

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:

APPROVED AS TO FORM:

\_\_\_\_\_  
Silvia Smith, Town Clerk

\_\_\_\_\_  
Samuel I. Streichman, Town Attorney

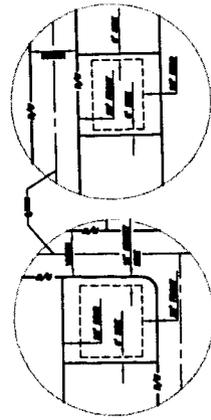
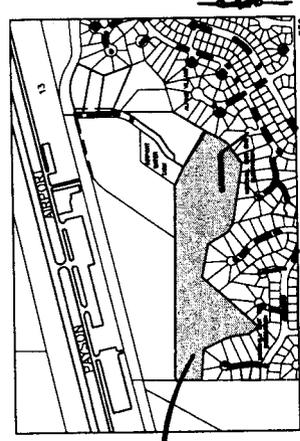
DEC 14 2006 G.13  
JAN 04 2007 G.4

# 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, PATSON, ARIZONA.

**OWNER/DEVELOPER**  
LAWRENCE WISWORTH PEW  
AND SUSAN PEW  
1504 E. LISH ROAD  
MESA, AZ. 85203  
480-960-7842

**BASES OF BEARINGS**  
THE LINE BETWEEN THE WEST CORNER  
OF LOT 11 AND THE NORTH CORNER OF  
LOT 12, AND THE LINE BETWEEN THE  
WEST CORNER OF LOT 12 AND THE  
WEST CORNER OF LOT 13, ARE  
AS SHOWN ON THE PLAT.



TYPICAL R-4 SETBACKS

## GENERAL NOTES

- A DECLARATION OF CONVEYANCE, CONDITIONS AND RESTRICTIONS FOR FALCON LOOKOUT WILL BE PROVIDED BY THE DEVELOPER.
- THIS SITE WILL INCLUDE SEWER SERVICE CONNECTIONS. THE PROPERTY OWNER IS RESPONSIBLE FOR ALL NECESSARY CONNECTIONS TO THE SEWER SYSTEM. THE DEVELOPER WILL PROVIDE THE SEWER MAINS TO THE PROPERTY LINE. THE PROPERTY OWNER SHALL BE RESPONSIBLE FOR THE SEWER SERVICE CONNECTION FROM THE PROPERTY LINE TO THE SEWER MAINS.
- ALL LOTS AND TRACTS CORNERS ARE SHOWN WITH A 1/4" BENCH WITH BEARS THE CORNER.
- THE DEVELOPER WARRANTS THAT THE LOTS, TRACTS AND TRACTS ARE SHOWN AS SHOWN ON THIS PLAT AND THAT THE DEVELOPER HAS THE RIGHT TO CONVEY THE SAME.
- CONVEYANCE OF THIS SUBDIVISION SHALL BE BY DEED.
- THE LOTS AND TRACTS SHOWN ON THIS PLAT SHALL BE CONVEYED TO THE PROPERTY OWNER BY DEED. THE DEVELOPER WARRANTS THAT THE LOTS, TRACTS AND TRACTS ARE SHOWN AS SHOWN ON THIS PLAT AND THAT THE DEVELOPER HAS THE RIGHT TO CONVEY THE SAME.
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## CERTIFICATION

I, THE UNDERSIGNED, THE OWNER/DEVELOPER, DO HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS PLAT IS TRUE AND CORRECT AND THAT I AM THE OWNER/DEVELOPER OF THE PROPERTY SHOWN ON THIS PLAT.

LAWRENCE WISWORTH PEW  
AND SUSAN PEW  
1504 E. LISH ROAD  
MESA, AZ. 85203  
480-960-7842

PROJECT SITE

## APPROVALS

APPROVED BY THE COUNTY CLERK OF THE TOWN OF PATSON, ARIZONA,  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008.

BY \_\_\_\_\_  
TOWN CLERK

APPROVED BY THE TOWN PUBLIC WORKS DIRECTOR OF THE TOWN OF PATSON,  
ARIZONA, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008.

BY \_\_\_\_\_  
PUBLIC WORKS DIRECTOR

## SHEET INDEX

DESCRIPTION	SHEET NUMBER
COVER SHEET	1-3
FINAL PLAT	2-3
FINAL PLAT - TRACT 'B'	3-3

## DEDICATION

I, THE UNDERSIGNED, THE OWNER/DEVELOPER, DO HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS PLAT IS TRUE AND CORRECT AND THAT I AM THE OWNER/DEVELOPER OF THE PROPERTY SHOWN ON THIS PLAT.

LAWRENCE WISWORTH PEW  
AND SUSAN PEW  
1504 E. LISH ROAD  
MESA, AZ. 85203  
480-960-7842

LAWRENCE WISWORTH PEW  
AND SUSAN PEW  
1504 E. LISH ROAD  
MESA, AZ. 85203  
480-960-7842

## ACKNOWLEDGMENT

I, THE UNDERSIGNED, THE OWNER/DEVELOPER, DO HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS PLAT IS TRUE AND CORRECT AND THAT I AM THE OWNER/DEVELOPER OF THE PROPERTY SHOWN ON THIS PLAT.

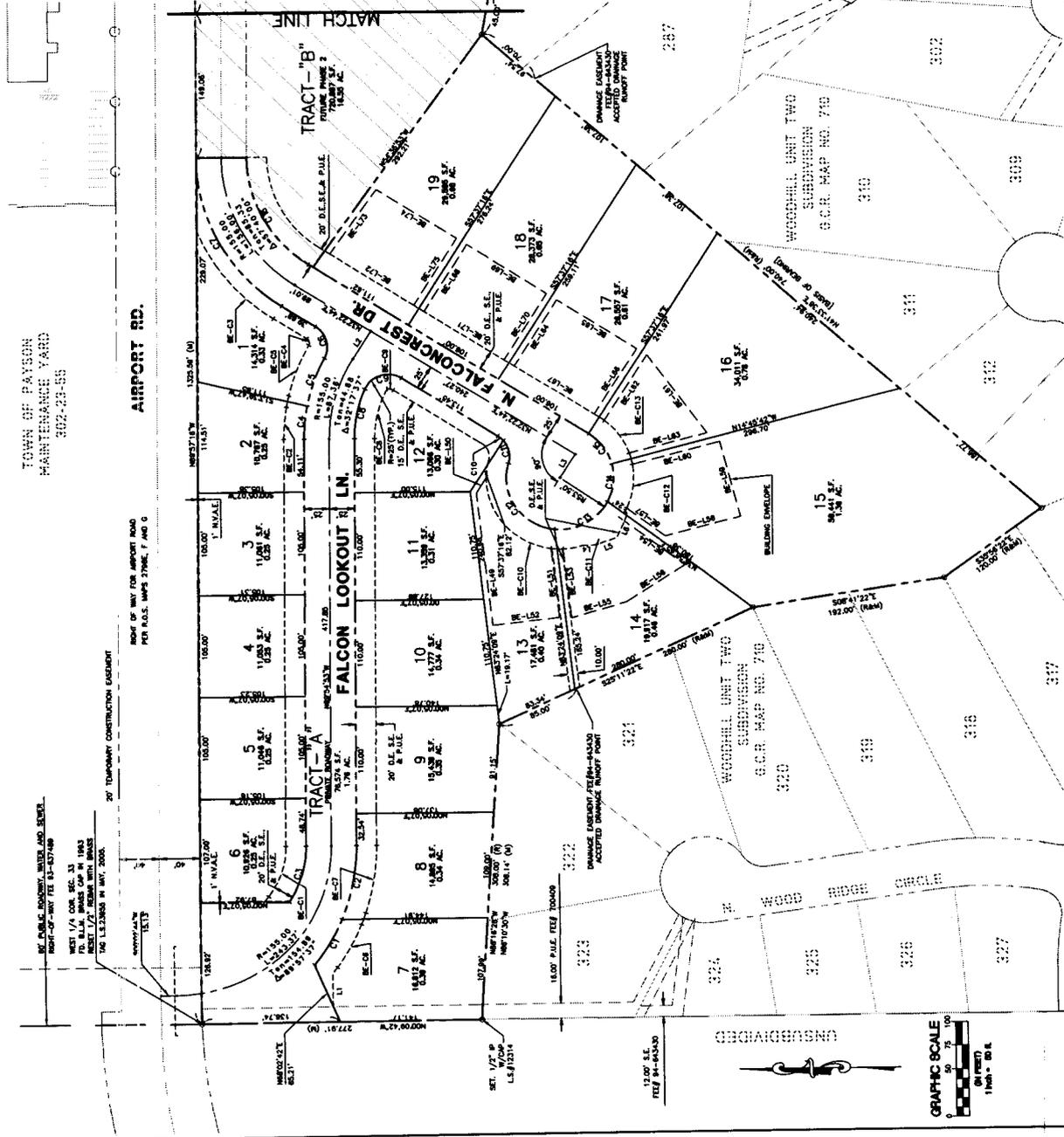
LAWRENCE WISWORTH PEW  
AND SUSAN PEW  
1504 E. LISH ROAD  
MESA, AZ. 85203  
480-960-7842



Prepared by  
**TETRA TECH, INC.**  
1504 E. LISH ROAD  
MESA, AZ. 85203  
480-960-7842

Project No. 6697.0001





**CURVE DATA**

CURVE	LENGTH	MARKS	DELTA
C1	58.51	20.74	124.70
C2	71.41	27.13	124.70
C3	53.00	19.00	90.00
C4	77.81	28.00	124.70
C5	54.49	19.00	90.00
C6	51.00	18.00	90.00
C7	71.41	27.13	124.70
C8	53.00	19.00	90.00
C9	77.81	28.00	124.70
C10	53.00	19.00	90.00
C11	71.41	27.13	124.70
C12	53.00	19.00	90.00
C13	71.41	27.13	124.70
C14	53.00	19.00	90.00
C15	71.41	27.13	124.70
C16	53.00	19.00	90.00
C17	71.41	27.13	124.70
C18	53.00	19.00	90.00
C19	71.41	27.13	124.70

**BUILDING ENVELOPE AREA TABLE**

LOT #	S.F.	ACRES
1	15,237	0.35
2	15,237	0.35
3	15,237	0.35
4	15,237	0.35
5	15,237	0.35
6	15,237	0.35
7	15,237	0.35
8	15,237	0.35
9	15,237	0.35
10	15,237	0.35
11	15,237	0.35
12	15,237	0.35
13	15,237	0.35
14	15,237	0.35
15	15,237	0.35
16	15,237	0.35
17	15,237	0.35
18	15,237	0.35
19	15,237	0.35

**BUILDING ENVELOPE LINE TABLE**

LINE	LENGTH	BEARING
BE-1	81.40	N00°00'00"W
BE-2	81.40	N00°00'00"W
BE-3	81.40	N00°00'00"W
BE-4	81.40	N00°00'00"W
BE-5	81.40	N00°00'00"W
BE-6	81.40	N00°00'00"W
BE-7	81.40	N00°00'00"W
BE-8	81.40	N00°00'00"W
BE-9	81.40	N00°00'00"W
BE-10	81.40	N00°00'00"W
BE-11	81.40	N00°00'00"W
BE-12	81.40	N00°00'00"W
BE-13	81.40	N00°00'00"W
BE-14	81.40	N00°00'00"W
BE-15	81.40	N00°00'00"W
BE-16	81.40	N00°00'00"W
BE-17	81.40	N00°00'00"W
BE-18	81.40	N00°00'00"W
BE-19	81.40	N00°00'00"W

TOWN OF PAYSON  
MAINTENANCE YARD  
302-23-55

AIRPORT RD.  
RIGHT OF WAY FOR AIRPORT ROAD  
PER R.A.S. MAPS 2796, 7 AND 8  
20' TEMPORARY CONSTRUCTION EASEMENT

TRACT - "A"  
TRACT - "B"  
WOODPHILL UNIT TWO  
SUBDIVISION  
G.C.R. MAP NO. 710

WOOD RIDGE CIRCLE  
17.00 S.E.  
REF 84-94530

GRAPHIC SCALE  
0 50 100  
1 IN. = 50 FT.

17.00 S.E.  
REF 84-94530

WOODPHILL UNIT TWO  
SUBDIVISION  
G.C.R. MAP NO. 710

PHASE 1  
FINAL PLAN

TETRA TECH, INC.  
1111 N. GARDEN AVENUE  
PHOENIX, ARIZONA 85012  
TEL: 602-953-8888  
WWW.TETRA-TECH.COM

DATE: 08/11/2008  
DRAWN BY: JAC  
CHECKED BY: JAC  
APPROVED BY: JAC  
DATE: 08/11/2008

PROJECT: 08-001  
SHEET NO. 2 OF 3

WOODPHILL UNIT TWO  
SUBDIVISION  
G.C.R. MAP NO. 710



# 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:

*Falcon Lookout Phase 1  
Agreement to Construct Subdivision Improvements*

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 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 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:**

**TOWN OF PAYSON,**  
an Arizona municipal corporation:

**DRAFT**

\_\_\_\_\_  
Lawrence Weymouth Pew

**DRAFT**

By \_\_\_\_\_  
F. Robert Edwards, Mayor  
ATTEST:

\_\_\_\_\_  
Susan Pew

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, 2000 (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]**



Town of Payson  
303 N. Beeline Highway  
Payson, Arizona, 85541-4306

Town Hall	(928)	474-5242
Police Dept.	(928)	474-5177
Water Dept.	(928)	474-5242
TDD	(928)	472-6449
Fax	(928)	474-4610

## MEMORANDUM

DATE: December 20, 2006

TO: Fred Carpenter  
Town Manager

FROM: LaRon Garrett   
Public Works Engineer

SUBJECT: Falcon Lookout Phase 1 - Final Plat

At the Town Council Meeting held December 14, 2006 the Falcon Lookout Phase 1 Final Plat approval was tabled to the January 4, 2007 meeting. The main concern was maintenance of the storm water drainage facilities required on individual lots. Some councilors were concerned that individual property owners may not have the expertise to provide the necessary maintenance and that it could become a financial burden to those lots.

Tetra Tech Inc., the engineer for the project, has recommended that an additional note be added to the Final Plat to address this situation. The new note is as follows:

### **General Note 13 (to be added):**

**The Falcon Lookout Home Owners' Association shall be responsible for maintenance and repair of all drainage detention facilities, including those within Tract "A" and on the individual lots. The lot owners shall permit personnel to inspect their detention facilities and repair them as necessary. The Falcon Lookout Home Owner's Association shall retain a Registered Civil Engineer, or other personnel as approved by the Town of Payson, to provide annual inspection of all detention facilities and provide a report to the Town of Payson Public Works Engineer.**

There has been some concern about the maintenance if the Home Owners Association is ever disbanded. The current Note 2 on the final plat provides that the Town could take over the maintenance and charge all costs to the property owners.

Staff agrees with this added note and recommends approval.



**TETRA TECH, INC.**

December 20, 2006

Mayor and Common Council  
Town of Payson  
303 N. Beeline Highway  
Payson, AZ 85541

**Subject: Falcon Lookout Phase One  
Final Plat Approval  
Project No. 6697.0001**

Gentlemen:

At the Town Council Meeting on December 14, 2006, the Falcon Lookout Phase One Final Plat was tabled due to concerns expressed by two property owners in Woodhill. The concerns expressed were centered around the drainage design for the project.

When designing drainage for subdivisions, we are mandated to meet the requirements of the Town of Payson Grading and Drainage Criteria Manual. The Manual requires us to provide drainage detention facilities to ensure that drainage runoff does not leave the property in different locations or at higher peak flows than it did under pre-developed conditions. In the case of Falcon Lookout Phase One, our detention design is being provided by two separate methods.

The increased flows from development of the streets and Lots 1 through 6 north of the streets will be mitigated by construction of underground storage facilities beneath the private roads. These facilities will reduce the peak flows and allow them to be metered out into existing drainage facilities at pre-developed rates. An Exhibit showing the detention facilities is enclosed as Exhibit "C". Since drainage from these lots cannot be captured in the street drainage, detention facilities for Lots 7 through 19 will be constructed when the specific lots are developed. These on-site facilities will consist of a storage tank designed to collect additional runoff from the driveway and roof and a perforated pipe constructed behind the lot to meter these flows and spread them out to pre-developed conditions. An example of this facility is included as Exhibit "D". In all cases, we are required to show that the peak flows leaving the developed site are not increased.

During the Council Meeting on December 14, 2006, the following concerns were expressed:

1. Some lot owners in Woodhill were not properly notified and were not advised of the drainage design.
2. The drainage system designed will not work.



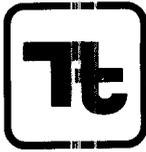
Mayor and Common Council  
December 20, 2006  
Page 2

3. The private on-site systems will not be properly maintained and inspected.

The meeting notices for the Citizens' Participation Meeting for this project were sent out from our office on July 21, 2005. Notices were sent to all lot owners within 300 feet of the property, based on a list provided to us by the Town of Payson Development Staff. The meeting was held on August 9, 2005. Charles and Connie Lee purchased Lot 322 in Woodhill Unit Two on July 20, 2005. The Deed was recorded on July 25, 2005; therefore, when the notices were sent out, the owner of Lot 322 was still Trailwood West Limited Partnership. We also met with the Woodhill HOA on September 7, 2006 to describe the proposed drainage design. This meeting was coordinated by Mark Miller, the Association President, and was well attended.

The suggestion was made by Mr. Lee to construct a concrete channel and a wall along the bottom of the lots in Falcon Lookout and direct the water elsewhere. Town Code does not allow us to direct runoff to locations that did not receive it under pre-developed conditions. A solid wall along the south side of the lots would prevent any runoff from Falcon Lookout flowing into Woodhill, even though this is what is done under pre-developed conditions. Additionally, the construction of a concrete channel and wall on the 2:1 hillside would result in removal of a substantial amount of existing vegetation and disturbance of the hillside, resulting in increased runoff and an unattractive scar between the lots in Woodhill and Falcon Lookout. Both Town Staff and Tetra Tech, Inc. agreed that any disturbance of the hillside due to construction would be detrimental to both projects.

Falcon Lookout is no different than any other subdivision designed under current code requirements in that the individual lot owners are responsible for maintaining drainage facilities constructed on their lots. To ensure that these facilities are properly inspected and maintained, however, the developer agrees to make the maintenance and repair of all the drainage facilities in Falcon Lookout the responsibility of the Falcon Lookout Homeowners Association. An annual inspection of the facilities will be required by a licensed professional and an inspection report will be submitted to the Payson Public Works Engineer for his approval. A copy of General Note 13, which has been added to the Final Plat, is included with this letter (Exhibit "A"), along with a reduced copy of Sheet 1 of the Final Plat (Exhibit "B").



TETRA TECH, INC.

Mayor and Common Council

December 20, 2006

Page 3

New developments, for obvious reasons, are never unanimously accepted by their neighbors. Developers cannot be required to obtain approval from all of the neighbors prior to receiving Final Plat Approval, anymore than the Town Council can expect 100% approval on the actions they take. The Developers of Falcon Lookout Phase One have met all conditions outlined in their Preliminary Plat Approval, and therefore, expect approval of the Final Plat. When the Common Council empowers a small minority of objectors who are not aware of, or don't care about, drainage design requirements, it results in costly delays. We have worked diligently with your Staff to provide a drainage design that will work and results in minimal impact to the hillside between the projects. We therefore ask for your approval of the Final Plat.

Very truly yours,

Ralph O. Bossert, PE, RLS  
Senior Project Manager

ROB:lmw

P:\65970001\WdDocs\Mayor Ltr 12-20-06.doc

Attachments

cc: Dan Millett/Falcon Lookout, LLC



## FALCON LOOKOUT FINAL PLAT

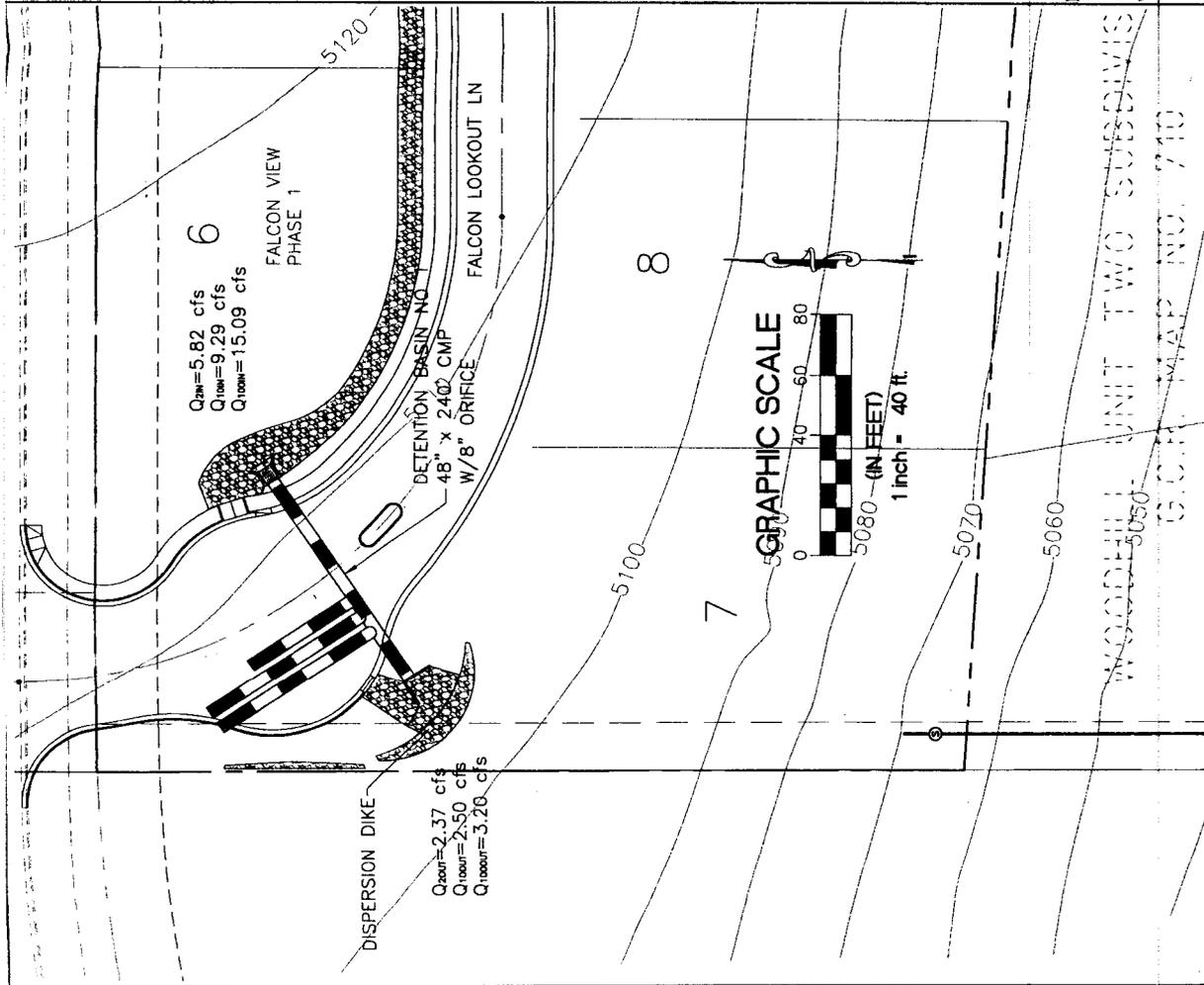
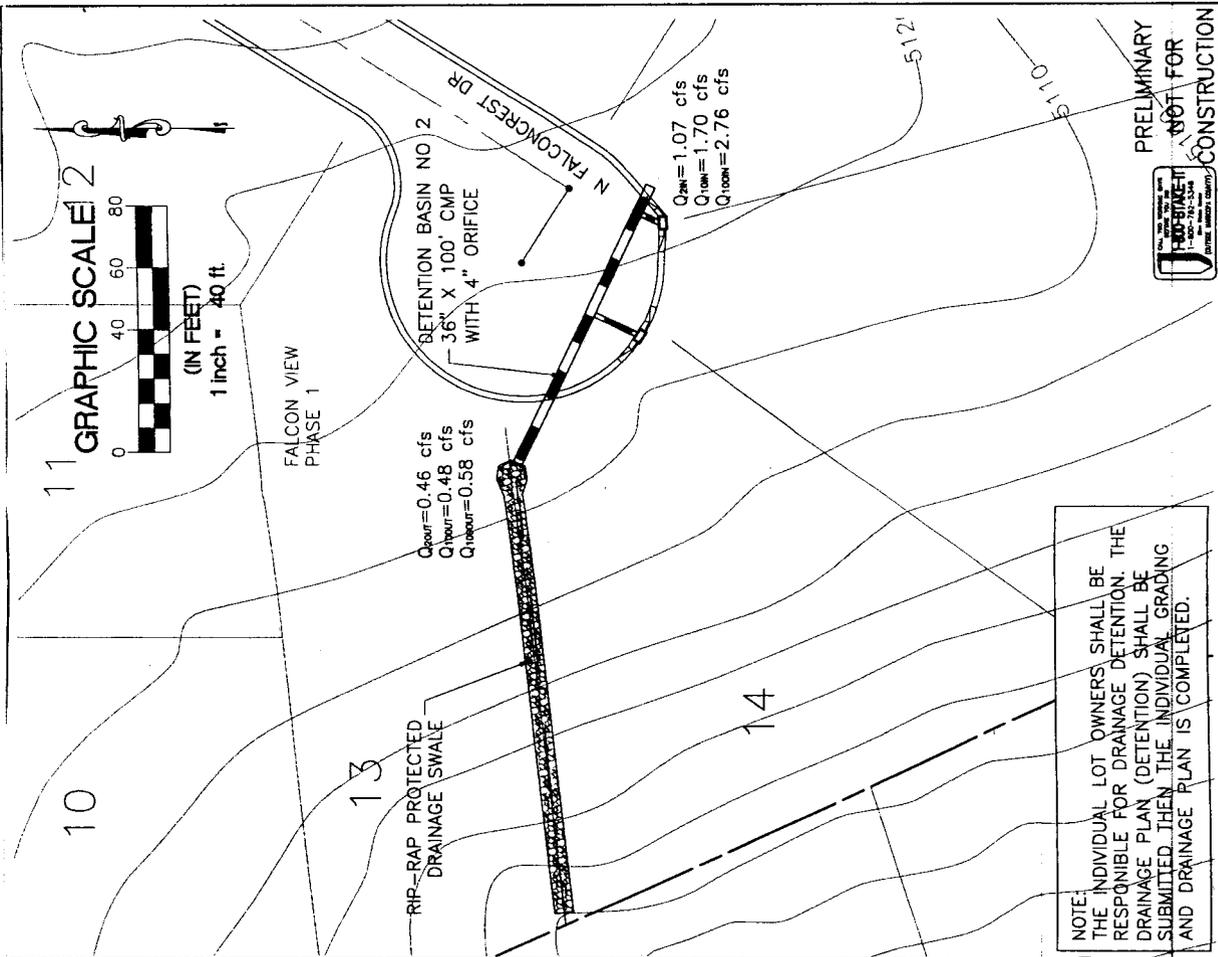
### General Note 13 (to be added):

The Falcon Lookout Home Owners' Association shall be responsible for maintenance and repair of all drainage detention facilities, including those within Tract "A" and on the individual lots. The lot owners shall permit personnel to inspect their detention facilities and repair them as necessary. The Falcon Lookout Home Owner's Association shall retain a Registered Civil Engineer, or other personnel as approved by the Town of Payson, to provide annual inspection of all detention facilities and provide a report to the Town of Payson Public Works Engineer.

EXHIBIT A







NOTE: THE INDIVIDUAL LOT OWNERS SHALL BE RESPONSIBLE FOR DRAINAGE DETENTION. THE DRAINAGE PLAN (DETENTION) SHALL BE SUBMITTED THEN THE INDIVIDUAL GRADING AND DRAINAGE PLAN IS COMPLETED.

PRELIMINARY  
NOT FOR CONSTRUCTION

**TETRA TECH, INC.**  
411 S. ...  
TETRA TECH, INC. (202) 414-1000

**FALCON LOOKOUT PHASE 1**  
PAYSON, ARIZONA

**EXHIBIT C**  
PROPOSED HYDRAULIC STRUCTURES

NO.	DATE	BY	CHK

SCALE: HORIZ. 1" = 40'  
VERT. 1" = 10'

DATE: 10/11/2011

PROJECT: FALCON VIEW PHASE 1

DESIGNER: J. ...

CHECKED: ...

APPROVED: ...

DATE: ...

SHEET NO. 3 OF 3

EXC