 Final Development Plan and Final Plat (Final Development Plan) approval of the engineering plans for any and all improvements required for all construction phases shall first be obtained from appropriate Prescott Valley Town staff.

Section 3. Construction Timing. The improvements shall be completed by the Subdivision Owner (or its agents or assigns) within eighteen (18) months after the Mingus West Unit 6 Final Development Plan is recorded in the Office of the Yavapai County, Arizona Recorder. Extensions of this time limitation may be granted by the Town Manager (or his/her designee), but only under the following conditions:

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

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

Finally, the Subdivision Owner expressly agrees that if the required assurances for improvements in the Mingus West Unit 6 Final Development Plan are not developed as set forth in this Subdivision Agreement within five (5) years after the Mingus West Unit 6 Final Development Plan FDP21-014 is recorded in the Office of the Yavapai County, Arizona Recorder, then any lots or parcels for which the required assurances have not been developed shall automatically revert to unplatted land, and the Subdivision Owner expressly approves in advance by its execution of this Subdivision Agreement the necessary Reversionary Plat(s) authorized by the Town Council to be recorded in the Office of the Yavapai County, Arizona Recorder to formalize such reversion.

Section 4. Construction Assurances. The types of assurances to be given for construction of on-site improvements shall only be those set forth in Subsection 14-04-080(B) of the Town Code. All assurance documents must be approved as to form by the Town Attorney, and fully-executed assurance documents for the first phase of development for Mingus West Unit 6 must be deposited in the Office of the Town Clerk before the Clerk shall record the Mingus West Unit 6 Final Development Plan.

The assurance amounts for the respective on-site improvements for Mingus West Unit 6 shall be as follows:

<i>PAVING TOTAL</i>	\$ 1,364,959.00
<i>WATER TOTAL</i>	\$ 825,350.00
<i>SEWER TOTAL</i>	\$ 377,905.00
<i>SITEWORK</i>	\$ 714,765.00
<i>DRAINAGE</i>	\$ 108,450.00
SUB TOTAL-INFRASTRUCTURE	\$ 3,391,429.00
10% CONTINGENCY (R4-28-A1211)	\$ 339,142.90
TOTAL ASSURANCE AMT.	\$ 3,730,571.90

Section 5. Contingency for Town Completion. In addition to any right or remedy available to the Town in any assurance document, arrangement, or agreement, the Subdivision Owner hereby expressly agrees to indemnify and hold the Town harmless from any and all costs or liabilities incurred by the Town, its agents or assigns, over and above what the Town may recover under any assurance documents, arrangements, or agreements, because the Town constructed or finished construction of any or all improvements (on and off-site) required of Subdivision Owner as approved in the Mingus West Unit 6 Final Development Plan because said improvements were abandoned, left incomplete, or never commenced by the Subdivision Owner (or its agents or assigns). Furthermore, the Subdivision Owner agrees to pay all reasonable costs of whatever nature the Town may incur (including reasonable attorneys' fees) in enforcing collection of said construction costs from the Subdivision Owner.

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

Section 7. Lot Development Release. No lots or parcels in the Mingus West Unit 6 Final Development Plan shall be "released" for sale prior to execution and delivery of this Subdivision Agreement and execution and delivery of the appropriate assurances (as provided hereinabove).

Section 8. Final Development Plan Recording. After compliance with any other requirements herein, the Mingus West Unit 6 Final Development Plan shall be recorded by the Town Clerk in the Office of the Yavapai County, Arizona Recorder within ten (10) business days after this Subdivision Agreement has been fully executed by the Subdivision Owner and deposited with the Town Clerk together with the required assurances.

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

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

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

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

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

Section 14. Merger Clause. This Subdivision Agreement together with the Development Agreement and the Mingus West Unit 6 Final Development Plan constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

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

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

Section 17. Warranty of Authority. ASH-Dorn LLC represents and warrants that (a) it is an Arizona limited liability company duly organized and validly existing under the laws of the State of Arizona, (b) the execution, delivery and performance of this Subdivision Agreement has been duly authorized by the responsible members thereof, and it has a sufficient interest in the property within the Mingus West Unit 6 Final Development Plan to permit it to develop the same (directly or through its agents or assigns) and to perform its obligations under this Subdivision Agreement.

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

Section 19. No Partnership Between Parties. It is not intended by this Subdivision Agreement to, and nothing contained in this Subdivision Agreement shall, create any partnership, joint venture or other arrangement between the Subdivision Owner (or its agents) or the Town. No term or provision of this Subdivision Agreement is intended, or shall be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

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

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

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

Kell Palguta, Mayor

ATTEST:

Fatima Fernandez, Town Clerk

APPROVED AS TO FORM:

Ivan Legler, Town Attorney

ASH-Dorn LLC

By:

By: _____
Its: _____

STATE OF ARIZONA)
)ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Kell Palguta, Mayor of the Town of Prescott Valley, a municipal corporation of Arizona, for and on behalf of said municipal corporation.

My commission expires: _____

Notary Public

STATE OF ARIZONA)
)ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____ the _____ of ASH-Dorn LLC, an Arizona limited liability company, for and on behalf of said limited liability company.

My commission expires: _____

Notary Public