SUMMARY OF AGENDA ITEM

DATE: **April 24, 2008 (for May 1, 2008 Council Meeting)**

FROM: **Legal Department**

SUBJECT: **Agreement to Construct Subdivision Improvements for Tyler Parkway Condominium Subdivision (Resolution No. 2373)**

INTRODUCTION: Resolution Number 2373 approves the final plat for Tyler Parkway Condominium Subdivision (the "Subdivision"). Additionally, Resolution Number 2373 approves an agreement for the developer to construct certain improvements within the Subdivision.

PURPOSE FOR AGREEMENT: The Agreement to Construct Subdivision Improvements (the "Agreement") has been prepared to ensure that the subdivision improvements (such as streets, sidewalks, water lines, sewer lines and drainage) which are shown on the plat map and improvement plans will be completed, either by the subdivider, the financing agency, or the Town with funds obtained from the subdivider or its financing agency. A.R.S. § 9-463.01(C)(8) authorizes the Town to require the type of security from developers that is provided for in the Agreement. A copy of A.R.S. § 9-463.01 is attached. In addition, Section 15-09-010(F)(4)(D) and Sections 15-07-002(J) of the Town Unified Development Code (also attached) require the entry into an assurance agreement by the subdivider for every subdivision project.

AGREEMENT TO CONSTRUCT SUBDIVISION IMPROVEMENTS: This Agreement provides for the following:

1. That the subdivider will construct all of the subdivision improvements required for the property and shown on the final plat or improvement plans.
2. Construction is required to begin within 6 months of the execution date of the Agreement. It must be completed within 2 years.
3. The Town will not accept the subdivision improvements unless:
   a. They have been completed in accordance with the Agreement;
   b. The right of way in which improvements are located has become the property of the Town;
   c. The Town Council has acted to accept the improvements as built;
   d. All contractors and subcontractors involved with the construction of the improvements have been paid in full and have furnished complete lien releases.
4. The subdivider will establish an escrow account with Pioneer Title Agency into which it will deposit the amount of $367,157.92 in cash (an amount equal to the engineer's estimate of costs of construction of the improvements, plus some additional amounts). A subsidiary agreement, known as an Agency Agreement, will be entered into between the subdivider and Pioneer Title Agency. The Agency Agreement determines how Pioneer

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Title disburses cash in escrow. Money cannot be disbursed from escrow without approval of the Town Engineer.

5. If the subdivider fails to construct the subdivision improvements required by the plat map and the Agreement, the Town has a right to replat the subdivided property to acreage. In addition, the Town may use the funds in the escrow account to complete construction of the subdivision improvements.

ters as the legislative body may provide by ordinance.

B. Hearing officers shall be appointed on the basis of training and experience which qualifies them to conduct hearings and make findings and conclusions on the matters heard.

Added by Laws 1978, Ch. 94, § 6.

ARTICLE 6.2. MUNICIPAL SUBDIVISION REGULATIONS

Article 6.2, consisting of §§ 9–463 and 9–463.01 to 9–463.04, was added by Laws 1973, Ch. 178, § 2, effective January 1, 1974.

§ 9–463. Definitions

In this article, unless the context otherwise requires:

1. "Design" means street alignment, grades and widths, alignment and widths of easements and rights-of-way for drainage and sanitary sewers and the arrangement and orientation of lots.

2. "Improvement" means required installations, pursuant to this article and subdivision regulations, including grading, sewer and water utilities, streets, easements, traffic control devices as a condition to the approval and acceptance of the final plat thereof.

3. "Land splits" as used in this article means the division of improved or unimproved land whose area is two and one-half acres or less into two or three tracts or parcels of land for the purpose of sale or lease.

4. "Municipal" or "municipality" means an incorporated city or town.

5. "Planning agency" means the official body designated by local ordinance to carry out the purposes of this article and may be a planning department, a planning commission, the legislative body itself, or any combination thereof.

6. "Plat" means a map of a subdivision:

(a) "Preliminary plat" means a preliminary map, including supporting data, indicating a proposed subdivision design prepared in accordance with the provisions of this article and those of any local applicable ordinance.

(b) "Final plat" means a map of all or part of a subdivision essentially conforming to an approved preliminary plat, prepared in accordance with the provision of this article, those of any local applicable ordinance and other state statute.

(c) "Recorded plat" means a final plat bearing all of the certificates of approval required by this article, any local applicable ordinance and other state statute.

7. "Right-of-way" means any public or private right-of-way and includes any area required for public use pursuant to any general or specific plan as provided for in article 6 [1] of this chapter.

8. "Street" means any existing or proposed street, avenue, boulevard, road, lane, parkway, place, bridge, viaduct or easement for public vehicular access or a street shown in a plat heretofore approved pursuant to law or a street in a plat duly filed and recorded in the county recorder's office. A street includes all land within the street right-of-way whether improved or unimproved, and includes such improvements as pavement, shoulders, curbs, gutters, sidewalks, parking space, bridges and viaducts.

9. "Subdivider" means a person, firm, corporation, partnership, association, syndicate, trust or other legal entity that files application and initiates proceedings for the subdivision of land in accordance with the provisions of this article, any local applicable ordinance and other state statute, except that an individual serving as agent for such legal entity is not a subdivider.

10. "Subdivision" means any land or portion thereof subject to the provisions of this article as provided in § 9–463.02.

11. "Subdivision regulations" means a municipal ordinance regulating the design and improvement of subdivisions enacted under the provisions of this article or any prior statute regulating the design and improvement of subdivisions.

Added by Laws 1973, Ch. 178, § 2, eff. Jan. 1, 1974.
Amended by Laws 1975, Ch. 96, § 1.

[1] Section 9–461 et seq.

§ 9–463.01. Authority

A. Pursuant to this article, the legislative body of every municipality shall regulate the subdivision of all lands within its corporate limits.

B. The legislative body of a municipality shall exercise the authority granted in subsection A of this section by ordinance prescribing:

1. Procedures to be followed in the preparation, submission, review and approval or rejection of all final plats.

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2. Standards governing the design of subdivision plats.

3. Minimum requirements and standards for the installation of subdivision streets, sewer and water utilities and improvements as a condition of final plat approval.

C. By ordinance, the legislative body of any municipality shall:

1. Require the preparation, submission and approval of a preliminary plat as a condition precedent to submission of a final plat.

2. Establish the procedures to be followed in the preparation, submission, review and approval of preliminary plats.

3. Make requirements as to the form and content of preliminary plats.

4. Either determine that certain lands may not be subdivided, by reason of adverse topography, periodic inundation, adverse soils, subsidence of the earth's surface, high water table, lack of water or other natural or man-made hazard to life or property, or control the lot size, establish special grading and drainage requirements and impose other regulations deemed reasonable and necessary for the public health, safety or general welfare on any lands to be subdivided affected by such characteristics.

5. Require payment of a proper and reasonable fee by the subdivider based upon the number of lots or parcels on the surface of the land to defray municipal costs of plat review and site inspection.

6. Require the dedication of public streets, sewer and water utility easements or rights-of-way, within the proposed subdivision.

7. Require the preparation and submission of acceptable engineering plans and specifications for the installation of required street, sewer, electric and water utilities, drainage, flood control, adequacy of water and improvements as a condition precedent to recordation of an approved final plat.

8. Require the posting of performance bonds, assurances or such other security as may be appropriate and necessary to assure the installation of required street, sewer, electric and water utilities, drainage, flood control and improvements meeting established minimum standards of design and construction.

D. The legislative body of any municipality may require by ordinance that land areas within a subdivision be reserved for parks, recreational facilities, school sites and fire stations subject to the following conditions:

1. The requirement may only be made upon preliminary plats filed at least thirty days after the adoption of a general or specific plan affecting the land area to be reserved.

2. The required reservations are in accordance with definite principles and standards adopted by the legislative body.

3. The land area reserved shall be of such a size and shape as to permit the remainder of the land area of the subdivision within which the reservation is located to develop in an orderly and efficient manner.

4. The land area reserved shall be in such multiples of streets and parcels as to permit an efficient division of the reserved area in the event that it is not acquired within the prescribed period.

E. The public agency for whose benefit an area has been reserved shall have a period of one year after recording the final subdivision plat to enter into an agreement to acquire such reserved land area. The purchase price shall be the fair market value of the reserved land area at the time of the filing of the preliminary subdivision plat plus the taxes against such reserved area from the date of the reservation and any other costs incurred by the subdivider in the maintenance of such reserved area, including the interest cost incurred on any loan covering such reserved area.

F. If the public agency for whose benefit an area has been reserved does not exercise the reservation agreement set forth in subsection E of this section within such one year period or such extended period as may be mutually agreed upon by such public agency and the subdivider, the reservation of such area shall terminate.

G. The legislative body of every municipality shall comply with this article and applicable state statutes pertaining to the hearing, approval or rejection, and recordation of:

1. Final subdivision plats.

2. Plats filed for the purpose of reverting to acreage of land previously subdivided.

3. Plats filed for the purpose of vacating streets or easements previously dedicated to the public.

4. Plats filed for the purpose of vacating or redescribing lot or parcel boundaries previously recorded.

H. Approval of every preliminary and final plat by a legislative body is conditioned upon compliance by the subdivider with:

1. Rules as may be established by the department of transportation relating to provisions for the safety of entrance upon and departure from abutting state primary highways.

2. Rules as may be established by a county flood control district relating to the construction or prevention of construction of streets in land established as being subject to periodic inundation.

3. Rules as may be established by the department of health services or a county health department relating to the provision of domestic water supply and sanitary sewage disposal.

I. If the subdivision is comprised of subdivided lands, as defined in § 32-2101, and is within an active management area, as defined in § 45-402, the final plat shall not be approved unless it is accompanied by a certificate of assured water supply issued by the director of water resources, or unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply by the director of water resources pursuant to § 45-576 or is exempt from the requirement pursuant to § 45-576. The legislative body of the municipality shall note on the face of the final plat that a certificate of assured water supply has been submitted with the plat or that the subdivider has obtained a written commitment of water service for the proposed subdivision from a city, town or private water company designated as having an assured water supply, pursuant to § 45-576, or is exempt from the requirement pursuant to § 45-576.

J. Except as provided in subsections K and P of this section, if the subdivision is composed of subdivided lands as defined in § 32-2101 outside of an active management area and the director of water resources has given written notice to the municipality pursuant to § 45-108, subsection H, the final plat shall not be approved unless one of the following applies:

1. The director of water resources has determined that there is an adequate water supply for the subdivision pursuant to § 45-108 and the subdivider has included the report with the plat.

2. The subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an adequate water supply by the director of water resources pursuant to § 45-108.

K. The legislative body of a municipality that has received written notice from the director of water resources pursuant to § 45-108, subsection H or that has adopted an ordinance pursuant to subsection O of this section may provide by ordinance an exemption from the requirement in subsection J or O of this section for a subdivision that the director of water resources has determined will have an inadequate water supply because the water supply will be transported to the subdivision by motor vehicle or train if all of the following apply:

1. The legislative body determines that there is no feasible alternative water supply for the subdivision and that the transportation of water to the subdivision will not constitute a significant risk to the health and safety of the residents of the subdivision.

2. If the water to be transported to the subdivision will be withdrawn or diverted in the service area of a municipal provider as defined in § 45-561, the municipal provider has consented to the withdrawal or diversion.

3. If the water to be transported is groundwater, the transportation complies with the provisions governing the transportation of groundwater in title 45, chapter 2, article 8. [1]

4. The transportation of water to the subdivision meets any additional conditions imposed by the legislative body.

L. A municipality that adopts the exemption authorized by subsection K of this section shall give written notice of the adoption of the exemption, including a certified copy of the ordinance containing the exemption, to the director of water resources, the director of environmental quality and the state real estate commissioner. If the municipality later rescinds the exemption, the municipality shall give written notice of the rescission to the director of water resources, the director of environmental quality and the state real estate commissioner. A municipality that rescinds an exemption adopted pursuant to subsection K of this section shall not readopt the exemption for at least five years after the rescission becomes effective.

M. If the legislative body of a municipality approves a subdivision plat pursuant to subsection J, paragraph 1 or 2 or subsection O of this section, the legislative body shall note on the face of the plat that the director of water resources has reported that the subdivision has an adequate water supply or that the subdivider has obtained a commitment of water service for the proposed subdivision from a city, town or private water company designated as having an adequate water supply pursuant to § 45-108.

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N. If the legislative body of a municipality approves a subdivision plat pursuant to an exemption authorized by subsection K of this section or granted by the director of water resources pursuant to § 45–108.02 or 45–108.03:

1. The legislative body shall give written notice of the approval to the director of water resources and the director of environmental quality.

2. The legislative body shall include on the face of the plat a statement that the director of water resources has determined that the water supply for the subdivision is inadequate and a statement describing the exemption under which the plat was approved, including a statement that the legislative body or the director of water resources, whichever applies, has determined that the specific conditions of the exemption were met. If the legislative body[2] subsequently informs the legislative body that the subdivision is being served by a water provider that has been designated by the director as having an adequate water supply pursuant to § 45–108, the legislative body shall record in the county recorder's office a statement disclosing that fact.

O. If a municipality has not been given written notice by the director of water resources pursuant to § 45–108, subsection H, the legislative body of the municipality, to protect the public health and safety, may provide by ordinance that, except as provided in subsections K and P of this section, the final plat of a subdivision located in the municipality and outside of an active management area will not be approved by the legislative body unless the director of water resources has determined that there is an adequate water supply for the subdivision pursuant to § 45–108 or the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an adequate water supply by the director of water resources pursuant to § 45–108. Before holding a public hearing to consider whether to enact an ordinance pursuant to this subsection, a municipality shall provide written notice of the hearing to the board of supervisors of the county in which the municipality is located. A municipality that enacts an ordinance pursuant to this subsection shall give written notice of the enactment of the ordinance, including a certified copy of the ordinance, to the director of water resources, the director of environmental quality, the state real estate commissioner and the board of supervisors of the county in which the city is located. If a municipality enacts an ordinance pursuant to this subsection, water providers may be eligible to receive monies in a water supply development fund, as otherwise provided by law.

P. Subsections J and O of this section do not apply to:

1. A proposed subdivision that the director of water resources has determined will have an inadequate water supply pursuant to § 45–108 if the director grants an exemption for the subdivision pursuant to § 45–108.02 and the exemption has not expired or if the director grants an exemption pursuant to § 45–108.03.

2. A proposed subdivision that received final plat approval from the municipality before the requirement for an adequate water supply became effective in the municipality if the plat has not been materially changed since it received the final plat approval. If changes were made to the plat after the plat received the final plat approval, the director of water resources shall determine whether the changes are material pursuant to the rules adopted by the director to implement § 45–108. If the municipality approves a plat pursuant to this paragraph and the director of water resources has determined that there is an inadequate water supply for the subdivision pursuant to § 45–108, the municipality shall note this on the face of the plat.

Q. If the subdivision is composed of subdivided lands as defined in § 32–2101 outside of an active management area and the municipality has not received written notice pursuant to § 45–108, subsection H and has not adopted an ordinance pursuant to subsection O of this section:

1. If the director of water resources has determined that there is an adequate water supply for the subdivision pursuant to § 45–108 or if the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an adequate water supply by the director of water resources pursuant to § 45–108, the municipality shall note this on the face of the plat if the plat is approved.

2. If the director of water resources has determined that there is an inadequate water supply for the subdivision pursuant to § 45–108, the municipality shall note this on the face of the plat if the plat is approved.

R. Every municipality is responsible for the recordation of all final plats approved by the legislative body and shall receive from the subdivider and transmit to the county recorder the recordation fee established by the county recorder.

S. Pursuant to provisions of applicable state statutes, the legislative body of any municipality may itself prepare or have prepared a plat for the subdivision of land under municipal ownership.

T. The legislative bodies of cities and towns may regulate by ordinance land splits within their corporate limits. Authority granted under this section refers to the determination of division lines, area and shape of the tracts or parcels and does not include authority to regulate the terms or condition of the sale or lease nor does it include the authority to regulate the sale or lease of tracts or parcels that are not the result of land splits as defined in § 9–463.

U. For any subdivision that consists of ten or fewer lots, tracts or parcels, each of which is of a size as prescribed by the legislative body, the legislative body of each municipality may waive the requirement to prepare, submit and receive approval of a preliminary plat as a condition precedent to submitting a final plat and may waive or reduce infrastructure standards or requirements except for improved dust-controlled access and minimum drainage improvements.

Added by Laws 1973, Ch. 178, § 2, eff. Jan. 1, 1974. Amended by Laws 1975, Ch. 96, § 2; Laws 1975, Ch. 151, § 33, eff. June 13, 1975; Laws 1980, 4th S.S., Ch. 1, § 1, eff. June 12, 1980; Laws 1981, Ch. 192, § 1, eff. April 22, 1981; Laws 1982, Ch. 191, § 1, eff. April 22, 1982; Laws 1984, Ch. 103, § 1; Laws 1994, Ch. 203, § 1, eff. April 19, 1994; Laws 1996, Ch. 103, § 1, eff. April 9, 1996; Laws 2000, 4th S.S., Ch. 1, § 6; Laws 2007, Ch. 240, § 1.

[1] Section 45–541 et seq.

[2] So in original. "Legislative body" probably should read "director".

§ 9–463.02. Subdivision defined; applicability

A. "Subdivision" means improved or unimproved land or lands divided for the purpose of financing, sale or lease, whether immediate or future, into four or more lots, tracts or parcels of land, or, if a new street is involved, any such property which is divided into two or more lots, tracts or parcels of land, or, any such property, the boundaries of which have been fixed by a recorded plat, which is divided into more than two parts. "Subdivision" also includes any condominium, cooperative, community apartment, townhouse or similar project containing four or more parcels, in which an undivided interest in the land is coupled with the right of exclusive occupancy of any unit located thereon, but plats of such projects need not show the buildings or the manner in which the buildings or airspace above the property shown on the plat are to be divided.

B. The legislative body of a municipality shall not refuse approval of a final plat of a project included in subsection A under provisions of an adopted subdivision regulation because of location of buildings on the property shown on the plat not in violation of such subdivision regulations or on account of the manner in which airspace is to be divided in conveying the condominium. Fees and lot design requirements shall be computed and imposed with respect to such plats on the basis of parcels or lots on the surface of the land shown thereon as included in the project. This subsection does not limit the power of such legislative body to regulate the location of buildings in such a project by or pursuant to a zoning ordinance.

C. "Subdivision" does not include the following:

1. The sale or exchange of parcels of land to or between adjoining property owners if such sale or exchange does not create additional lots.

2. The partitioning of land in accordance with other statutes regulating the partitioning of land held in common ownership.

3. The leasing of apartments, offices, stores or similar space within a building or trailer park, nor to mineral, oil or gas leases.

Added by Laws 1973, Ch. 178, § 2, eff. Jan. 1, 1974.

§ 9–463.03. Violations

It is unlawful for any person to offer to sell or lease, to contract to sell or lease or to sell or lease any subdivision or part thereof until a final plat thereof, in full compliance with provisions of this article and of any subdivision regulations which have been duly recorded in the office of recorder of the county in which the subdivision or any portion thereof is located, is recorded in the office of the recorder, except that this shall not apply to any parcel or parcels of a subdivision offered for sale or lease, contracted for sale or lease, or sold or leased in compliance with any law or subdivision regulation regulating the subdivision plat design and improvement of subdivisions in effect at the time the subdivision was established. The county recorder shall not record a plat located in a municipality having subdivision regulations enacted under this article unless the plat has been approved by the legislative body of the municipality.

Added by Laws 1973, Ch. 178, § 2, eff. Jan. 1, 1974.

6. Submittal Requirements for Hillside areas: *46

   In addition to submittal requirements for zoning and subdivision found elsewhere in the code the following information shall be submitted for staff review for all hillside areas.

   a. A topographic map of the existing terrain utilizing a scale no smaller than one inch equals one hundred feet, with contour intervals no greater than:
      (1) Two foot intervals for slopes of twenty percent or less,
      (2) Five foot intervals for slopes over twenty percent
      (3) Show elevations of critical locations, rock outcrops and other special geological formations
   b. The actual slope areas shown on the site shall be sealed by a civil engineer or land surveyor registered in the State of Arizona.
   c. The location of all streets, utilities, driveways, and buildings.
   d. Lots or parcels where the slope is 15% or greater on at least 50% of the lot, shall be identified and, the following shall be noted on the tentative plat, preliminary plat and final plat: "The following lot(s) are subject to hillside development regulations, and any developments to be placed thereon shall be shown to conform to the requirements of the hillside regulations prior to the issuance of any building permits". (List identified lot or lots)

F. Stage III - Final Plat

This stage includes the final design of the subdivision, engineering of public improvements and submittal of the plat and plans by the subdivider, for review and for action by the Council.

1. Zoning: Zoning of the tract shall permit the proposed use, and any zoning amendment necessary shall have been adopted by the Council prior to filing of the final plat. Any application for rezoning of any subdivision, proposed subdivision or part there of shall be governed by the zoning provisions of this Code and subject to the fees as required or authorized.
2. Easements: It shall be the responsibility of the subdivider to provide on the final plat, prior to plat recordation, such easements in such location and width as required for utility purposes. The following notation shall be placed upon all final plats:

"Construction within easements, except by public agencies and utility companies, shall be limited to utilities and wood, wire, or removable section-type fencing."

3. Final Plat Preparation: The final plat shall be prepared in accordance with requirements set forth in Section 15-09-010 (G) of these regulations and shall substantially conform to the approved preliminary plat.
4. Final Plat Submission:
   a. The subdivider shall file with the department three Mylar transparencies and eight true copies thereof, together with a letter of transmittal and recordation fee, and a computer

closure of the property, at least seven days prior to the Council meeting at which consideration is desired.

b. The subdivider shall submit with the copies required in this subsection a filing fee of five dollars per lot or tract.

c. The subdivider shall file a landscape plan with the final plat indicating fulfillment of the requirements of Article 15-07-002 (I).

d. The subdivider shall file the following with the final plat, indicating fulfillment of the requirements of article 15-07-002 and this chapter:

(1) Evidence of agency of the subdivider for owners.

(2) Performance contract, pursuant to Section 15-07-002.

(3) Letter of commitment of a bank, financial institution or bonding company of its willingness to provide assurance of construction, pursuant to section 15-07-002.

5. Final Plat Review:

a. The department, upon receipt of the final plat submittal, shall immediately record receipt and date of filing and check it for completeness. If complete, the department shall review the plat for substantial conformity to the approved preliminary plat and refer copies of the submittal to the following reviewing offices who shall make known their recommendations in writing addressed to the Council.

(1) Community Development Director, to approve final plat and landscaping.

(2) Town Parks and Recreation Department, when applicable.

(3) Town Engineer for approval of street improvements, drainage, and flood control measures.

(4) Northern Gila County Sanitary District, Payson Fire Department, and Payson Water Department for approval of sewage disposal, water supply, and fire safety plans.

(5) Arizona Department of Transportation, for approval (where the plat abuts a state highway).

(6) Interested utility companies, for utility easements.

b. The department shall assemble the recommendations of the various reviewing offices, prepare a concise summary of recommendations and submit said summary together with the reviewer's recommendations to the Council. In the event that the department finds that the final plat does not conform to the preliminary plat, as approved by the Council, then the final plat shall be submitted to the commission for review and recommendations prior to submittal to the Council.

6. Final Plat Approval:

a. Upon receipt of a request for Council action from the department, the clerk shall place the case on the agenda of the next regular Council meeting, whereupon the Council shall approve or deny the plat.

J. Performance Contract

1. Agreement by Subdivider: Upon approval of the Council of the final plat, the subdivider shall execute an agreement relating to the following:
   a. Subdivision improvements may be constructed in practical increments or lots as specified by the subdivider, subject to provisions for satisfactory drainage, traffic movements and other services, as determined by the Public Works Department.
   b. The improvements shall be constructed in accordance with plans approved by the Town Water Department for water and public sewer facilities and by the Public Works Department for all other improvements. Sanitary sewer improvements must also be approved by the Northern Gila County Sanitary District.
   c. The improvements shall be completed within an agreed period for each increment, provided that an extension of time may be granted under conditions specified. Improvements within the public right-of-way shall be completed within two years of the date of the approval of the final plat by the Town, unless extended by Council action.
   d. The subdivider shall give adequate assurance of construction of each increment in accordance with subsections 1 and 2 of this Section.
   e. Progress payments may be made to the subdivider on his order from any cash deposit made pursuant to subsection 2 of this section. Such progress payment shall be made in accordance with standards established with the Public Works Department.
   f. Any work abandoned or not completed by the subdivider may be completed by the Town, which shall recover such construction costs from the subdivider.
   g. Construction of all improvements within the streets and easements shall be subject to inspection by the Public Works Department and such other departments as are necessary.
   h. No building or residence shall be occupied as a residence or issued a certificate of occupancy until all public right-of-way and utility improvements required by this Code have been completed and accepted by Council, and no grading, drainage work, or construction shall start until a permit has been issued for such work.
   i. Upon transfer of ownership of an unimproved part or parcel of the platted subdivision to another party, the new owner shall be responsible for fulfillment of all obligations of development of the property in compliance with this Code and all existing agreements and conditions imposed on the original subdivider and developer.
   j. No construction, grading, tree removal, or drainage improvements shall commence until the appropriate permits are obtained from the Town, and adequate assurances are provided.
2. Assurance of Construction
   a. To insure construction of the required improvements, as above set forth in this section, the subdivider shall deposit with a mutually agreed upon escrow agent, banking institute,

or manner acceptable with the Public Works Department, an amount in cash or a surety bond, equal to the amount of the cost of the work of each recorded increment, plus an additional ten percent for changes and an additional three percent for a deposit on inspection fees, as determined by the Public Works Department, guaranteeing that the work will be completed in accordance with the Town Code, other pertinent regulations and agreed upon details and specifications.

b. The surety bond shall be executed by the subdivider, as principal, with a corporation duly authorized to transact surety business in the State of Arizona, as surety. The bond shall be in favor of the Town, shall be continuous in form and shall be conditioned that the total aggregate liability of the surety for all claims shall be limited to the face amount of the bond, irrespective of the number of years that the bond is enforced. The bond or cash shall be released upon satisfactory performance and acceptance of the work by the Public Works Department, or the bond may be canceled or the cash withdrawn by the subdivider, provided that other security satisfactory to the Town has been deposited, which will cover the obligations of the subdivider, which remain to be performed.

3. Assurance of Construction Through Loan Commitments

In lieu of providing assurance of construction in the manner provided above in this section, the subdivider may provide assurance of construction of subdivision improvements of the recorded plat by delivering to the Public Works Department, prior to the recording of said plat, an appropriate agreement between an approved lending institution and the subdivider, stating that funds sufficient to cover the entire cost of installing the subdivision improvements, including engineering and inspection costs, and the cost of replacement or repairs of any existing streets or improvements damaged by the subdivider in the course of development of the subdivision, in an amount approved by the Public Works Department, have been deposited with such approved lending institution, or have been committed to be loaned by such lending institution to the subdivider. Such agreement shall provide that such funds in the stated amount are specifically allocated and will be used by or on the behalf of the subdivider, only for the purpose of installing subdivision improvements. The Town shall be the beneficiary of such an agreement, or the subdivider's rights shall be assigned to the Town, and the Public Works Department shall approve each disbursement of any such funds. The agreement may also contain terms, conditions, and provisions normally included by such lending institutions in loan commitments for construction funds, or as may be necessary to comply with statutes and regulations applicable to such loaning institutions.

K. Private Lot Development

1. Plan Review Services for Private Lot Development - Requests for plan review services to develop on individual lots by private lot owners may be submitted to the Community Development Department, with the appropriate plan review fees after approval of final plat and the provision of adequate assurances for the subdivision.

2. Building Permits for Private Lot Development - Building permits will not be issued for private lot development until all improvements have been inspected by the Public Works Director or his designee and accepted by the Town Council. The following exceptions shall be provided:
   a. Office facilities for marketing and construction management for the subdivision may be permitted and construction commenced after final plat approval and appropriate permits are issued. Permits will only be issued to the Developer of record.
   b. Adequate fire protection must be available and approved by the Town of Payson Fire Chief prior to the issuance of any permits.

RESOLUTION NO. 2373

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 TYLER PARKWAY CONDOMINIUM SUBDIVISION.

WHEREAS, the subdivision plat for Tyler Parkway Condominium Subdivision has been presented for approval; and

WHEREAS, the developer desires to proceed with construction of the improvements in Tyler Parkway Condominium Subdivision; and

WHEREAS, the Town has negotiated an Agreement to Construct Subdivision Improvements with the developer of Tyler Parkway Condominium 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 Tyler Parkway Condominium Subdivision be and is hereby approved as depicted on Exhibit "1" attached hereto and incorporated herein, subject to the conditions, requirements, and notes written thereon or otherwise imposed. Approval of the final plat pursuant to this Resolution Number 2296 is contingent upon the recording of the final plat in the Office of the Gila County Recorder within six (6) months of the approval of this Resolution. If the final plat is not recorded within such time period, final plat approval shall be rescinded with no further action and the final plat shall lapse and be of no further effect.

Section 2. That the Agreement to Construct Subdivision Improvements, attached hereto as Exhibit "2" 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 "2".

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 _____, 2008, 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 April 24, 2008 (1:07PM)
C:\MyFiles\Resolutions\2373 Plat Approval & Agmt to Construct for Tyler Pkwy Condos.wpd

MAY 01 2008 G.6

FINAL PLAT
FOR
TYLER PARKWAY CONDOMINIUMS

LOCATED ON LOT 1 PER MAP 3011, GILA COUNTY RECORDS, LOCATED IN THE S 1/2 OF SECTION 27, TOWNSHIP 11 NORTH, RANGE 10 EAST OF THE GILA AND SALT RIVER MERIDIAN, TOWN OF PAYSON, GILA COUNTY, ARIZONA

GENERAL NOTES

1) TYLER PARKWAY CONDOMINIUMS IS BEING DEVELOPED AS A CONDOMINIUM SUBDIVISION USING R-3 ZONING STANDARDS AS ESTABLISHED BY THE TOWN OF PAYSON.

2) ALL BOUNDARY CORNERS OF THE TYLER PARKWAY CONDOMINIUMS SUBDIVISION WILL BE MONUMENTED. NEW OR MISSING CORNERS WILL BE MONUMENTED WITH 1/2 INCH IRON PIPE, TAGGED L.S. 12314.

3) A DECLARATION OF CONDOMINIUM CONDOMAT'S, CONDITIONS, AND RESTRICTIONS ESTABLISHING AND GOVERNING TYLER PARKWAY CONDOMINIUMS DCMT'S HAS BEEN RECORDED IN THE OFFICE OF THE GILA COUNTY RECORDER, FEE NO. _____ SETTING FORTH THE BENEFICIAL RESTRICTIONS UNDER A GENERAL PLAN OF IMPROVEMENT FOR THE BENEFIT OF THE OWNERS OF THE REAL PROPERTY DEFINED BY THIS PLAT INCLUDING THE VARIOUS DESIGNATED TRACTS AND ESTABLISHES MAINTENANCE AND PRESERVATION OF SAID PROPERTY. THE SAID CC&R'S ALSO ESTABLISH RESPONSIBILITY OF THE HOMEOWNER'S ASSOCIATION FOR MAINTAINING THE STORM WATER DRAINAGE FACILITIES ON A PORTION OF THE PROPERTY.

4) THE USES FOR TRACTS SHOWN ON THIS FINAL PLAT ARE AS FOLLOWS.

TRACT "A" - PRIVATE ACCESS NOTED IN THE DEDICATION. STREET, DRIVEWAY, AND STORM WATER DRAINAGE IMPROVEMENTS WITHIN TRACT "A" WILL BE MANAGED AND MAINTAINED BY TYLER PARKWAY CONDOMINIUMS HOMEOWNER'S ASSOCIATION. TRACT "A" SHALL ALSO BE A PUBLIC UTILITY AND DRAINAGE EASEMENT.

TRACT "B" - COMMON OPEN SPACE AREA WITHIN THE PROJECT BOUNDARY WILL BE MANAGED BY THE TYLER PARKWAY CONDOMINIUMS HOMEOWNER'S ASSOCIATION AND MAY CONTAIN JOINT USE FACILITIES. TRACT "B" SHALL ALSO BE A PUBLIC UTILITY EASEMENT AND DRAINAGE EASEMENT.

TRACT "C" FUTURE CONDOMINIUM DEVELOPMENT LABELED AS "PHASE 2".

CONSTRUCTION WITHIN TRACT "A", EXCEPT BY UTILITY COMPANIES, PUBLIC AGENCIES, OR AS PROVIDED IN THE CC&R'S, THIS PLAT AND ASSOCIATED IMPROVEMENT PLANS SHALL NOT BE ALLOWED.

5) TYLER PARKWAY CONDOMINIUMS HOMEOWNER'S ASSOCIATION MUST BE PROVIDED WITH INTENT OF LOCATION OF UTILITY INSTALLATION PRIOR TO PUBLIC OR PRIVATE UTILITIES BEING TRAVERSED ACROSS OR ON TRACTS "A" OR "B".

6) DWELLING UNIT INTERIOR DIMENSIONS SHOWN HEREON ARE TO INCLUDE EACH UNIT'S FINISHED BUT UNDOATED CEILING, FLOOR, AND INTERIOR WALLS. ALL EXTERIOR DIMENSIONS ARE MEASURED TO THE EXTERIOR OF FOUNDATION STEMWALLS. DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMAL PARTS THEREOF.

7) WALLS FENCES AND RAILINGS ENCLOSING PATIO AREAS ARE PART OF THE LIMITED COMMON ELEMENTS.

8) ALL AREAS SHOWN ON THIS PLAT, OTHER THAN THE AIRSPACE CONTAINED WITHIN THE UNITS ARE COMMON ELEMENTS OR LIMITED COMMON ELEMENTS.

9) THIS PLAT SUBSTANTIALLY COMPLETE. UPON CONSTRUCTION OF THE BUILDING UNITS, THE PLAT MAY BE AMENDED AS DETERMINED FROM AS-BUILT MEASUREMENTS.

DEDICATION

STATE OF ARIZONA)
) SS
COUNTY OF GILA)

KNOW ALL MEN BY THESE PRESENTS:

THAT FOREST EDGE, L.L.C., AN ARIZONA CORPORATION HAS SUBDIVIDED UNDER THE NAME OF EAST TYLER CONDOMINIUMS, LOCATED ON LOT 1 PER MAP NO. 3011, GILA COUNTY RECORDS, LOCATED IN THE S 1/2 OF SECTION 27, T 11 N, R 10 E, GASRM, GILA COUNTY, ARIZONA, AND HEREBY PUBLISHES THIS PLAT AND HEREBY DECLARES THAT SAID PLAT SETS FORTH THE LOCATION AND GIVES THE MEASUREMENTS 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 HEREWITH DECLARED PRIVATE ACCESS FOR THE EXCLUSIVE USE OF THE PROPERTY OWNERS WITHIN TYLER PARKWAY CONDOMINIUMS 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 EASEMENTS SHALL INCLUDE THE RIGHT FOR THE UTILITY COMPANIES, THE TOWN OF PAYSON, AND THE NORTHERN GILA SANITARY DISTRICT, TO THE PRIVATE ACCESS FOR INGRESS, EGRESS, INSTALLATION, REPLACEMENT, REPAIR, MAINTENANCE AND OPERATION OF ALL UTILITIES, INCLUDING BUT NOT LIMITED TO WATER, SEWER, GAS, TELEPHONE, CABLE TELEVISION, AND OTHER COMMUNICATION FACILITIES.

TRACTS "A" AND "B" ARE NOT TO BE USED FOR DWELLING PURPOSES BUT ARE HEREBY DEDICATED FOR THE USES AS SHOWN ON SAID PLAT. THERE IS RECORDED A DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR EAST TYLER CONDOMINIUMS RELATING TO AN ASSOCIATION OF OWNERS WHICH WILL OVERN THE USE AND MAINTENANCE OF ALL AREAS WITHIN THE SUBDIVISION.

PATIOS AND PORCHES ATTACHED TO SPECIFIC DWELLING UNITS ARE LIMITED COMMON ELEMENTS FOR THE EXCLUSIVE USE OF THE UNIT TO WHICH THEY ARE ATTACHED.

IN WITNESS WHEREOF:

FOREST EDGE L.L.C., AN ARIZONA CORPORATION HAS HEREUNTO CAUSED ITS NAME TO BE SIGNED OF THIS _____ DAY OF _____ 2006.

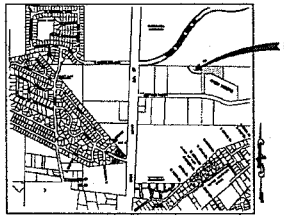
_____ _____
DAN MILLETT ITS PRESIDENT

ACKNOWLEDGMENT

STATE OF ARIZONA)
COUNTY OF GILA) } SS
THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____ 2006.
BY DAN MILLETT WHO ACKNOWLEDGED HIMSELF TO BE THE PRESIDENT OF FOREST EDGE 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

OWNERS/SUBDIVIDERS

FOREST EDGE L.L.C.
904 North Barkely
Mesa, AZ 85203



VICINITY MAP

N.T.S.

BASIS OF BEARINGS

BEING THE EAST-WEST MID-SECTION LINE OF SECTION 27, TOWNSHIP 11 NORTH, RANGE 10 EAST OF THE GILA AND SALT RIVER MERIDIAN.
SAID BASIS OF BEARING BEING S 89°57'27" E

Prepared by

TETRA TECH, INC.

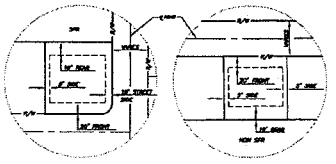
Project No. 6671.0001

SHEET INDEX

	DESCRIPTION
1	COVER SHEET
2	TRACT AND DWELLING UNIT LOCATIONS
3	CONDOMINIUM AND GARAGE ELEVATION SCHEDULE
4	CONDOMINIUM PLANS AND SECTIONS
5	GARAGE PLANS AND SECTIONS

LEGEND

- FOUND MONUMENTATION, AS NOTED
- C/L SURVEY MONUMENT
- (R) RECORDED INFORMATION
- (M) MEASURED INFORMATION
- BOUNDARY LINE
- RIGHT OF WAY LINE
- CENTER LINE



TYPICAL R3 SETBACKS

N.T.S.

APPROVAL

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 ENGINEER OF THE TOWN OF PAYSON, ARIZONA, THIS _____ DAY OF _____ 2006.

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

BY _____
TOWN ENGINEER

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, 2006, 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.

SHEET 1 OF 5

EXHIBIT "1"
to Resolution No. 2373

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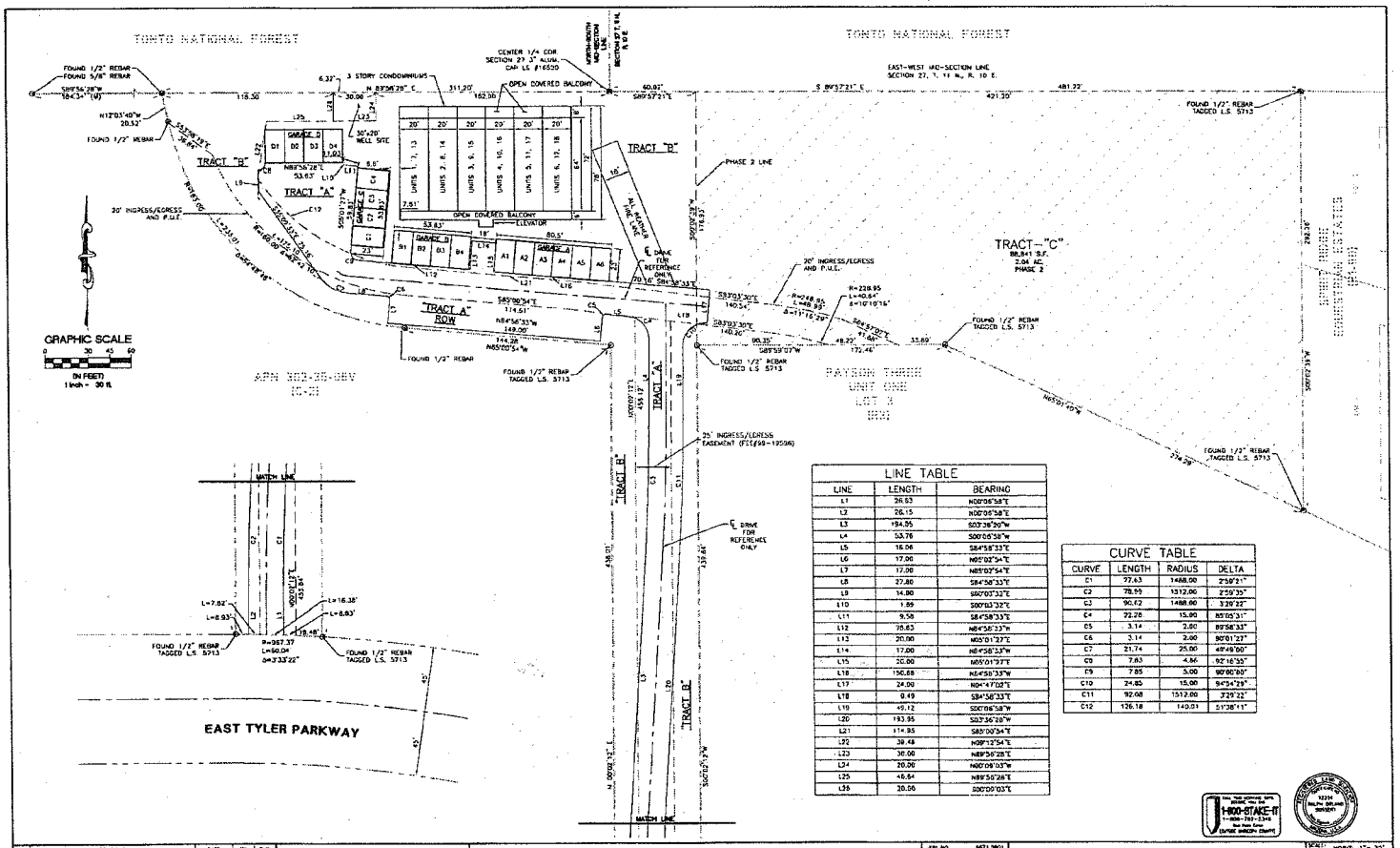

LINE TABLE		
LINE	LENGTH	BEARING
L1	26.63	N00°06'58"E
L2	26.15	N00°06'58"E
L3	194.55	S03°36'20"W
L4	53.76	S00°06'58"W
L5	16.04	S84°58'33"E
L6	17.00	N85°02'54"E
L7	17.00	N85°02'54"E
L8	27.80	S84°58'33"E
L9	14.00	S00°03'32"E
L10	1.89	S00°03'32"E
L11	9.58	S84°58'33"E
L12	36.63	N84°58'33"W
L13	20.00	N00°01'27"E
L14	17.00	N84°58'33"W
L15	20.00	N05°01'27"E
L16	150.88	N84°58'33"W
L17	24.00	N04°47'02"E
L18	9.49	S84°58'33"E
L19	45.12	S00°06'58"W
L20	193.95	S03°36'20"W
L21	114.93	S85°00'54"E
L22	39.48	N08°12'54"E
L23	30.00	N89°56'28"E
L24	20.00	N00°09'03"W
L25	46.64	N89°56'28"E
L26	20.00	S00°00'03"E

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	77.63	1488.00	2°59'21"
C2	78.59	1512.00	2°59'35"
C3	90.62	1488.00	3°29'22"
C4	22.28	15.00	85°05'31"
C5	3.14	2.00	89°58'33"
C6	3.14	2.00	90°01'27"
C7	21.74	25.00	49°49'00"
C8	7.83	4.86	92°16'55"
C9	7.85	5.00	90°00'00"
C10	24.85	15.00	94°47'02"
C11	92.08	1512.00	3°29'22"
C12	126.18	140.01	51°38'11"

NO.	REVISIONS	DATE	BY	CHK.

TETRA TECH, INC.
431 S. Beeline Highway
Payson, AZ 85541-4825
TEL (928)474-4636 FAX (928)474-4847

EAST TYLER CONDOMINIUIMS
PAYSON, ARIZONA

JOB NO. 6671.0001
DESIGNED BY: RDB
DRAWN BY: JJR
CHECKED BY: RDB
APPROVED BY: RDB
DATE: 01/17/07

TRACT AND DWELLING UNIT LOCATIONS

SCALE: HORIZ. 1"= 30'
CONT. INTERVAL = N/A
DRAWING NO. FP02
SHEET NO. 2 OF 5

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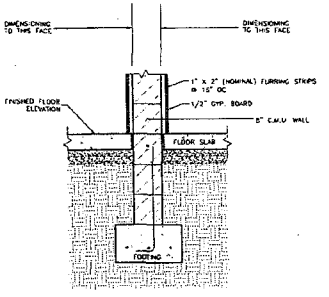
FLOOR AND CEILING ELEVATION SCHEDULE

BUILDING	FLOOR #	UNIT	ELEVATIONS FINISHED FLOOR EL.	CEILING EL.	LOFT EL.	BUILDING	FLOOR #	UNIT(S)	ELEVATIONS FINISHED FLOOR EL.	CEILING EL.	LOFT EL. (STOR. EL.)
3-STORY CONDOMINIUM	1	1	5061.00	5069.50	- - -	3-STORY CONDOMINIUM	2	12	5070.75	5079.25	- - -
3-STORY CONDOMINIUM	1	2	5061.00	5069.50	- - -	3-STORY CONDOMINIUM	3	13	5080.25	5089.50	- - -
3-STORY CONDOMINIUM	1	3	5061.00	5069.50	- - -	3-STORY CONDOMINIUM	3	14	5080.25	5089.50	- - -
3-STORY CONDOMINIUM	1	4	5061.00	5069.50	- - -	3-STORY CONDOMINIUM	3	15	5080.25	5089.50	- - -
3-STORY CONDOMINIUM	1	5	5061.00	5069.50	- - -	3-STORY CONDOMINIUM	3	16	5080.25	5089.50	- - -
3-STORY CONDOMINIUM	1	6	5061.00	5069.50	- - -	3-STORY CONDOMINIUM	3	17	5080.25	5089.50	- - -
3-STORY CONDOMINIUM	2	7	5070.75	5079.25	- - -	3-STORY CONDOMINIUM	3	18	5080.25	5089.50	- - -
3-STORY CONDOMINIUM	2	8	5070.75	5079.25	- - -	GARAGE A	- - -	1-6	5060.80	5069.80	5070.80
3-STORY CONDOMINIUM	2	9	5070.75	5079.25	- - -	GARAGE B	- - -	1-4	5060.5	5069.50	5070.50
3-STORY CONDOMINIUM	2	10	5070.75	5079.25	- - -	GARAGE C	- - -	1-4	5060.00	5069.00	5070.00
3-STORY CONDOMINIUM	2	11	5070.75	5079.25	- - -	GARAGE D	- - -	1-4	5059.35	5068.35	5069.35

UNIT CUBIC CONTENTS

UNIT(S)	LIVING UNIT SQ. FT.	LIVING UNIT CU. FT.	GARAGE UNIT SQ. FT.	GARAGE UNIT CU. FT.
1	1,276	10,846	423	3,423
2-5	1,296	11,016	423	3,423
6	1,276	10,846	423	3,423
7	1,276	10,846	423	3,423
8-11	1,296	11,016	423	3,423
12	1,276	10,846	423	3,423
13	1,276	11,484	423	3,423
14-17	1,296	11,664	423	3,423
18	1,276	11,484	423	3,423



(A) TYPICAL PARTY WALL SECTION
SCALE: N.T.S.

1-800-STAKE-IT

NO.	REVISIONS	DATE	BY	CHK

TETRA TECH, INC.
431 S. Beatrice Highway
Payson, AZ 85541-4863
TEL:(928)474-4636 FAX:(928)474-4867

EAST TYLER CONDOMINIUMS
PAYSON, ARIZONA

JOB NO. 6671000
DESIGNED BY: BOB
DRAWN BY: JAB
CHECKED BY: BOB
APPROVED BY: BOB
DATE: 02/17/07

CONDOMINIUM AND GARAGE
ELEVATION SCHEDULE

SCALE: HORIZ. 1"= 1'
CONT. INTERVAL = N/A
DRAWING NO. FP03
SHEET NO. 3 OF 5

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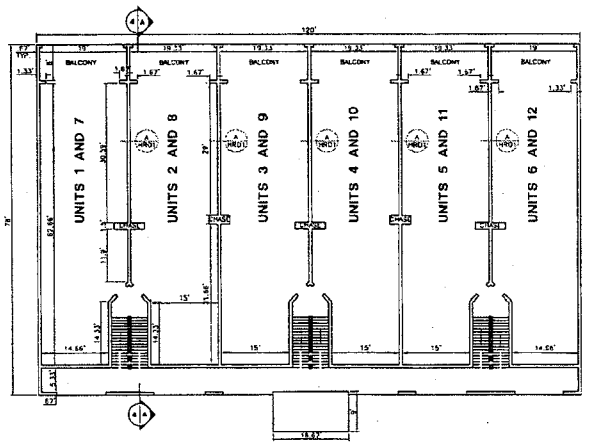
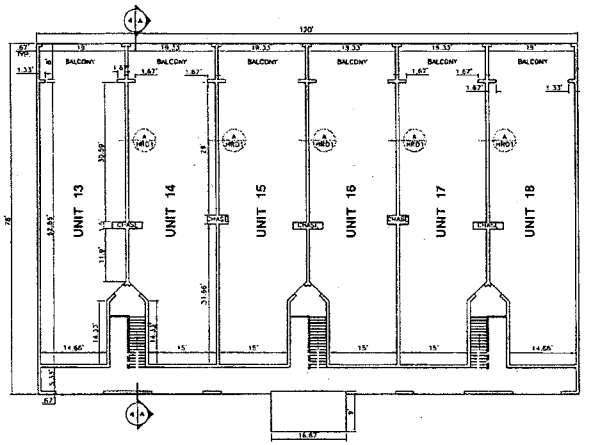
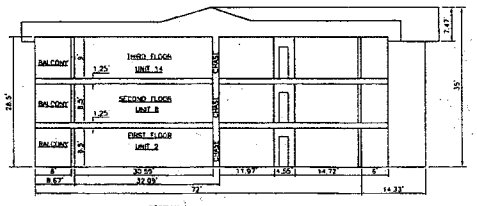


FIRST & SECOND FLOOR
SCALE: 1"=10'



THIRD FLOOR
SCALE: 1"=10'



SECTION A
SCALE: 1"=10'

NO.	REVISIONS	DATE	BY	CHK.

TETRA TECH, INC.

EAST TYLER CONDOMINIUMS
PAYSON, ARIZONA

JOB NO.	66710001
DESIGNED BY:	RDB
DRAWN BY:	JAB
CHECKED BY:	RDB
APPROVED BY:	RDB
DATE:	07/17/07

CONDOMINIUM PLANS AND SECTIONS

SCALE: HORIZ: 1"= 10'
CONT. INTERVAL = N/A
DRAWING NO. FP04
SHEET NO. 4 OF 5

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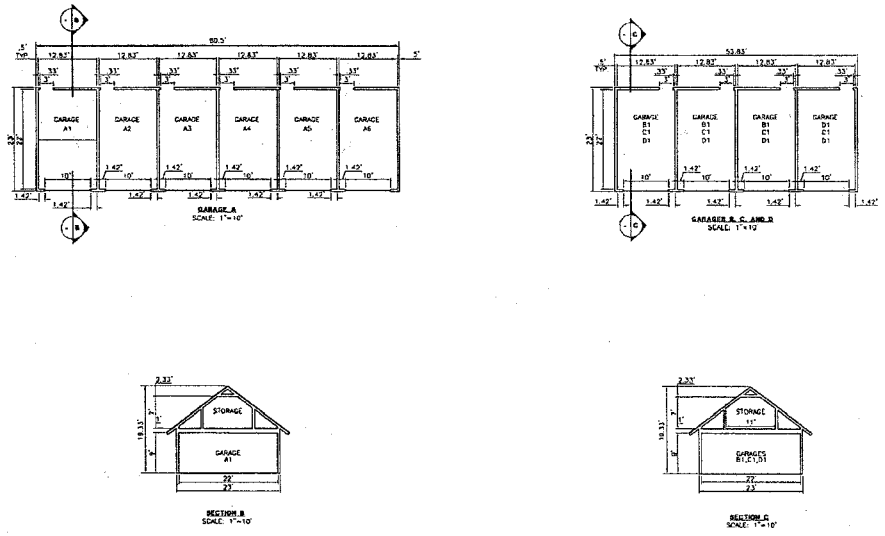

NO.	REVISIONS	DATE	BY	CHK.

TETRA TECH, INC.
431 S. Beeline Highway
Payson, AZ 85541-4685
TEL:(928)474-4536 FAX:(928)474-4667

EAST TYLER CONDOMINIUMS
PAYSON, ARIZONA

JOB NO.	66710001
DESIGNED BY:	RDB
DRAWN BY:	JKD
CHECKED BY:	RDB
APPROVED BY:	RDB
DATE:	07/17/07

CONDOMINIUM PLANS AND SECTIONS

SCALE: HORIZ. 1"= 10'
CONT. INTERVAL = N/A
DRAWING NO. FP05
SHEET NO. 5 OF 5

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EXHIBIT "2"

to Resolution No. 2373

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

Tyler Parkway Condominiums, Payson, Arizona

THIS AGREEMENT is made and entered into this _____ day of _____, 2008, by and between Forest Edge, LLC, an Arizona limited liability company ("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 "Tyler Parkway Condominiums" (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 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

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 and incorporated herein by this reference (the "Improvements"). The Subdivider's obligation to complete the Improvements will arise as of the date of this Agreement (the "Start Date"); provided, however, that such Subdivision improvements may be constructed and installed in phases as provided for in this Agreement. The Subdivider's obligation to complete the Improvements is independent of any obligations of the Town contained herein and is not conditioned on the sale of any lots or improvement within the development.

2. Existing Utilities. Any relocation or modification of existing utilities or public improvements to construct the Improvements shall be done at no expense to the public.

3. Assurance of Construction. This Agreement is submitted as an assurance that Subdivider will construct the Improvements as required by A.R.S. § 9-463.01(C)(8) and the Payson Town Code.

4. Start of Construction. Subdivider shall begin construction of the Improvements within six (6) months of the date of the Start Date, and will diligently pursue completion of the Improvements. Subdivider's failure to do substantial work on the Improvements for a period of sixty (60) consecutive calendar days shall be presumptive evidence that Subdivider is failing to diligently pursue construction of the Improvements.

5. Completion of Improvements. The Improvements shall be completed by the Subdivider not more than two (2) years after the Start Date. The Improvements shall not be considered completed unless and until such Improvements have been completed in accordance with all applicable plans which have been approved by the Town and Town regulations, and after the Town has inspected them for compliance with the plans and regulations and has accepted the Improvements in accordance with paragraph 6 herein below. The period for completion of the Improvements may be extended for good cause shown at the discretion of the Town of Payson or its designated representative.

6. Acceptance of Improvements. The Town shall not accept the Improvements or accept maintenance responsibility for the Improvements, nor shall the Improvements be deemed accepted unless and until all of the following have occurred:

   (a) The Improvements have been completed in accordance with Paragraph 5 of this Agreement.

   (b) The Improvements and the right-of-way in which the Improvements are located has been

dedicated or conveyed to the Town in accordance with the Subdivision Plat or separate instrument, as applicable.

(c) The dedication or conveyance, as applicable, has been accepted by the Town as evidenced by the approval of the Subdivision Plat or by some other formal action.

(d) The Town Council has acted to accept the Improvements as built. The Parties anticipate that each portion of the Improvements will be given a preliminary acceptance by the Town or its inspector; however, the Parties understand and acknowledge that no such preliminary acceptance shall be effective as a final acceptance until each of the requirements of this section, including approval by the Payson Town Council, has occurred. The Parties further understand that it shall be the sole responsibility of Subdivider to repair any Improvements which are damaged, fall into disrepair, or are defective prior to acceptance of such Improvements by the Payson Town Council and/or the termination of the warranty period.

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

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

8. Security. To secure performance of its obligations to construct the Improvements under this Agreement, Subdivider shall 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 Three Hundred Sixty-seven Thousand, One Hundred Fifty-seven Dollars and Ninety-two Cents ($367,157.92) 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 herein shall be released upon the final release of assurances by the Town. Such amount represents a retention in the event of a default by Subdivider to provide additional funds for completion of the Improvements by the Town. Additionally, the Town at the request of the Subdivider may cause to be retained 10% of the construction invoices to assure compliance by a contractor with that contractor's responsibilities.

10. Limitation on Transfer of Title. Subdivider shall not convey title to any of the Property without obtaining prior written approval from Town in the form of a Release of Assurance. Subdivider specifically understands and agrees that a Release of Assurance shall not be provided by Town until the Subdivision Improvements are completed in accordance with Paragraph 5.

11. Deposit Receipt Agreements. Notwithstanding Paragraph 10, Subdivider may enter into a deposit receipt agreement for the sale of the Property or any portion of it if the agreement clearly states that no portion of the Property may be conveyed until Subdivider performs its obligations under this agreement.

12. Bulk Sales. Notwithstanding Paragraph 10, Subdivider may sell and convey all of the Property in one transaction to a single purchaser who has entered into a satisfactory assurance agreement with Town, assuring completion of the Subdivision Improvements.

13. Substitution of Assurances. Subdivider may submit substitute assurances in a form and amount acceptable to Town at any time during which Subdivider is not in default under this agreement.

14. Town's Option Upon Default. If Subdivider defaults on any of its obligations under this Agreement or fails to complete construction of the Improvements within the time period required by this Agreement, the Parties agree that, in addition to any other remedies the Town may have against the Subdivider for failure to perform as required under this Agreement, the Town shall have and is hereby granted the right, at its sole discretion, to initiate a process to replat to acreage any portion of the Property that has not been identified as a construction phase or upon which construction of Subdivision improvements has not been completed. The Subdivider hereby

authorizes the Town to execute on behalf of the Subdivider all documents necessary to so replat the Property, and appoints the Town as its agent and attorney in fact to do so. The replat may exclude any dedications to the public which were made on the Subdivision Plat or by separate instrument which are deemed necessary to serve the portions of the Property which are not replatted or to necessarily serve the public. Subdivider shall pay the reasonable costs incurred in replatting. The Town may use some or all of the aforesaid Assurance Agreement trust and other assurance funds to pay for the replatting of the Property. Prior to initiating any action to replat the Property or any portion of Property, the Town shall give forty-five (45) days first-class mailed notice to the Subdivider at its last known address and Subdivider shall have an opportunity to cure any such defaults within such period. In addition, if Subdivider defaults on its obligations under this Agreement or fails to complete construction of the Improvements within the time period required by this Agreement, and, after notice and opportunity to cure, defaults as provided in this paragraph, the Parties agree that, without election and in addition to any other remedies the Town may have against the Subdivider for failure to perform as required under this Agreement, the Town may draw upon the Escrow Account funds, or any remaining balance thereof, in accordance with the said Agency Agreement in order to complete construction of the Improvements. In this connection, the Town shall have sole discretion in determining a default in this Agreement, which discretion shall be exercised in a fair and reasonable manner. Subdivider shall not transfer title to any of the property in the Subdivision at any time after Subdivider commits a default upon any of its obligations under this Agreement.

15. Termination. This Agreement shall remain in full force and effect until one of the following has occurred:

a) All of the Improvements have been completed and accepted for maintenance by action of the Town Council and Subdivider's contractor(s) has(have) been paid in full and furnished complete lien releases to the Subdivider, who shall provide the Town with copies of such complete lien releases.

b) The Subdivider has tendered substitute assurances acceptable to the Town for the completion of the Improvements.

c) A new Subdivision Plat has been recorded for the Property in compliance with any and all applicable laws and regulations.

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

17. Severability. If any portion of this Agreement is found to be invalid, such finding will not affect the validity of the remainder of this Agreement and to this end the provisions of this Agreement are severable.

18. No Waiver. No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor shall it be deemed to be a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the Town and the Subdivider; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default of the same type. The Town's failure to exercise any right under this

Agreement will not constitute the approval of any wrongful act by the Subdivider.

19. Notice. 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 Escrow Agent; (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: Forest Edge, LLC
Attention: Daniel G. Millett, Manager
904 North Barkley
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 which Party drafted this Agreement or any provision or portion thereof.

26. Counterparts. This Agreement may be executed in one or more counterparts. Each executed counterpart shall for all purposes be deemed an original, but all of which together shall constitute in the aggregate but one in the same instrument. The signature pages from one or more counterparts may be removed therefrom and attached to one or more duplicate agreements containing all original signatures.

27. Date of Performance. If this Agreement provides that any time period expires or date for performance specified in this Agreement falls on a non-business day (a Saturday, Sunday, or legal holiday recognized by the Town), such time period or performance deadline shall be extended to the Town's next business day. Except as may otherwise be set forth herein, any performance shall be timely made and completed no later than 5:00 p.m. (Payson time) on the date the performance is due.

28. Complete Agreement. This Agreement and additional written agreements described or incorporated herein, if any, contain and set forth the entire and exclusive Agreement and understanding between the Parties hereto pertaining to the subject matter of this Agreement and reflect the reasonable expectations of the Parties hereto. This Agreement may not be amended or modified in any way whatsoever without the prior written consent of all Parties to this Agreement.

29. Dispute Resolution. Any dispute, controversy, claim, or cause of action arising out of or related to this Agreement shall be governed by Arizona law and may, but in no event need, be settled by submission with the consent of both Parties to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, A.R.S. § 12-1501, et seq., and judgment upon any award rendered by the arbitrator(s) may be entered in the Superior Court of Gila County; or any such dispute, controversy, claim, or cause of action may be litigated in a court. The venue for any such dispute shall be Gila County, Arizona. Both Parties consent in advance to such venue and jurisdiction and waive any right to object that Gila County is an inconvenient or improper forum based upon lack of venue. Neither Party shall be entitled to recover from the other Party any of its attorneys' fees or other costs incurred in any such dispute, controversy, claim, or cause of action, but each Party shall bear its own attorneys' fees, whether the same is resolved through arbitration, litigation in a court, or otherwise.

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

31. Time of the Essence. Time is of the essence of this Agreement and of all of its parts.

32. Business License. Subdivider shall provide the Town with a copy of its Town business license. If Subdivider is exempt from the Town's business licensing requirements, it shall still provide the Town with the items required under Section 110.03(C)-(D) of the Town Code.

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

FOREST EDGE, LLC,
an Arizona limited liability company

_____
Daniel G. Millett, Manager

TOWN OF PAYSON,
an Arizona municipal corporation:

By_____
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 _____, 2008.

By_____
Samuel I. Streichman, Town Attorney

STATE OF ARIZONA)
) ss.
County of Gila)

The foregoing Agreement to Construct Subdivision Improvements for Tyler Parkway Condominiums was signed before me this _____ day of _____, 2008, by Daniel G. Millett, Manager of Forest Edge, LLC, on behalf of the company.

_____
Notary Public

My commission expires:
_____

STATE OF ARIZONA)
) ss.
County of Gila)

The foregoing Agreement to Construct Subdivision Improvements for Tyler Parkway Condominiums was signed before me this _____ day of _____, 2008, by F. Robert Edwards, Mayor of the Town of Payson, on behalf of the Town.

_____
Notary Public

My commission expires:
_____

EXHIBIT "A"
LEGAL DESCRIPTION

Those properties as shown on the Tyler Parkway Condominium Subdivision Plat recorded in the Office of the Gila County Recorder, Gila County, Arizona, on _____, 2008, as Map Number _____.

EXHIBIT "B"
IMPROVEMENTS

Those improvements as shown on the "Tyler Parkway Condominium Improvement Plans" consisting of eight sheets dated March 26, 2008, and approved by the Town of Payson on March 31, 2008.

EXHIBIT "C"

AGENCY AGREEMENT

[TO BE PROVIDED BY DEVELOPER]