RESOLUTION NO. 2239

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 FALCON LOOKOUT PHASE 1 SUBDIVISION.

WHEREAS, the subdivision plat for Falcon Lookout Phase 1 Subdivision has been presented for approval; and

WHEREAS, the developer desires to proceed with construction of the improvements in Falcon Lookout Phase 1 Subdivision; and

WHEREAS, the Town has negotiated an Agreement to Construct Subdivision Improvements with the developer of Falcon Lookout Phase 1 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 Falcon Lookout Phase 1 Subdivision, a nineteen lot subdivision, be and is hereby approved as depicted on Exhibit "A" attached hereto and incorporated herein, subject to the conditions, requirements, and notes written thereon or otherwise imposed.

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

DEC 14 2006 G.13

Prepared by Town of Payson Legal Department
SIS:drs December 7, 2006 (12:14PM)
C:\MyFiles\Resolutions\2239 Plat Approval & Agmt to Construct for Falcon Lookout Phase 1.wpd

FINAL PLAT
FOR
FALCON LOOKOUT
PHASE 1

A SUBDIVISION, BEING A PORTION OF THE
SOUTHWEST 1/4, OF SECTION 33, TOWNSHIP 11 NORTH, RANGE 10 EAST
OF THE GILA AND SALT RIVER MERIDIAN, PAYSON, ARIZONA.

GENERAL NOTES

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

2) THIS SITE WILL INCLUDE SNOW WATER CONVEYANCES. THE PROPERTY OWNERS ARE RESPONSIBLE FOR ALL REQUIRED MAINTENANCE OF THOSE DRAINAGE CONVEYANCES ON THEIR PROPERTY. THE TOWN OF PAYSON, OR OTHER PUBLIC AGENCIES HAVING JURISDICTION, PORSESS RIGHT OF ACCESS FOR CLEANING, SLEANING, OR CHANGELINGS 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) 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.

6) CONSTRUCTION OUTSIDE BUILDING ENVELOPES SHALL NOT BE PERMITTED.

7) ON LOTS WITH BUILDING ENVELOPES SHOWN, LOT OWNERS WILL BE REQUIRED TO CONSTRUCT IMPROVEMENTS ONLY WITHIN THE DEFINED BUILDING ENVELOPE. DRIVEWAY IMPROVEMENTS SHALL BE CONSTRUCTED WITHIN A THIRTY FOOT WIDE ACCESS CORRIDOR. LOCATION OF THE DRIVEWAY ACCESS CORRIDOR FOR EACH LOT MUST BE APPROVED BY THE TOWN OF PAYSON AND THE HOMEOWNER'S ASSOCIATION.

8) LOTS 7-10 INCLUSIVE ARE HILLSIDE LOTS AND SHALL CONFORM TO THE REQUIREMENTS OF THE HILLSIDE SUBDIVISION IN SECTION 10-07-060, ITEM H OF THE TOWN OF PAYSON UNIFIED DEVELOPMENT CODE. AN INDIVIDUAL GRADING 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 PERMIT AND BUILDING PERMIT.

9) LOTS 7-10 AND 13-19 INCLUSIVE SHALL CONSTRUCT A TEMPORARY BARRIER ON THE DOWNHILL SIDE OF THE LOT, DESIGNED BY AN ARIZONA REGISTERED PROFESSIONAL ENGINEER, CAPABLE OF PREVENTING DEBRIS FROM FALLING ONTO THE PROPERTIES BELOW THEM. THIS BARRIER SHALL BE PLACED AS CLOSE TO THE CONSTRUCTION AS PRACTICAL AND SHALL BE SHOWN ON THE HILLSIDE GRADING PLAN AND SHALL BE IN PLACE PRIOR TO ANY CONSTRUCTION COMMENCING ON EACH INDIVIDUAL LOT.

10) LOTS 7-19 SHALL INCLUDE AN UNDERGROUND STORMWATER RETENTION COMPLY WITH THE HILLSIDE GRADING PLAN, IN CONFORMANCE WITH THE CONCEPTUAL DESIGN & PARAMETERS CONTAINED IN THE FALCON LOOKOUT FINAL DRAINAGE REPORT.

11) AN AVIGATION EASEMENT IS HEREBY GRANTED OVER ALL LOTS, TRACTS, AND STREETS WITHIN THIS SUBDIVISION THAT PROHIBITS THE CONSTRUCTION OF ANY ITEM THAT MAY INHERE THE SAFE OPERATION OF AIRCRAFT OVER THE PROPERTIES. ALL PROPERTIES ARE SUBJECT TO AIRCRAFT NOISE AND OTHER COMMON HAZARDS ASSOCIATED WITH A GENERAL PURPOSE AIRPORT.

12) PORTIONS OF THIS SUBDIVISION ARE LOCATED WITHIN ONE QUARTER MILE OF AN INDUSTRIAL ZONING DISTRICT.

APPROVALS

APPROVED BY THE COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, THIS _____ DAY OF _____ 2006.

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 _____ 2006.

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

BY _____
PUBLIC WORKS DIRECTOR

SHEET INDEX

	DESCRIPTION
1-3	COVER SHEET
2-3	FINAL PLAT
3-3	FINAL PLAT – TRACT "B"

CERTIFICATION

THIS IS TO CERTIFY THAT THIS MAP, CONSISTING OF (2) SHEETS, CORRECTLY REPRESENTS A SURVEY MADE UNDER MY SUPERVISION DURING THE MONTH OF JANUARY, 2006, THAT THE SURVEY IS COMPLETE, LOT CORNERS ARE MARKED WITH 5/8" REBAR W/ L.S. TAG #12314 AND THE MONUMENTS FOUND, THEIR POSITIONS ARE CORRECTLY SHOWN, AND SAID MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE REPEATED.

LEGEND

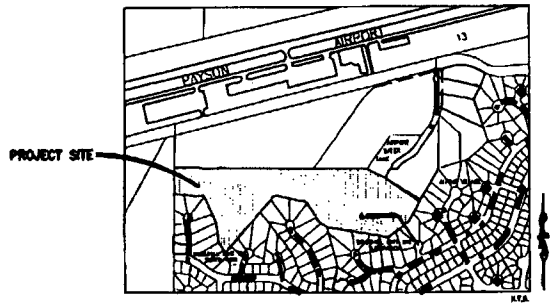
●	FOUND MONUMENTATION, AS NOTED
⊙	C.A. SURVEY MONUMENT
(R)	RECORDED INFORMATION
(M)	MEASURED INFORMATION
	BOUNDARY LINE
	RIGHT OF WAY LINE
	CENTER LINE
	LOT LINE
	EASEMENT LINE
302-23-004P	ASSESSOR'S PARCEL NO.
D.E.	DRAINAGE EASEMENT
S.E.	SEPTIC EASEMENT
P.U.E.	PUBLIC UTILITY EASEMENT
N.V.A.E.	NON-VEHICULAR ACCESS EASEMENT
	BUILDING SETBACKS

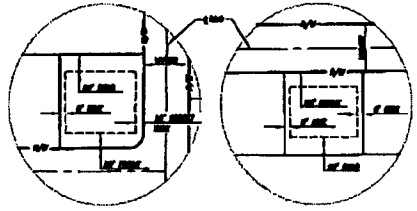
OWNER/DEVELOPER

LAWRENCE WEYMOUTH PEW
AND SUSAN PEW
1564 E. LEHI ROAD
MESA, AZ. 85203
480-980-7842

BASIS OF BEARINGS

THE LINE BETWEEN THE WEST CORNER OF LOT 309 OF WOODSILL UNIT TWO (MAP 718 60/2), AND BEARING BEING N 41°30'30" E





TYPICAL R1-8 SETBACKS
N.T.S.

DEDICATION

STATE OF ARIZONA)
COUNTY OF GILA) ss

KNOW ALL MEN BY THESE PRESENTS:

LAWRENCE WEYMOUTH PEW AND SUSAN PEW HAVE SUBDIVIDED UNDER THE NAME OF FALCON LOOKOUT, BEING A PORTION OF THE SW 1/4 OF SECTION 33, T 11 N, R 10 E, GILA AND SALT RIVER MERIDIAN, GILA COUNTY, ARIZONA, AND HEREBY PUBLISHES THIS PLAT AS AND FOR THE PLAT OF SAID FALCON LOOKOUT PHASE 1, AND HEREBY DECLARES THAT SAID PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS AND DIMENSIONS 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. TRACT "A" IS HEREBY DECLARED PRIVATE ACCESS FOR THE EXCLUSIVE USE OF THE PROPERTY OWNERS WITHIN FALCON LOOKOUT AND THEIR ASSIGNS, SUCCESSORS, AND HEIRS 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 EASEMENT SHALL INCLUDE THE RIGHT FOR THE UTILITY COMPANIES, THE TOWN OF PAYSON, AND THE NORTHERN GILA DRAINAGE DISTRICT, TO THE PRIVATE ACCESS FOR INSPECTION, REPAIR, REINSTALLATION, 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. TRACT "B" IS HEREBY RESERVED FOR FUTURE DEVELOPMENT. THERE HAS BEEN RECORDED A "DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR FALCON LOOKOUT RELATING TO AN ASSOCIATION OF OWNERS WHICH SHALL GOVERN THE USE AND MAINTENANCE OF TRACT "A". 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:

LAWRENCE WEYMOUTH PEW HAS HEREUNTO CAUSED HIS NAME TO BE SIGNED THIS _____ DAY OF _____ 2006.

_____
LAWRENCE WEYMOUTH PEW — OWNER

IN WITNESS WHEREOF:

SUSAN PEW HAS HEREUNTO CAUSED HER NAME TO BE SIGNED THIS _____ DAY OF _____ 2006.

_____
SUSAN PEW — OWNER

ACKNOWLEDGMENT

STATE OF ARIZONA }
COUNTY OF GILA }) ss

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____ 2006.

BY LAWRENCE W. AND SUSAN T. PEW WHO ACKNOWLEDGED THEMSELVES TO BE THE OWNERS OF FALCON LOOKOUT PHASE 1.

MY COMMISSION EXPIRES _____ NOTARY PUBLIC

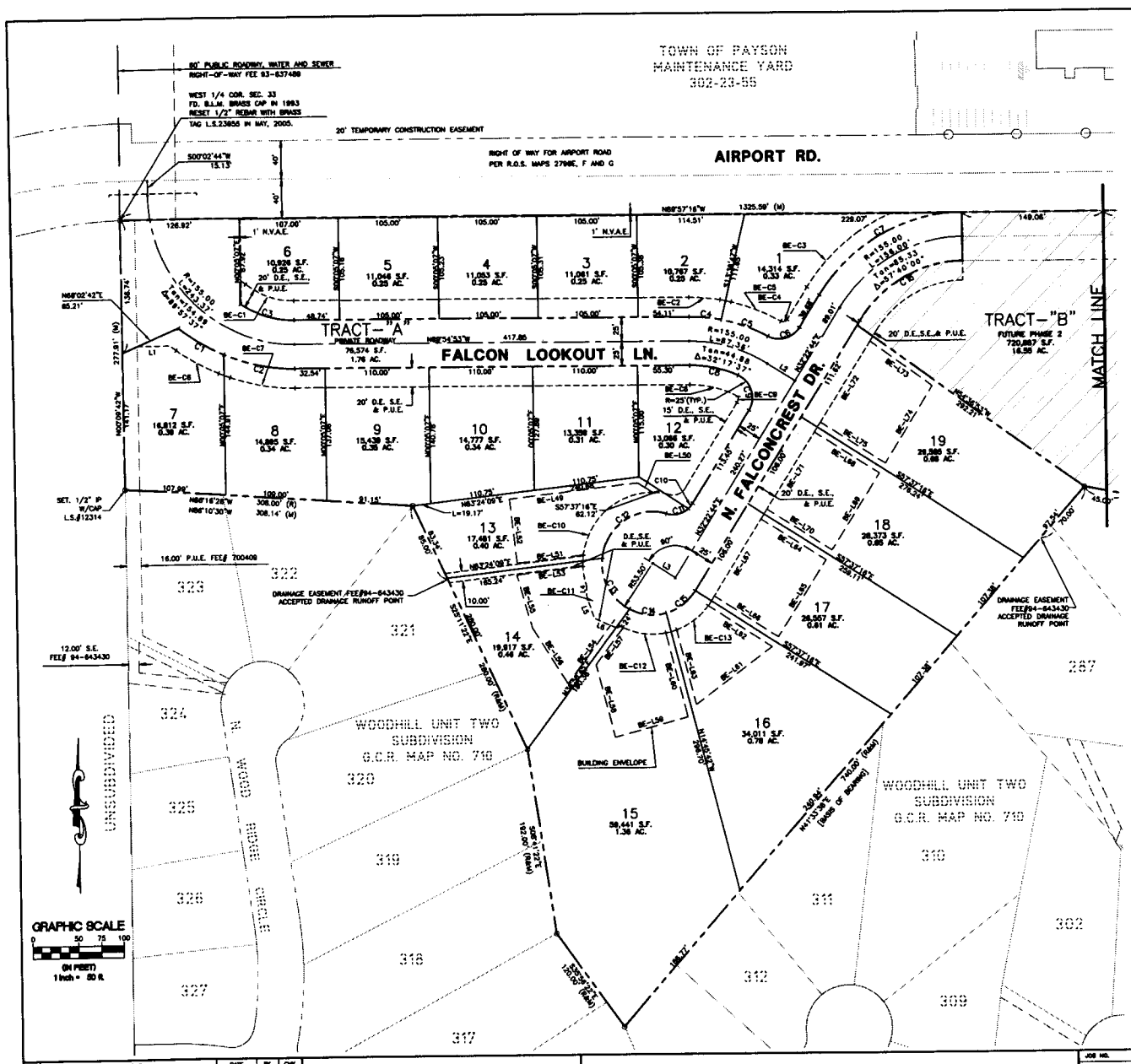
Prepared by
TETRA TECH, INC.

Project No. 6697.0001

SHEET 1 OF 3

EXHIBIT "A"

to Resolution No. 2239



CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	56.57	201.74	15°47'01"
C2	78.18	201.74	22°11'58"
C3	61.58	107.45	32°50'03"
C4	34.35	180.00	10°56'07"
C5	52.48	180.00	16°42'27"
C6	37.24	25.00	85°20'57"
C7	181.17	180.00	57°40'00"
C8	52.61	130.00	23°11'07"
C9	43.24	25.00	99°06'30"
C10	7.19	25.00	16°28'37"
C11	25.14	25.00	57°37'38"
C12	83.79	53.50	90°28'33"
C13	83.50	53.50	88°00'05"
C14	40.44	53.50	43°18'48"
C15	38.54	53.50	42°20'43"
C16	130.84	130.00	57°40'00"

BUILDING ENVELOPE CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
BE-C1	58.01	87.45	38°41'58"
BE-C2	33.08	200.00	9°28'41"
BE-C3	77.81	195.00	22°48'11"
BE-C4	7.57	5.00	86°45'00"
BE-C5	56.28	200.00	16°07'28"
BE-C6	51.02	221.74	13°11'04"
BE-C7	71.45	221.74	18°27'42"
BE-C8	53.38	110.00	27°48'13"
BE-C9	6.42	10.00	36°46'21"
BE-C10	106.67	73.50	83°08'57"
BE-C11	67.56	73.50	52°40'48"
BE-C12	48.44	73.50	36°12'08"
BE-C13	42.49	73.50	33°07'09"

BUILDING ENVELOPE AREA TABLE		
LOT #	S.F.	ACRES
13	6531.56	0.15
14	6735.08	0.15
15	7501.34	0.17
16	7211.14	0.17
17	7520.00	0.17
18	7520.00	0.17
19	7520.00	0.17

BUILDING ENVELOPE LINE TABLE		
LINE	LENGTH	BEARING
BE-L38	81.48	N00°05'07"E
BE-L39	98.00	N88°54'53"W
BE-L40	47.51	N88°54'53"W
BE-L41	81.48	N00°05'07"E
BE-L42	50.84	N83°24'09"E
BE-L43	75.57	N00°05'07"E
BE-L44	98.00	S88°54'53"E
BE-L45	49.30	S88°54'53"E
BE-L46	100.54	S32°22'44"W
BE-L47	75.13	N00°05'07"E
BE-L48	53.88	S57°37'18"E
BE-L49	135.87	N83°24'09"E
BE-L50	18.68	S57°37'18"E
BE-L51	70.00	N83°24'09"E
BE-L52	68.99	N06°35'51"W
BE-L53	70.00	N83°24'09"E
BE-L54	80.00	N36°58'45"E
BE-L55	56.94	S15°58'40"E
BE-L56	69.10	S32°13'34"E
BE-L57	48.11	N36°58'45"E
BE-L58	77.62	N14°45'42"W
BE-L59	80.00	S75°14'18"W
BE-L60	90.00	N14°45'42"W
BE-L61	100.35	N53°43'51"E
BE-L62	80.00	S57°37'18"E
BE-L63	80.00	N14°45'42"W
BE-L64	80.00	S57°37'18"E
BE-L65	94.00	N32°22'44"E
BE-L66	80.00	S57°37'18"E
BE-L67	94.00	S32°22'44"W
BE-L68	80.00	S57°37'18"E
BE-L69	94.00	N32°22'44"E
BE-L70	80.00	S57°37'18"E
BE-L71	94.00	S32°22'44"W
BE-L72	98.56	N32°22'44"E
BE-L73	80.11	N54°36'33"W
BE-L74	94.36	N32°22'44"E
BE-L75	80.00	S57°37'18"E

LINE TABLE		
LINE	LENGTH	BEARING
L1	35.08	S88°54'53"E
L2	33.38	S57°37'18"E
L3	28.50	N57°37'18"W
L4	10.63	S00°05'55"E
L5	24.56	S18°32'10"E
L6	24.63	S66°12'42"E

NO.	REVISIONS	DATE	BY	CHK.

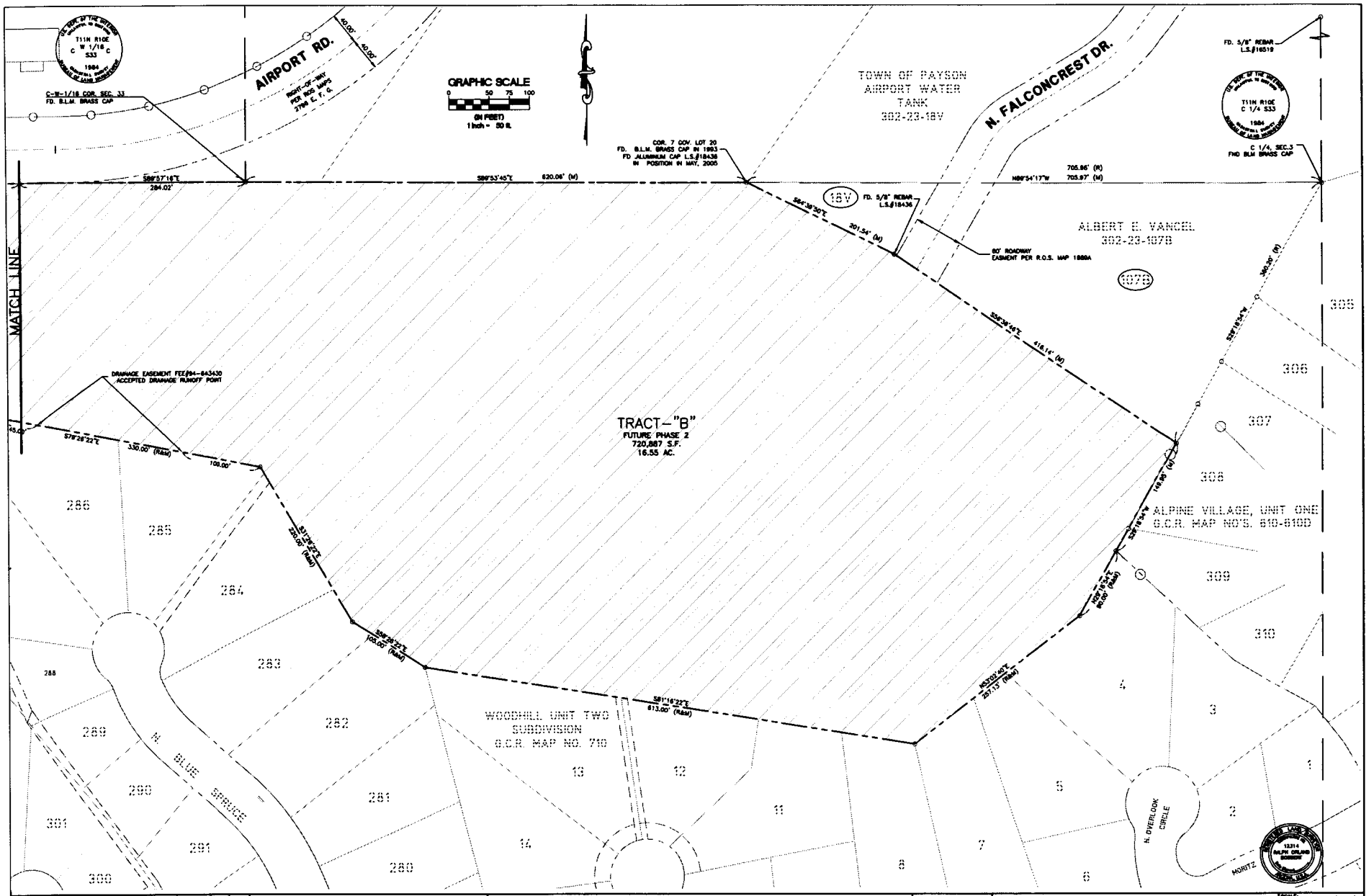
TETRA TECH, INC.
431 S. Beeline Highway
Payson, AZ 85541-4668
TEL:(928)474-4638 FAX:(928)474-4687

FALCON LOOKOUT
PAYSON, ARIZONA

JOB NO.	6687G001
DESIGNED BY:	RGB
DRAWN BY:	JLP
CHECKED BY:	RGB
APPROVED BY:	RGB
DATE:	06/12/06

PHASE 1
FINAL PLAT

SCALE:	HORIZ: 1"= 50'
CONT. INTERVAL =	N/A
DRAWING NO.	FP
SHEET NO. 2	OF: 3



NO.	REVISIONS	DATE	BY	CHK.

TETRA TECH, INC.
431 S. Beeline Highway
Payson, AZ 85541-4865
TEL:(928)474-4638 FAX:(928)474-4867

FALCON LOOKOUT
PAYSON, ARIZONA

JOB NO.	66970001
DESIGNED BY:	ROB
DRAWN BY:	JLP
CHECKED BY:	ROB
APPROVED BY:	ROB
DATE:	06/12/06

PHASE 1
FINAL PLAT
TRACT "A"

SCALE: HORIZ: 1"= 50'
CONT. INTERVAL = N/A
DRAWING NO. FP
SHEET NO. 3 OF: 3

EXHIBIT "B"

to Resolution No. 2239

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, ext. 208

AGREEMENT TO CONSTRUCT SUBDIVISION IMPROVEMENTS

Falcon Lookout Phase 1 Subdivision, Payson, Arizona

THIS AGREEMENT is made and entered into this _____ day of DRAFT, 200__ by and between Lawrence Weymouth Pew and Susan Pew, husband and wife ("Subdivider"), and the Town of Payson, 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 "Falcon Lookout Phase 1" (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 recording of the final plat for the Subdivision (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 improvements within the development. The Improvements shall consist of the Improvements described on Exhibit "B".

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. 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 establish an escrow account (the "Escrow Account") with Pioneer Title Agency, Inc., or other escrow company mutually agreeable to Town and Subdivider (the "Escrow Agent") pursuant to an agency or other agreement in form and content as generally set forth on attached Exhibit "C" (the "Agency Agreement"). Subdivider shall deposit the sum of Five Hundred Seventy-seven Thousand, Five Hundred Forty-two Dollars and Fifty-eight Cents ($577,542.58) in cash with the Escrow Agent, 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 Escrow Account shall be disbursed by Escrow Agent 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 said Agency 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 disbursal 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 Agency 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. Such Agency 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

Agency 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 Agency 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 hereinabove 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. 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 6.

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 materially defaults on its obligations under 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 the Property to revert to acreage of approximately the same boundary configurations of record existing before the Subdivision Plat for the Property was recorded. The Subdivider hereby authorizes the Town to execute on behalf of the Subdivider all documents necessary to 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 Escrow Account 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 written notice to the Subdivider at its last known address and to the Lender. 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 the Town may have against the Subdivider for failure to perform as required under this Agreement, the Town may give sixty (60) days' notice in writing to Escrow Agent of its intention to draw upon the Escrow Account funds. Following such notice and within such sixty day period, Escrow Agent may notify the Town in writing of its intention to complete construction of the Improvements and to use the Escrow Account funds, or any remaining balance thereof, for such purpose. In such case, the Escrow Agent shall be considered a successor to the Subdivider and shall complete the construction of the Improvements in accordance with this Agreement, all applicable codes, rules, and regulations. In the event that the Escrow Agent does not notify the Town of its intention to complete construction of the Improvements within said sixty days, then in that event, the Town may draw upon the Escrow Account funds, or any remaining balance thereof, in order to complete construction of the Improvements in accordance with this Agreement. The Town shall have sole discretion in determining a default in this Agreement, which discretion shall be exercised in a fair and reasonable manner.

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. 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.

20. Address of the Parties:

Subdivider: Lawrence Weymouth Pew and Susan Pew
1564 East Lehigh Road
Mesa, Arizona 85203

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 the Party who 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 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.

SUBDIVIDER:

DRAFT

Lawrence Weymouth Pew

Susan Pew

TOWN OF PAYSON,
an Arizona municipal corporation:

By DRAFT
F. Robert Edwards, Mayor

ATTEST:

By_____
Silvia Smith, Town Clerk

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 _____, 200__.

By_____
Samuel I. Streichman, Town Attorney

STATE OF ARIZONA)
) ss.
County of Gila)

The foregoing Agreement to Construct Subdivision Improvements for Falcon Lookout Phase 1 was signed before me this _____ day of _____, 200__, by Lawrence Weymouth Pew.

_____
Notary Public

My commission expires:
_____

STATE OF ARIZONA)
) ss.
County of Gila)

The foregoing Agreement to Construct Subdivision Improvements for Falcon Lookout Phase 1 was signed before me this _____ day of _____, 200__, by Susan Pew.

_____
Notary Public

My commission expires:
_____

STATE OF ARIZONA)
) ss.
County of Gila)

The foregoing Agreement to Construct Subdivision Improvements for Falcon Lookout Phase 1 was signed before me this _____ day of _____, 2004, 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
December 7, 2006 (11:01AM) SIS:drs
C:\MyFiles\Subdivisions\Falcon Lookout\Agmt to Construct Phase 1.wpd

EXHIBIT "A"
LEGAL DESCRIPTION

Those lots and tracts as shown on the Falcon Lookout Phase 1 Subdivision Plat recorded in the Office of the Gila County Recorder, Gila County, Arizona, on _____ as Map Number _____.

EXHIBIT "B"
IMPROVEMENTS

Those improvements as shown on the "Falcon Lookout Phase 1 Subdivision Improvement Plans" consisting of fourteen sheets dated June 8, 2006 and approved by the Town of Payson on November 16, 2006.

EXHIBIT "C"

AGENCY AGREEMENT

[To be supplied by developer]