

RESOLUTION NO. 2218

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING THE FINAL PLAT AND APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT TO CONSTRUCT SUBDIVISION IMPROVEMENTS FOR MANZANITA HILLS PHASE 6 SUBDIVISION.

WHEREAS, the subdivision plat for Manzanita Hills Phase 6 Subdivision has been previously approved; and

WHEREAS, the developer desires to proceed with construction of the improvements in Manzanita Hills Phase 6 Subdivision; and

WHEREAS, the Town has negotiated an Agreement to Construct Subdivision Improvements with the developers of Manzanita Hills Phase 6 Subdivision requiring the posting of assurances that such improvements will be constructed,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

Section 1. That the final plat for Manzanita Hills Subdivision, a fourteen lot subdivision, be and is hereby approved as depicted on Exhibit "A" attached hereto and incorporated herein.

Section 2. Roadway Protection.

- A. For the purposes of this Section, "Construction Traffic" shall mean all trucks, trailers, tractors, backhoes, graders, and any other equipment or machinery used to construct infrastructure as detailed on the final improvement plans of Manzanita Hills Phase 6 Subdivision.
- B. Prior to the commencement of any Construction Traffic, the developers shall obtain from the Town of Payson Public Works Engineer or designee an ingress/egress plan (to include street names) for all Construction Traffic. All Construction Traffic must enter and leave the subdivision in accordance with the ingress/egress plan.
- C. No Construction Traffic shall damage any of the Town's existing roadways. The developers of Manzanita Hills Phase 6 Subdivision shall be responsible to repair such damage.
- D. If Construction Traffic from Manzanita Hills Phase 6 Subdivision does cause damage to the Town's existing roadways, the Town shall not accept the public improvements of Manzanita Hills Phase 6 Subdivision until such damage has been repaired to the satisfaction of the Town of Payson Public Works Engineer.

Section 3. That the Agreement to Construct Subdivision Improvements, attached hereto as Exhibit "B" and incorporated herein as though set forth in full at this point, be and is hereby approved in substantially the form as set forth in said Exhibit "B".

Section 4. In lieu of constructing Green Valley Parkway as depicted on the final plat approved in Section 1 hereof, and prior to the Town's acceptance of the subdivision improvements, developer shall pay to the Town of Payson the sum of \$50,689.00 which shall be used for the future design and construction of the section of Green Valley Parkway depicted on said final plat.

SEP 21 2006 G. 4

Section 5. That F. Robert Edwards, Mayor of the Town of Payson, be and is hereby authorized to execute such Agreement in substantially the form attached.

Section 6. That the Town of Payson be and hereby is authorized to take such other and further actions as are necessary or appropriate to carrying out the purposes of such Agreement.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this _____ day of _____, 2006, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

F. Robert Edwards, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk

Samuel I. Streichman, Town Attorney

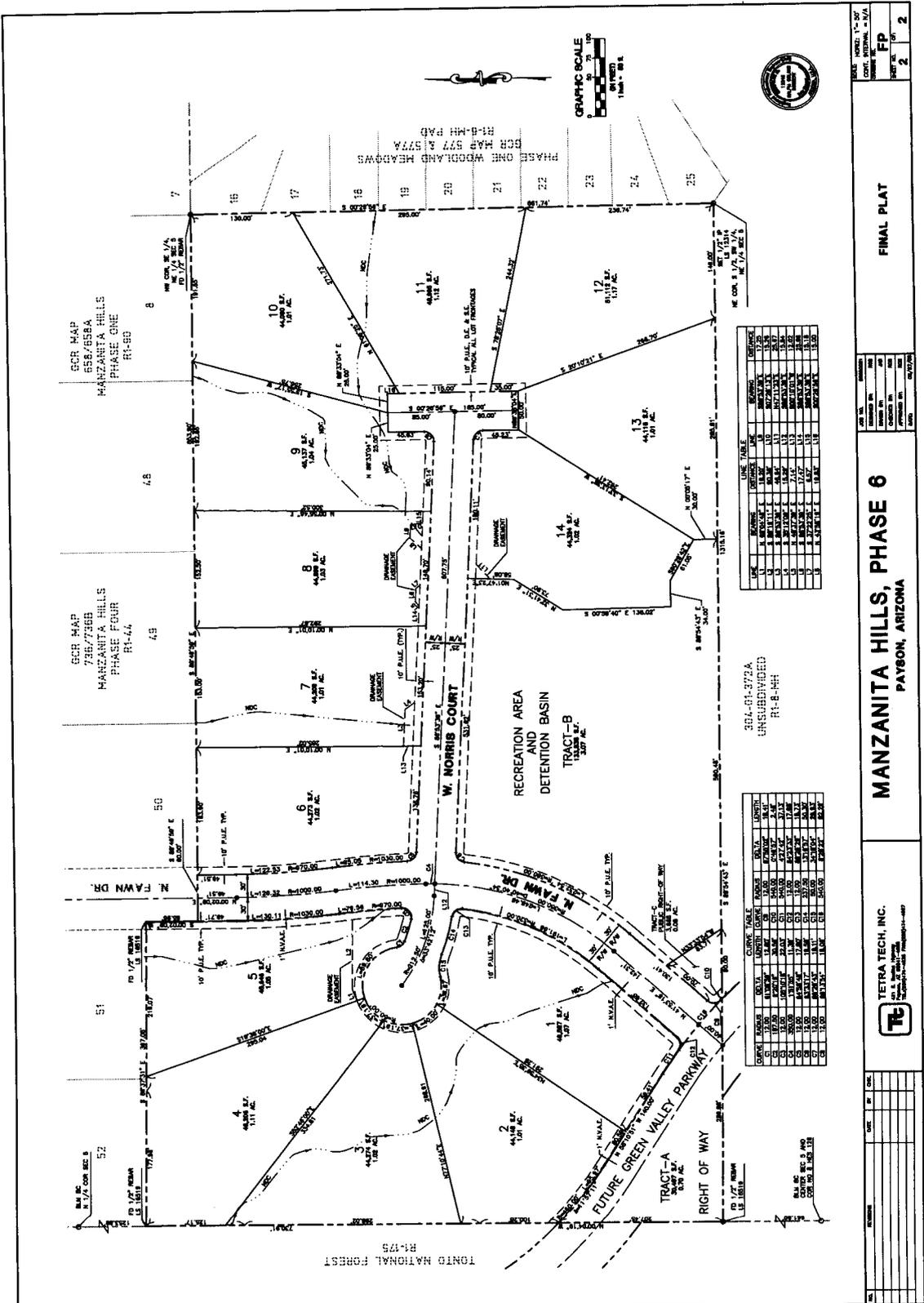


EXHIBIT "B"

to Resolution No. 2218

WHEN RECORDED, RETURN TO:

Samuel I. Streichman, Town Attorney
Town of Payson Legal Department
303L North Beeline Highway
Payson, Arizona 85541
Phone: 928-474-5242, extension 208

AGREEMENT TO CONSTRUCT SUBDIVISION IMPROVEMENTS Manzanita Hills Phase 6 Subdivision, Payson, Arizona

This Agreement is made and entered into as of the _____ day of **DRAFT**, 2006, by and between MANZANITA HILLS SIX LLC, an Arizona limited liability company ("Subdivider"), and the TOWN OF PAYSON, ARIZONA, a municipal corporation ("Town") (collectively, the "Parties"). The Parties hereby confirm and agree as follows:

RECITALS

- A. Subdivider intends to subdivide and develop the property located in Payson, Arizona, more fully described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"), identified as "Manzanita Hills Phase 6 Subdivision" (the "Subdivision"); and
- B. The Parties to this Agreement wish to establish specific terms, conditions, and guidelines to provide for assurances for the completion of the required subdivision improvements in the Subdivision in compliance with the provisions of A.R.S. § 9-463.01(C)(8) and Articles 15-2 and 15-4 of the Payson Town Code; and
- C. The Town seeks to protect the health, safety, and general welfare of the community by requiring the completion of various improvements in the Subdivision and thereby to limit the harmful effects of substandard subdivision, including premature subdivision, which leaves property undeveloped and unproductive; and
- D. This Agreement inures to the benefit of the Parties and is not executed for the benefit of third parties, such as, but not limited to, materialmen, laborers, or others providing work, services, or materials for the Subdivision, or for the benefit of lot or home purchasers in the Subdivision.

AGREEMENT

NOW, THEREFORE, based on the foregoing and in consideration of the Town approving a Final Plat (the "Subdivision Plat") for the Property, the Parties agree as follows:

1. Construction of Subdivision Improvements. Subdivider hereby agrees to construct and install, at its own expense, all subdivision improvements for the Property as described in Exhibit "B" attached hereto and incorporated herein by this reference (the "Improvements"). The Subdivider's obligation to complete the Improvements will arise as of the date of this Agreement (the "Start Date"); provided, however, that such Subdivision improvements may be constructed and installed in phases as provided for in this Agreement. The Subdivider's obligation to complete the Improvements is independent of any obligations of the Town contained herein and is not conditioned on the sale of any lots or improvement within the development.
2. Existing Utilities. Any relocation or modification of existing utilities or public improvements to construct the Improvements shall be done at no expense to the public.
3. Assurance of Construction. This Agreement is submitted as an assurance that Subdivider will construct the Improvements as required by A.R.S. § 9-463.01(C)(8) and the Payson Town Code.
4. Start of Construction. Subdivider shall begin construction of the Improvements within six (6) months of the date of the Start Date, and will diligently pursue completion of the Improvements. Subdivider's failure to do substantial work on the Improvements for a period of sixty (60) consecutive calendar days shall be presumptive evidence that Subdivider is failing to diligently pursue construction of the Improvements.
5. Completion of Improvements. The Improvements shall be completed by the Subdivider not more than two (2) years after the Start Date. The Improvements shall not be considered completed unless and until such Improvements have been completed in accordance with all applicable plans which have been approved by the Town and Town regulations, and after the Town has inspected them for compliance with the plans and regulations and has accepted the Improvements in accordance with paragraph 6 herein below. The period for completion of the Improvements may be extended for good cause shown at the discretion of the Town of Payson or its designated representative.
6. Acceptance of Improvements. The Town shall not accept the Improvements or accept maintenance responsibility for the Improvements, nor shall the Improvements be deemed accepted unless and until all of the following have occurred:
 - (a) The Improvements have been completed in accordance with Paragraph 5 of this Agreement.
 - (b) The Improvements and the right-of-way in which the Improvements are located has been dedicated or conveyed to the Town in accordance with the Subdivision Plat or separate instrument, as applicable.
 - (c) The dedication or conveyance, as applicable, has been accepted by the Town as evidenced by the approval of the Subdivision Plat or by some other formal action.
 - (d) The Town Council has acted to accept the Improvements as built. The Parties anticipate that each portion of the Improvements will be given a preliminary acceptance by the Town or its inspector; however, the Parties understand and acknowledge that no such preliminary acceptance shall be effective as a final acceptance until each of the requirements of this section, including approval by the Payson Town Council, has occurred. The Parties further understand that it shall be

the sole responsibility of Subdivider to repair any Improvements which are damaged, fall into disrepair, or are defective prior to acceptance of such Improvements by the Payson Town Council and/or the termination of the warranty period.

(e) The Town shall not give final acceptance for the Improvements nor shall such Improvements be deemed accepted until Subdivider's contractor(s) has(have) been paid in full and has(have) furnished complete lien releases to Subdivider, who shall provide the Town with copies of such complete lien releases.

7. Warranty. The Subdivider warrants that the Improvements, each and every one of them, will be free from defects for a period of two years from the date that the Town Council accepts the maintenance of the last Improvement completed by the Subdivider.

8. Security. To secure performance of its obligations to construct the Improvements under this Agreement, Subdivider shall procure a loan from Arizona Business Bank, Phoenix, Arizona ("Lender") pursuant to the funding agreement in form and content as generally set forth on attached Exhibit "C" (the "Funding Agreement"). Said loan shall provide site construction assurances in lieu of surety bond in the amount of Five Hundred Forty-nine, Seven Hundred Two Thousand Dollars and Forty-five Cents (\$549,702.45) which is the amount equal to the Engineer's Estimate of total costs to perform Subdivider's obligations under this Agreement, an additional ten percent (10%) of such sum, and the inspection fees provided for herein. This amount may be increased from time to time on request of the Town based upon change orders issued for additional compensated work to construct and install the Improvements, provided that the change order and the amount of the increase in cost resulting therefrom has been approved in writing by Lender. Monies from said loan shall be disbursed by Lender to cover the costs of constructing and installing the Improvements in the Subdivision in conformity with this Agreement. Such funds shall be disbursed in accordance with and subject to the conditions contained in the Funding Agreement upon direction of the Subdivider, but only after approval by the Public Works Engineer of the work to be inspected and accepted by the Town for which such disbursement is requested. The Town shall agree to disbursement of such funds as are reasonable and necessary to construct and install the Improvements as provided in this Agreement. Subdivider agrees that if this Agreement is terminated for any reason before the completion of all Improvements required under this Agreement, Subdivider shall tender to the Town (1) monetary assurances in an amount equal to the Town's estimate of the total cost to complete the Improvements, or (2) other assurances acceptable to the Town. Subdivider and Town agree that the sum referenced above and in the Funding Agreement pursuant to which such funds are to be disbursed will be used only for the purpose of installing the Improvements as provided in this Agreement. The Funding Agreement, if not sooner established, shall be established within thirty (30) days of the execution of this Agreement.

In order to further secure performance of its obligations under this Agreement, and to provide for the acceptability of the Improvements constructed hereunder, Subdivider shall pay to the Town the greater of the amount equal to three percent (3%) of the amount of the Public Works Engineer's estimate of the cost of the Improvements or the actual cost to the Town of Payson for inspection of the construction of the Improvements. Subdivider shall additionally, at its sole cost, provide for all tests required by the Town of Payson and shall provide the results of all such tests, free of charge, to the Town of Payson. Concurrently with the establishment of the Funding Agreement referred to in this paragraph 8 or the execution of this Agreement, whichever last occurs, Subdivider shall pay over to the Town of Payson, as a deposit against such construction inspection, a sum equal to three percent (3%) of the Public Works Engineer's estimate, excluding any amount for construction of sewer collection facilities.

In the event that such Funding Agreement is not established in the amount required pursuant to this paragraph 8, Subdivider shall provide additional security in cash or other form acceptable to the Town equal to such amount prior to commencing or continuing construction of the Improvements.

9. Retention. The additional ten percent (10%) of funds provided for in paragraph 8 herein shall be released upon the final release of assurances by the Town. Such amount represents a retention in the event of a default by Subdivider to provide additional funds for completion of the Improvements by the Town. Additionally, the Town at the request of the Subdivider may cause to be retained 10% of the construction invoices to assure compliance by a contractor with that contractor's responsibilities.
10. Limitation on Transfer of Title. Subdivider shall not convey title to any of the Property without obtaining prior written approval from Town in the form of a Release of Assurance. Subdivider specifically understands and agrees that a Release of Assurance shall not be provided by Town until the Subdivision Improvements are completed in accordance with Paragraph 5.
11. Deposit Receipt Agreements. Notwithstanding Paragraph 10, Subdivider may enter into a deposit receipt agreement for the sale of the Property or any portion of it if the agreement clearly states that no portion of the Property may be conveyed until Subdivider performs its obligations under this agreement.
12. Bulk Sales. Notwithstanding Paragraph 10, Subdivider may sell and convey all of the Property in one transaction to a single purchaser who has entered into a satisfactory assurance agreement with Town, assuring completion of the Subdivision Improvements.
13. Substitution of Assurances. Subdivider may submit substitute assurances in a form and amount acceptable to Town at any time during which Subdivider is not in default under this agreement.
14. Town's Option Upon Default. If Subdivider defaults on any of its obligations under this Agreement or fails to complete construction of the Improvements within the time period required by this Agreement, the Parties agree that, in addition to any other remedies the Town may have against the Subdivider for failure to perform as required under this Agreement, the Town shall have and is hereby granted the right, at its sole discretion, to initiate a process to replat to acreage any portion of the Property that has not been identified as a construction phase or upon which construction of Subdivision improvements has not been completed. The Subdivider hereby authorizes the Town to execute on behalf of the Subdivider all documents necessary to so replat the Property, and appoints the Town as its agent and attorney in fact to do so. The replat may exclude any dedications to the public which were made on the Subdivision Plat or by separate instrument which are deemed necessary to serve the portions of the Property which are not replatted or to necessarily serve the public. Subdivider shall pay the reasonable costs incurred in replatting. The Town may use some or all of the aforesaid Assurance Agreement trust and other assurance funds to pay for the replatting of the Property. Prior to initiating any action to replat the Property or any portion of Property, the Town shall give forty-five (45) days first-class mailed notice to the Subdivider at its last known address and Subdivider shall have an opportunity to cure any such defaults within such period. In addition, if Subdivider defaults on its obligations under this Agreement or fails to complete construction of the Improvements within the time period required by this Agreement, and, after notice and opportunity to cure, defaults as provided in this paragraph, the Parties agree that, without

election and in addition to any other remedies the Town may have against the Subdivider for failure to perform as required under this Agreement, the Town may draw upon the loan funds, or any remaining balance thereof, in accordance with the Funding Agreement in order to complete construction of the Improvements. In this connection, the Town shall have sole discretion in determining a default in this Agreement, which discretion shall be exercised in a fair and reasonable manner. Subdivider shall not transfer title to any of the property in the Subdivision at any time after Subdivider commits a default upon any of its obligations under this Agreement.

15. Termination. This Agreement shall remain in full force and effect until one of the following has occurred:
 - a) All of the Improvements have been completed and accepted for maintenance by action of the Town Council and Subdivider's contractor(s) has(have) been paid in full and furnished complete lien releases to the Subdivider, who shall provide the Town with copies of such complete lien releases.
 - b) The Subdivider has tendered substitute assurances acceptable to the Town for the completion of the Improvements.
 - c) A new Subdivision Plat has been recorded for the Property in compliance with any and all applicable laws and regulations.
16. Binding Effect. This Agreement shall be binding upon the Parties and their respective successors and assigns.
17. Severability. If any portion of this Agreement is found to be invalid, such finding will not affect the validity of the remainder of this Agreement and to this end the provisions of this Agreement are severable.
18. No Waiver. No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor shall it be deemed to be a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the Town and the Subdivider; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default of the same type. The Town's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Subdivider.
19. Notice. Subdivider agrees to provide written notice to the Town, within ten (10) days of the occurrence of (1) a change of name, corporate identity, or address of the Subdivider or the Lender; (2) intent to transfer, or transfer of title to the Property by deed, or transfer of title to the Property by deed, contract, or operation of law; (3) the foreclosure of a lien against the Property or a portion of the Property; (4) the filing of a voluntary or involuntary petition of bankruptcy respecting the Subdivider; (5) any other event that may affect performance of the Parties under this Agreement.
20. Address of the Parties:

Subdivider: Stephen Carder, Manager
Manzanita Hills Six LLC
8417 East Whispering Wind Drive
Scottsdale, Arizona 85255

Bruce Griffin, Manager
Manzanita Hills Six LLC
600 East Highway 260 #17
Payson, Arizona 85541

Town: Town of Payson
303 North Beeline Highway
Payson, Arizona 85541
Attention: Public Works Engineer

21. Date of Agreement. The date of this Agreement shall for all purposes be the date of the signature of the last Party to sign this Agreement.
22. Controlling Law. This Agreement and the rights of the Parties hereto shall be governed by and construed in accordance with the internal laws of the State of Arizona without regard to conflicts of laws principles.
23. Authority. The Parties acknowledge and warrant that each of them is fully authorized and empowered to execute this Agreement by and through the individual(s) executing hereinafter.
24. Further Documents. The Parties shall execute and deliver any and all such documents and perform any and all such acts as are reasonably necessary or required to carry out the matters contemplated by this Agreement.
25. Representations. Each of the Parties acknowledges and warrants that it has been, or has had an opportunity to be, represented by independent counsel. This Agreement is the result of negotiation between the Parties and their respective attorneys, and the terms, conditions, and provisions of this Agreement shall be construed in a fair and even manner regardless of which Party drafted this Agreement or any provision or portion thereof.
26. Counterparts. This Agreement may be executed in one or more counterparts. Each executed counterpart shall for all purposes be deemed an original, but all of which together shall constitute in the aggregate but one in the same instrument. The signature pages from one or more counterparts may be removed therefrom and attached to one or more duplicate agreements containing all original signatures.
27. Date of Performance. If this Agreement provides that any time period expires or date for performance specified in this Agreement falls on a non-business day (a Saturday, Sunday, or legal holiday recognized by the Town), such time period or performance deadline shall be extended to the Town's next business day. Except as may otherwise be set forth herein, any performance shall be timely made and completed no later than 5:00 p.m. (Payson time) on the date the performance is due.
28. Complete Agreement. This Agreement and additional written agreements described or incorporated herein, if any, contain and set forth the entire and exclusive Agreement and understanding between the Parties hereto pertaining to the subject matter of this Agreement and reflect the reasonable expectations of the Parties hereto. This Agreement may not be amended or modified in any way whatsoever without the prior written consent of all Parties to this Agreement.
29. Dispute Resolution. Any dispute, controversy, claim, or cause of action arising out of or related to this Agreement shall be governed by Arizona law and may, but in no event need, be settled by

submission with the consent of both Parties to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, A.R.S. § 12-1501, et seq., and judgment upon any award rendered by the arbitrator(s) may be entered in the Superior Court of Gila County; or any such dispute, controversy, claim, or cause of action may be litigated in a court. The venue for any such dispute shall be Gila County, Arizona. Both Parties consent in advance to such venue and jurisdiction and waive any right to object that Gila County is an inconvenient or improper forum based upon lack of venue. Neither Party shall be entitled to recover from the other Party any of its attorneys' fees or other costs incurred in any such dispute, controversy, claim, or cause of action, but each Party shall bear its own attorneys' fees, whether the same is resolved through arbitration, litigation in a court, or otherwise.

30. Cancellation. This Agreement is subject to the provisions of A.R.S. § 38-511, the terms of which are incorporated herein by reference. Said statute provides, among other things, that if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement is an employee or agent of any other Party to the contract, at any time while this Agreement or any extension hereof is in effect, this Agreement may be cancelled.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above mentioned.

MANZANITA HILLS SIX LLC,
an Arizona limited liability company

TOWN OF PAYSON,
an Arizona municipal corporation:

DRAFT
Stephen Carder, Manager

By _____
DRAFT
F. Robert Edwards, Mayor

Bruce Griffin, Manager

APPROVAL AS TO FORM

The Town of Payson Legal Department has reviewed this agreement and approved it as to form and has determined that said agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

Dated this _____ day of _____, 2006.

By _____
Samuel I. Streichman, Town Attorney

STATE OF ARIZONA)
) ss.
County of Gila)

The foregoing Agreement to Construct Subdivision Improvements for Manzanita Hills Phase 6 Subdivision was signed before me this _____ day of _____, 2006, by Stephen Carder, Manager of Manzanita Hills Six LLC, on behalf of the company.

Notary Public

My commission expires:

STATE OF ARIZONA)
) ss.
County of Gila)

The foregoing Agreement to Construct Subdivision Improvements for Manzanita Hills Phase 6 Subdivision was signed before me this _____ day of _____, 2006, by Bruce Griffin, Manager of Manzanita Hills Six LLC, on behalf of the company.

Notary Public

My commission expires:

STATE OF ARIZONA)
) ss.
County of Gila)

The foregoing Agreement to Construct Subdivision Improvements for Manzanita Hills Phase 6 Subdivision was signed before me this _____ day of _____, 2006, by F. Robert Edwards, Mayor of the Town of Payson, on behalf of the Town.

Notary Public

My commission expires:

*Prepared by Town of Payson Legal Department
September 15, 2006 (1:01PM) SIS:drs
C:\MyFiles\Subdivisions\Manzanita Hills\Agreement to Construct Phase Six.wpd*

EXHIBIT "A"
LEGAL DESCRIPTION

Those lots and tracts shown on the Manzanita Hills Phase 6 Subdivision Plat recorded in the Office of the Gila County Recorder, Gila County, Arizona, on _____, 2006, as Map Number _____.

EXHIBIT "B"

IMPROVEMENTS

Those improvements as shown on the "Manzanita Hills Phase 6 Subdivision Improvement Plans" consisting of eleven sheets dated August 5, 2006, and approved by the Town of Payson on September 13, 2006.

EXHIBIT "C"
FUNDING AGREEMENT

WHEN RECORDED, RETURN TO:

**Samuel I. Streichman
Town of Payson
Office of the Town Attorney
303L North Beeline Highway
Payson, Arizona 85541
Phone: 928-474-5242**

**FUNDING AGREEMENT
Manzanita Hills Phase 6 Subdivision, Payson, Arizona**

TO: Town of Payson, Arizona

Date: _____, 2006

For the purpose of providing the assurance of construction through loan commitment, Manzanita Hills Six LLC, an Arizona limited liability company (herein referred to as "Developer"), and Arizona Business Bank (herein referred to as "Financial Institution"), agree as follows:

1. That funds in the amount of Five Hundred Forty-nine Thousand, Seven Hundred Two Dollars and Forty-five Cents (\$549,702.45), determined by the Developer to be sufficient to cover the cost of installing the remaining work in the Subdivision, including the cost of completing the Improvements required pursuant to the Agreement to Construct Subdivision Improvements entered into between the Developer and the Town of Payson, have been committed by the Financial Institution and will be made available by the Financial Institution as agent for the Developer, all in accordance with the _____ Loan Agreement (hereinafter, the "Loan Agreement") between the Developer and the Financial Institution, and are available to the Developer.
2. Developer agrees that the funds described in Paragraph 1 above will be used only for the purpose of installing off-site and on-site subdivision improvements (hereinafter "Subdivision Improvements") in the above-named subdivision.
3. All disbursements from said funds by Financial Institution to pay for said Subdivision Improvements shall be made in accordance with the Agreement to Construct Subdivision Improvements dated _____ (hereinafter "Agreement to Construct Subdivision Improvements") entered into on or about _____ between Developer and the Town of Payson, Arizona, and the Loan Agreement entered into between Developer and Financial Institution, to Developer or to a contractor or materialman upon direction of Developer, upon receipt from the Town Public Works Engineer of notice which must state the amount of the disbursement approved by the Town Public Works Engineer and that the construction of said Subdivision Improvements for the period covered by the disbursement has been accepted or preliminarily accepted in accordance

with the Agreement to Construct Subdivision Improvements.

4. If Developer defaults on its obligations under the Agreement to Construct Subdivision Improvements, or if Developer abandons construction of the Subdivision Improvements or if Developer fails to complete construction of the Subdivision Improvements covered by said funds within nine (9) months of this date, it is agreed that the Town of Payson, Arizona, by giving written notice within thirty (30) days following such event to Financial Institution of its intent to complete the Subdivision Improvements in accordance herewith may draw on the remaining balance of the funds described in Paragraph 1 above in accordance with the Loan Agreement in order to complete construction of the Subdivision Improvements in the above-referenced subdivision.

In the event the Town does not draw the remaining balance of the funds within sixty (60) days of such written notice to the Financial Institution, the Financial Institution shall have the option to draw upon the remaining balance of said funds and complete the Subdivision Improvements through its agents.

5. The Town of Payson, Arizona, agrees in the event of default outlined in the Agreement to Construct Subdivision Improvements that, before exercising its right to initiate the process to replat the property to revert to acreage, it will notify the Financial Institution in writing and give the Financial Institution forty-five (45) days to agree to complete the Improvements or agree to allow the Town of Payson, Arizona, to draw upon the remaining funds under the Loan Agreement to complete construction of the Improvements, according to the Loan Agreement. Should both the Financial Institution and the Town of Payson, Arizona, decide not to complete the Improvements within the forty-five (45) day period mentioned above, any remaining funds available pursuant to the Loan Agreement shall be applied by the Financial Institution toward reducing the Developer's outstanding loan balance with the Financial Institution.
6. It is understood that, notwithstanding anything to the contrary in this Funding Agreement or any other documents relating to this Funding Agreement or the transaction of which it is a part, the Town of Payson is not a borrower of funds from Financial Institution and is not and shall not be in any way required to repay any funds disbursed to or on behalf of Developer or Borrower. The Town of Payson may obtain from Financial Institution part or all of the funds committed under the Loan Agreement dated _____ in accordance with the Agreement to Construct Subdivision Improvements and this Funding Agreement and, to the extent practicable, Financial Institution may disburse such funds in accordance with said Loan Agreement to the Town of Payson; provided, however, the Parties understand and acknowledge that, in the event the Town of Payson makes claim to or utilizes such funds, or otherwise exercises its rights under said Agreement to Construct Subdivision Improvements, the Town of Payson will utilize such funds only for completion of the construction of Improvements according to said Agreement to Construct Subdivision Improvements and according to the approved plans for the construction of such Improvements. Financial Institution agrees to disburse all its committed funds or such part as is then remaining under said Loan Agreement.
7. Except as set forth in this Funding Agreement all other terms of the Agreement to Construct Subdivision Improvements dated _____ are hereby reaffirmed and ratified and shall be in full force and effect.

Acknowledged and Agreed:

MANZANITA HILLS SIX LLC,
an Arizona limited liability company

DRAFT

By: _____
Stephen Carder, Manager

DRAFT

By: _____
Bruce Griffin, Manager

ARIZONA BUSINESS BANK

By: _____
Patrick Sutter
Vice President & Loan Officer

TOWN OF PAYSON, a municipal corporation

DRAFT

By: _____
F. Robert Edwards, Mayor

APPROVED AS TO FORM:

By: _____
Samuel I. Streichman, Town Attorney

ATTEST:

By: _____
Silvia Smith, Town Clerk

STATE OF ARIZONA)
) ss.
County of Gila)

The foregoing Funding Agreement for Manzanita Hills Phase 6 Subdivision was signed before me this _____ day of _____, 2006, by Stephen Carder, Manager of Manzanita Hills Six LLC, on behalf of the company.

Notary Public

My commission expires:

STATE OF ARIZONA)
) ss.
County of Gila)

The foregoing Funding Agreement for Manzanita Hills Phase 6 Subdivision was signed before me this _____ day of _____, 2006, by Bruce Griffin, Manager of Manzanita Hills Six LLC, on behalf of the company.

Notary Public

My commission expires:

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing Funding Agreement for Manzanita Hills Phase 6 Subdivision was signed before me this _____ day of _____, 2006, by Patrick Sutter, Vice President and Loan Officer for Arizona Business Bank, on behalf of the Bank.

Notary Public

My commission expires:

STATE OF ARIZONA)
) ss.
County of Gila)

The foregoing Funding Agreement for Manzanita Hills Phase 6 Subdivision was signed before me this _____ day of _____, 2006, by F. Robert Edwards, Mayor of the Town of Payson, on behalf of the Town.

Notary Public

My commission expires:

*Prepared by Town of Payson Legal Department
SIS:drs September 15, 2006 (1:07PM)
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