RESOLUTION NO. 2229

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 CHAPARRAL HIGHLANDS SUBDIVISION.

WHEREAS, the subdivision plat for Chaparral Highlands Subdivision has been presented for approval; and

WHEREAS, the developer desires to proceed with construction of the improvements in Chaparral Highlands Subdivision; and

WHEREAS, the Town has negotiated an Agreement to Construct Subdivision Improvements with the developer of Chaparral Highlands 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 Chaparral Highlands Subdivision, a nineteen lot subdivision, be and is hereby approved as depicted on Exhibit "A" attached hereto and incorporated herein.

Section 2. 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 3. 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 4. 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:

_____
Silvia Smith, Town Clerk

APPROVED AS TO FORM:

_____
Samuel I. Streichman, Town Attorney

Prepared by Town of Payson Legal Department
SIS:drs November 8, 2006 (3:12PM)
C:\MyFiles\Resolutions\2229 Plat Approval & Agmt to Construct for Chaparral Highlands.wpd

NOV 16 2006 G.3*

FINAL PLAT
FOR
CHAPARRAL HIGHLANDS

A SUBDIVISION, BEING A PORTION OF THE NE 1/4, OF THE SE 1/4, OF SECTION 26, TOWNSHIP 11 NORTH, RANGE 10 EAST OF THE GILA AND SALT RIVER MERIDIAN, TOWN OF PAYSON, GILA COUNTY, ARIZONA

GENERAL NOTES

1) A DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CHAPARRAL HIGHLANDS WILL BE PROVIDED BY THE DEVELOPER.

2) THIS SITE WILL INCLUDE STORM WATER CONVEYANCES. THE PROPERTY OWNERS ARE RESPONSIBLE FOR ALL REQUIRED MAINTENANCE OF THESE DRAINAGE CONVEYANCES ON PRIVATE PROPERTY. THE TOWN OF PAYSON, OR OTHER PUBLIC AGENCIES HAVING JURISDICTION, POSSESSES RIGHT OF ACCESS FOR CLEARING, CLEANING, OR CHANNELIZING IF NOT PROPERLY MAINTAINED BY THE PROPERTY OWNERS. ALL FUNDS EXPENDED FOR THIS MAINTENANCE BY THE TOWN OF PAYSON WILL BE CHARGED TO THE INDIVIDUAL PROPERTY OWNERS.

3) NO LOT IN THIS SUBDIVISION MAY BE FURTHER DIVIDED AND NOT MORE THAN ONE SINGLE FAMILY RESIDENTIAL STRUCTURE MAY BE CONSTRUCTED ON EACH LOT WITHIN THIS SUBDIVISION.

4) ALL LOTS AND TRACT CORNERS ARE MARKED WITH A 5/8" REBAR WITH BRASS TAG, STAMPED L.S.#12314.

5) LOTS 1 THRU 7 INCLUSIVE, 9 THRU 14 INCLUSIVE, AND 16 THRU 19 INCLUSIVE ARE HILLSIDE LOTS AND SHALL CONFORM TO THE REQUIREMENTS FOR HILLSIDE SUBDIVISIONS AS SET FORTH IN SECTION 18-07-030H OF THE TOWN OF PAYSON'S UNIFIED DEVELOPMENT CODE. AN INDIVIDUAL GRADING AND DRAINAGE PLAN, PREPARED BY AN ARIZONA REGISTERED CIVIL ENGINEER FOR EACH OF THESE LOTS, SHALL BE SUBMITTED AND APPROVED BY THE PAYSON PUBLIC WORKS DEPARTMENT PRIOR TO ISSUANCE OF A GRADING AND/OR BUILDING PERMIT.

6) NATURAL DRAINAGE CONVEYANCES ON LOTS, EITHER WITH OR WITHOUT A DRAINAGE EASEMENT CANNOT BE RELOCATED WITHOUT WRITTEN APPROVAL FROM THE TOWN OF PAYSON. ANY CONSTRUCTION THAT IMPEDES THE DRAINAGE FLOW IN ANY WAY IS STRICTLY PROHIBITED.

7. ADEQUATE WATER PRESSURE IS PROVIDED TO ALL CHAPARRAL HIGHLANDS WATER METERS IN ACCORDANCE WITH ADEQ REQUIREMENTS. LOTS 10, 11, 18, AND 19 MAY REQUIRE INDIVIDUAL BOOSTER SYSTEMS TO PROVIDE ADEQUATE PRESSURE TO THE HOUSES. SAID SYSTEMS WILL BE CONSTRUCTED, OPERATED, AND MAINTAINED BY THE INDIVIDUAL LOT OWNERS.

DEDICATION

STATE OF ARIZONA)
COUNTY OF GILA) } SS

KNOW ALL MEN BY THESE PRESENTS:

CHAPARRAL HIGHLANDS, L.L.C., AN ARIZONA CORPORATION HAS SUBDIVIDED UNDER THE NAME OF CHAPARRAL HIGHLANDS, BEING A PORTION OF THE NE 1/4, OF THE SE 1/4, OF SECTION 26, T 11 N, R 10 E, GILA AND SALT RIVER MERIDIAN, GILA COUNTY, ARIZONA, AND HEREBY PUBLISHES THIS PLAT AND HEREBY DECLARES THAT SAID PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS AND DESIGNATIONS OF THE LOTS, TRACTS, AND STREETS CONSTITUTING THE SAME AND THAT EACH LOT, TRACT, AND STREET SHALL BE KNOWN BY THE NUMBER, LETTER, OR NAME THAT IS GIVEN TO EACH RESPECTIVELY ON SAID PLAT. TRACTS "A" IS HEREBY DECLARED PRIVATE ACCESS FOR THE EXCLUSIVE USE OF THE PROPERTY OWNERS WITHIN CHAPARRAL HIGHLANDS AND THEIR HEIRS, SUCCESSORS, AND ASSIGNS AND IS NOT DEDICATED TO THE PUBLIC FOR ITS USE EXCEPT THAT EASEMENTS FOR PUBLIC WATER AND SEWER LINES, REFUSE COLLECTION, PUBLIC UTILITIES, CABLE TELEVISION, AND EMERGENCY AND SERVICE TYPE VEHICLES AND DRAINAGE AND FLOOD CONTROL ARE PROVIDED AS SHOWN ON SAID MAP. SAID EASEMENTS SHALL INCLUDE THE RIGHT FOR THE UTILITY COMPANIES, THE TOWN OF PAYSON, AND THE NORTHERN GILA SANITARY DISTRICT, TO USE PRIVATE ACCESS FOR ENTRIES, SERVICE, INSTALLATION, REPLACEMENT, REPAIR MAINTENANCE AND OPERATION OF ALL UTILITIES, INCLUDING BUT NOT LIMITED TO WATER, SEWER, GAS, TELEPHONE, CABLE TELEVISION, AND OTHER COMMUNICATION FACILITIES. THE PRIVATE ACCESS IS NOTED AS TRACT "A" ON SAID MAP AND IS HEREBY DECLARED A PUBLIC UTILITY EASEMENT. THIS EASEMENT SHALL IN NO WAY AFFECT ANY OTHER RECORDED EASEMENTS ON SAID PREMISES. THERE HAS BEEN RECORDED A "DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR CHAPARRAL HIGHLANDS RELATING TO AN ASSOCIATION OF OWNERS WHICH WILL GOVERN THE USE AND MAINTENANCE OF TRACT "A". TRACT "B" (A PORTION OF E. MABEN WAY) SHALL REMAIN PRIVATE ACCESS UNTIL DEDICATED TO THE TOWN OF PAYSON. EASEMENTS ARE HEREBY GRANTED FOR THE PURPOSE SHOWN HEREON. CONSTRUCTION WITHIN EASEMENTS, EXCEPT BY PUBLIC AGENCIES AND UTILITY COMPANIES, SHALL BE LIMITED TO UTILITIES AND WOOD, WIRE, OR REMOVABLE SECTION TYPE FENCING.

IN WITNESS WHEREOF:

CHAPARRAL HIGHLANDS [illegible] AN ARIZONA CORPORATION HAS HEREUNTO CAUSED ITS NAME TO BE SIGNED OF THIS DAY OF _____ 2004.

MICHAEL MUSTACCI — ITS PRESIDENT

ACKNOWLEDGMENT

STATE OF ARIZONA }
COUNTY OF GILA } } SS
THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____ 2004.
BY MICHAEL MUSTACCI WHO ACKNOWLEDGED HIMSELF TO BE THE PRESIDENT OF CHAPARRAL HIGHLANDS, L.L.C.
AND THAT AS SUCH MEMBER, BEING AUTHORIZED SO TO DO, SIGNED THE NAME OF THE COMPANY AS SUCH OFFICER.
MY COMMISSION EXPIRES _____ NOTARY PUBLIC

SITE DATA

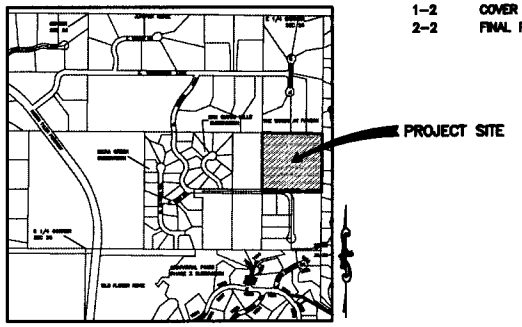
EXISTING ZONING	R1-10-MH
TOTAL NO. OF LOTS	19
AREA IN PRIVATE STREETS (TRACT A)	1.46 AC.
AREA IN PRIVATE STREETS (TRACT B)	0.33 AC.
AREA IN LOTS	8.52 AC.
TOTAL AREA	9.86 AC.
A.P.N.	302-23-006A
D/U PER ACRE	1.9

CERTIFICATION

THIS IS TO CERTIFY THAT THIS MAP, CONSISTING OF (2) SHEETS, CORRECTLY REPRESENTS A SURVEY MADE UNDER MY SUPERVISION DURING THE MONTH OF FEBRUARY, 2004. THAT THE SURVEY IS COMPLETE, LOT CORNERS ARE MARKED WITH 5/8" REBAR W/ L.S. TAG #12314 AND THE MONUMENTS EXIST, THEIR POSITIONS ARE CORRECTLY SHOWN, AND SAID MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

OWNERS/SUBDIVIDERS

CHAPARRAL HIGHLANDS L.L.C.
HC 6 BOX 14780
PAYSON, ARIZONA 85541
(928) 472-7414



VICINITY MAP
N.T.S.

BASIS OF BEARINGS

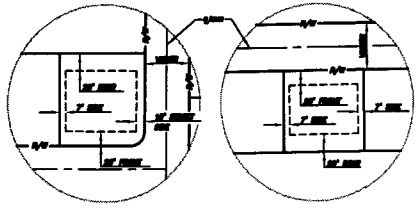
THE LINE BETWEEN THE SE CORNER OF THE NE 1/4, OF THE SE 1/4, OF THE SE 1/4 OF SECTION 26, TO THE NE CORNER OF THE SE 1/4, OF THE SE 1/4 OF SECTION 26.
BASIS OF BEARING BEING N 00°03'07" W

SHEET INDEX

	DESCRIPTION
1-2	COVER SHEET
2-2	FINAL PLAT

LEGEND

o	FOUND MONUMENTATION, AS NOTED
⊕	C/L SURVEY MONUMENT
(R)	RECORDED INFORMATION
(M)	MEASURED INFORMATION
	BOUNDARY LINE
	RIGHT OF WAY LINE
	CENTER LINE
	LOT LINE
	D.E., P.U.E. & S.E.
	D.E. ONLY
	SEWER EASEMENT
302-23-006A	ASSESSOR'S PARCEL NO.
D.E.	DRAINAGE EASEMENT
S.E.	SLOPE EASEMENT
P.U.E	PUBLIC UTILITY EASEMENT



TYPICAL R1-10-MH SETBACKS
N.T.S.

APPROVAL

APPROVED BY THE COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, THIS _____ DAY OF _____ 2004.

BY _____
MAYOR, TOWN OF PAYSON, ARIZONA

ATTEST: _____
TOWN CLERK

APPROVED BY THE TOWN PUBLIC WORKS DIRECTOR OF THE TOWN OF PAYSON, ARIZONA, THIS _____ DAY OF _____ 2004.

SUBSTANTIALLY CONFORMS TO PRELIMINARY PLAT. ENGINEERING PLANS COMPLY WITH THE SUBDIVISION REQUIREMENTS.

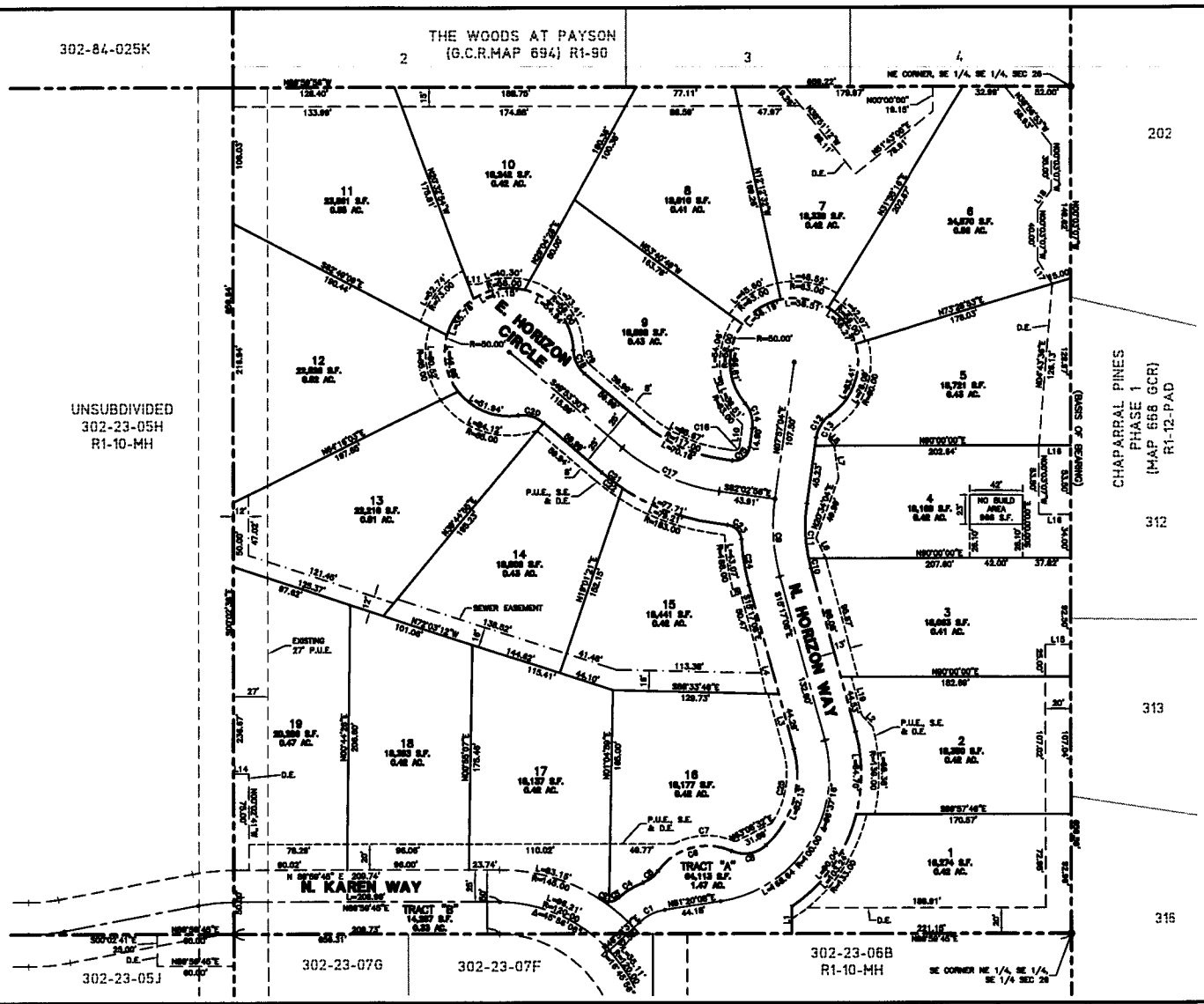
BY _____
PUBLIC WORKS DIRECTOR

Prepared by
TETRA TECH, INC.
Project No. 2424.0003

1-800-STAKE-IT

SHEET 1 OF 2

P:\2424\0003\dwg\2424\0003_FP_CVR.dwg, HP9/2006 7:47:35 AM, jacquelyn.hillman, 1:1,30,0,0



LINE TABLE		
LINE	BEARING	DISTANCE
L1	N00°00'00"W	20.82
L2	N43°22'38"W	12.74
L3	N18°17'08"W	46.70
L4	N12°46'18"E	36.00
L5	S74°43'32"W	5.00
L6	N38°36'26"W	17.40
L7	N07°56'17"W	26.24
L8	N40°33'34"W	6.48
L9	S72°54'34"W	5.00
L10	S07°34'31"E	16.83
L11	S86°30'46"W	6.23
L14	N86°56'46"E	11.86
L15	N90°00'00"E	20.03
L16	N90°00'00"E	25.00
L17	S36°35'14"E	21.40
L18	N36°12'07"E	18.60
L19	N18°17'08"W	31.10

CURVE TABLE			
CURVE	RADIUS	DELTA	LENGTH
C1	37.00	34°20'31"	22.18'
C2	12.00	36°32'00"	7.44'
C3	12.00	36°26'30"	8.27'
C4	62.00	21°06'34"	22.84'
C5	25.00	33°36'26"	14.66'
C6	47.00	79°38'00"	64.80'
C7	56.00	53°14'27"	50.15'
C8	25.00	66°36'21"	29.06'
C9	150.00	23°41'12"	60.83'
C10	125.00	3°33'16"	7.76'
C11	125.00	19°40'56"	43.84'
C12	25.00	48°11'23"	21.03'
C13	15.00	48°11'23"	12.62'
C14	25.00	48°11'23"	21.03'
C15	12.00	90°00'00"	18.85'
C16	4.00	90°00'00"	6.28'
C17	150.00	32°06'28"	84.15'
C18	25.00	48°11'23"	21.03'
C19	17.00	48°11'23"	14.30'
C20	25.00	46°08'27"	21.50'
C21	175.00	6°31'16"	20.31'
C22	183.00	7°08'12"	23.80'
C23	12.00	81°37'02"	17.01'
C24	175.00	11°46'14"	35.10'
C25	67.00	46°53'17"	55.34'

NO.	REVISIONS	DATE	BY	CHK.

TETRA TECH, INC.
421 S. Gordon Highway
Payson, AZ 85541-4800
Tel.(928)474-4884 Fax(928)474-4887

CHAPARRAL HIGHLANDS
PAYSON, ARIZONA

JOB NO.	24240003
DESIGNED BY	RGS
DRAWN BY	JLP
CHECKED BY	RGS
APPROVED BY	RGS
DATE	11/06/06

FINAL PLAT

SCALE: HORIZ: 1"= 40'
CONT. INTERVAL = N/A
DRAWING NO. FP
SHEET NO. 2 OF 2

F:\24240003\dwg\24240003_FP.dwg, 11/9/2006 8:02:52 AM, jasonphillmore, 1:330469

EXHIBIT "B"

to Resolution No. 2229

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

Chaparral Highlands Subdivision, Payson, Arizona

This Agreement is made and entered into as of the _____ day of _____, 2006, by and between CHAPARRAL HIGHLANDS, LLC, an Arizona limited liability company ("Subdivider"), and the TOWN OF PAYSON, ARIZONA, an Arizona 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 "Chaparral Highlands Subdivision" (the "Subdivision"); and

B. The improvements to be constructed in the Subdivision are described in the documents referred to in Exhibit "B", attached hereto and incorporated herein by this reference, and hereafter referred to as the "Improvements." Construction of the Improvements is to be assured to the Town as provided in Paragraph 8 of this Agreement.

C. The Parties to this Agreement wish to establish specific terms, conditions, and guidelines to provide for assurances for the completion of the required 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

D. 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

E. 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. The Subdivider's obligation to complete the Improvements will arise as of the date of this Agreement (the "Start Date"). 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 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 the Improvements have been completed in accordance with all Town regulations and all applicable plans which have been approved by the Town, and after the Town has inspected the Improvements for compliance with the plans and regulations and has accepted the Improvements in accordance with paragraph 6 herein. 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 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 have 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 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 Town Council and/or the termination of the warranty period provided for in paragraph 7 herein.

(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 the 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 (2) 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 under this Agreement, Subdivider shall procure a loan from M&I Bank ("Financial Institution") to provide site construction assurances in the amount of Seven Hundred Seven Thousand, Four Hundred Twenty-six Dollars and Twenty-two Cents ($707,426.22), 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 an additional three percent (3%) of such sum. 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 such Improvements. 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 will be used only for the purpose of installing the Improvements as provided in this Agreement. A copy of Financial Institution's Funding Agreement is attached hereto marked Exhibit "C" and made a part hereof by this reference.

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. Additionally, at its sole cost, Subdivider shall 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. Prior to commencing construction or inspection of the Improvements, 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 amount of Thirteen Thousand, Nine Hundred Sixty Dollars and Thirty-seven Cents ($13,960.37).

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, at the request of the Subdivider, the Town may cause to be retained 10% of the construction invoices to assure compliance by a contractor with that contractor's responsibilities.

10. Town's Option Upon Default. If Subdivider materially defaults on its obligations under this Agreement, the Parties agree that, in addition to any other remedies Town may have against Subdivider for failure to perform as required under this Agreement, Town shall have and is hereby granted the right, at its sole discretion, to initiate a process to replat the Property to revert to acreage of approximately the same boundary configurations of record existing before the Subdivision Plat for the Property was recorded. Subdivider hereby authorizes Town to execute on behalf of Subdivider all documents necessary to replat the Property, and appoints 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. Prior to initiating any action to replat the Property or any portion of Property, Town shall give forty-five (45) days' first-class mailed notice to Subdivider at its last known address and Subdivider shall have an opportunity to cure any such defaults within such period. In addition, if Subdivider materially defaults on its obligations under 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 Town may have against Subdivider for failure to perform as required under this Agreement, the Town may make claim against the loan procured under paragraph 8 hereinabove and receive and use said funds to complete construction of the Improvements. In this connection, the Town shall have the sole discretion in determining a default under this Agreement, which discretion the Town may exercise in any manner, whether or not the exercise of such discretion is fair or reasonable under the circumstances.

11. 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 has 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.

12. Binding Effect. This Agreement shall be binding upon the Parties and their respective successors and assigns.

13. 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.

14. 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.

15. Notice. The 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 Financial Institution; (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.

16. Address of the Parties:

Subdivider:
Chaparral Highlands, LLC
7954 Gibson Ranch Road
Payson, Arizona 85541
Attention: Michael Mustacci, Manager

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

17. 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.

18. 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.

19. 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.

20. Further Documents. The Parties shall execute and deliver any and all such documents and perform any and all such acts as reasonably necessary or required to carry out the matters contemplated by this Agreement.

21. 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.

22. 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 and 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.

23. 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.

24. Complete Agreement. This Agreement and additional written agreements described 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.

25. Dispute Resolution. This Agreement shall be governed and construed in accordance with the internal laws of the State of Arizona. With the written consent of both Parties, any

dispute, controversy, claim, or cause of action arising out of or related to this Agreement may, but in no event need, be settled by submission 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*. Judgment upon any award rendered by the arbitrator(s), if filed in Arizona Superior Court, shall be filed in the Superior Court of Gila County, Arizona; or any such dispute, controversy, claim, or cause of action may be litigated in the Superior Court of Gila County, Arizona. The venue for any such dispute shall be Gila County, Arizona, and 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, costs, or expert witness fees incurred in any such dispute, controversy, claim, or cause of action, but each party shall bear its own attorneys' fees without contribution from the other party, whether the same is resolved through arbitration, litigation in a court, or otherwise.

26. 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, at any time while this Agreement or any extension hereof is in effect, an employee or agent of any other party to the contract, this Agreement may be canceled.

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

TOWN OF PAYSON,
an Arizona municipal corporation

By_____
F. Robert Edwards, Mayor

ATTEST:

_____
Silvia Smith, Town Clerk

CHAPARRAL HIGHLANDS, LLC,
an Arizona limited liability company

By_____
Michael J. Mustacci, 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 was signed before me this _____ day of _____, 2006, by Michael J. Mustacci, Manager of Chaparral Highlands, LLC, an Arizona limited liability company, on behalf of the company.

_____
Notary Public

My commission expires:
_____

STATE OF ARIZONA)
) ss.
County of Gila)

The foregoing Agreement to Construct Subdivision Improvements 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
November 8, 2006 (3:13PM) SIS:drs
C:\MyFiles\Subdivisions\Chaparral Highlands\Agmt to Construct.wpd

EXHIBIT "A"
LEGAL DESCRIPTION

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

EXHIBIT "B"
IMPROVEMENTS

Those improvements as shown on the "Chaparral Highlands Subdivision Improvement Plans," consisting of thirty sheets dated August 7, 2006, and approved by the Town of Payson on _____, 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

Chaparral Highlands Subdivision, Payson, Arizona

TO: Town of Payson, Arizona Date: _____, 2006

For the purpose of providing the assurance of construction through loan commitment, Chaparral Highlands, LLC (herein referred to as "Developer"), and M&I Marshall & Ilsley Bank (herein referred to as "Financial Institution"), agree as follows:

1. That funds in the amount of Seven Hundred Seven Thousand, Four Hundred Twenty-six Dollars and Twenty-two Cents ($707,426.22), 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 October 13, 2005 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, 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:

CHAPARRAL HIGHLANDS, LLC,
an Arizona limited liability company

By:_____
Michael J. Mustacci, Manager

M&I MARSHALL & ISLEY BANK

By:_____
Scott R. Davis, Vice Presidente

TOWN OF PAYSON, a municipal corporation

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 _____)

The foregoing Funding Agreement for Chaparral Highlands Subdivision was signed before me this _____ day of _____, 2006, by Michael J. Mustacci, Manager of Chaparral Highlands, LLC, on behalf of the company.

_____
Notary Public

My commission expires:

_____

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing Funding Agreement for Chaparral Highlands Subdivision was signed before me this _____ day of _____, 2006, by Scott R. Davis, Vice President of M&I Bank, on behalf of the Bank.

_____
Notary Public

My commission expires:

_____

STATE OF ARIZONA)
) ss.
County of Gila)

The foregoing Funding Agreement for Chaparral Highlands 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 November 8, 2006 (3:17PM)
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