RESOLUTION NO. 2471

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT TO CONSTRUCT SUBDIVISION IMPROVEMENTS FOR CHILSON RANCH PHASE ONE SUBDIVISION (CHILSON RANCH).

WHEREAS, the subdivision plat for Chilson Ranch Phase One Subdivision has been previously approved by the Mayor and Common Council; and

WHEREAS, the developer, Hurlburt Development, Inc., desires to proceed with construction of the improvements in Chilson Ranch Phase One Subdivision; and

WHEREAS, the Town has negotiated an Agreement to Construct Subdivision Improvements with the developer of Chilson Ranch Phase One Subdivision requiring the posting of assurances that such improvements will be constructed and completed,

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

Section 1. That the Agreement to Construct Subdivision Improvements, attached hereto as Exhibit "1" 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 "1".

Section 2. That Kenny J. Evans, Mayor of the Town of Payson, be and is hereby authorized to execute such Agreement in substantially the form attached.

Section 3. That the developer, Hurlburt Development, Inc., intends to establish an escrow account with a title agency in Payson, Arizona, and to fund such account with the sum of at least $3,338,454.99. Until such escrow account and agency agreement in connection therewith are each established and funded as required in Exhibit "1", Exhibit "1" shall not be executed or finalized.

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 said Agreement to Construct Subdivision Improvements.

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 _____

_____
Kenny J. Evans, Mayor

ATTEST:

_____
Silvia Smith, Town Clerk

APPROVED AS TO FORM:

_____
Samuel I. Streichman, Town Attorney

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

AGREEMENT TO CONSTRUCT SUBDIVISION IMPROVEMENTS

Chilson Ranch Phase One Subdivision, Payson, Arizona

This Agreement is made and entered into as of the _____ day of DRAFT, 2008, by and between HURLBURT DEVELOPMENT, INC., an Arizona corporation ("Subdivider"), and the TOWN OF PAYSON, ARIZONA, an Arizona municipal corporation ("Town") (collectively, the "Parties"). The Parties hereby confirm and agree as follows:

RECITALS

A. Subdivider intends to subdivide and develop the property located in Payson, Arizona, more fully described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), identified as "Chilson Ranch Phase One Subdivision" (the "Subdivision"); and

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

C. The Parties to this Agreement wish to establish specific terms, conditions, and guidelines to provide for assurances for the completion of the required improvements in the Subdivision in compliance with the provisions of A.R.S. § 9-463.01(C)(8) and Articles 15-2 and 15-4 of the Payson Town Code; and

D. The Town seeks to protect the health, safety, and general welfare of the community by requiring the completion of various improvements in the Subdivision and thereby to limit the harmful effects of substandard subdivision, including premature subdivision which leaves property undeveloped and unproductive; and

E. This Agreement inures to the benefit of the Parties and is not executed for the benefit of third parties, such as, but not limited to, materialmen, laborers, or others providing work, services or materials for the Subdivision, or for the benefit of lot or home purchasers in the Subdivision.

AGREEMENT

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

1. Construction of Subdivision Improvements. Subdivider hereby agrees to construct and install, at its own expense, all subdivision improvements for the Property, as described in Exhibit "B" attached hereto. The Subdivider's obligation to complete the Improvements will arise as of the date of this Agreement (the "Start Date"). The Subdivider's obligation to complete the Improvements is independent of any obligations of the Town contained herein and is not conditioned on the sale of any lots or improvement within the development.

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

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

4. Start of Construction. Subdivider shall begin construction of the Improvements within six (6) months of the 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 the Improvements have been completed in accordance with all Town regulations and all applicable plans which have been approved by the Town, and after the Town has inspected 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 maintenance responsibility for the Improvements, nor shall the Improvements be deemed accepted unless and until all of the following have occurred:

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

(b) The Improvements and the right-of-way in which the Improvements are located have been dedicated or conveyed to the Town in accordance with the Subdivision Plat or separate instrument, as applicable.

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

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

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

7. Warranty. The Subdivider warrants that the Improvements, each and every one of them, will be free from defects for a period of two (2) years from the date that the Town Council accepts the maintenance of the last Improvement completed by the Subdivider.

8. Security. To secure performance of its obligations to construct the Improvements under this Agreement, Subdivider shall establish an escrow account (the "Escrow Account") with a title agency in Payson, Arizona, 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 Million, Three Hundred Thirty-eight Thousand, Four Hundred Fifty-four Dollars and Ninety-nine Cents ($3,338,454.99) in cash with the Escrow Agent, which is the amount equal to the engineer's estimate, accepted by the Town's Public Works Director, of total costs to perform Subdivider's obligations for Improvements as set forth in Exhibit "B" hereto to be constructed under this Agreement, an additional ten percent (10%) of such sum for contingency, and an additional three percent (3%) for inspection fees. This amount shall 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 or other increases in the costs to perform Subdivider's obligations under this Agreement. Monies

from the Escrow Account shall be disbursed by the 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 the Agency Agreement upon direction of the Subdivider, but only upon prior approval of the Town, which approval shall not be unreasonably withheld. The Town shall agree to disbursal of such funds as 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 the Escrow Account in which such funds are to be placed will be used only for the purpose of installing the Improvements. Such Escrow Account shall be established within thirty (30) days of the execution of this Agreement and in no event later than the Start Date.

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 an amount equal to three percent (3%) of the amount of the engineer's estimate, accepted by the Town's Public Works Director, excluding the amount estimated by the engineer for sewer collection installations, or the actual cost to the Town of Payson for construction inspection and testing, whichever is greater. Concurrently with the establishment of the escrow account referred to in this Paragraph, Subdivider shall pay over to the Town of Payson, as a deposit against such construction inspection and testing fees, a sum equal to three percent (3%) of the engineer's estimate, accepted by the Town's Public Works Director, excluding any amount for construction of sewer collection facilities.

In the event such Escrow Account is not established in the amount required pursuant to this Paragraph (an amount equal to the engineer's estimate, accepted by the Town's Public Works Director, of total costs to perform Subdivider's obligations to construct the Improvements under this Agreement, and an additional ten percent (10%) of such sum, including increases in the costs to perform Subdivider's obligations under this Agreement), Subdivider shall provide additional security in cash or other form acceptable to the Town equal to such amount and any increase thereto of the total costs to perform Subdivider's obligations to construct the Improvements prior to commencing or continuing construction of the Improvements.

Subdivider agrees that if this Agreement is terminated because of the breach thereof by Subdivider before the completion of all Improvements required in this Agreement, Subdivider shall tender to the Town 1) cash 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.

9. Retention. The additional ten percent (10%) of funds provided for in paragraph 8 herein shall be released upon the final release of assurances by the Town. Such amount represents a retention in the event of a default by Subdivider to provide additional funds for completion of the Improvements by the Town. Additionally, at the request of the Subdivider, the Town may cause to be retained 10% of the construction invoices to assure compliance by a contractor with that contractor's responsibilities.

10. Town's Option Upon Default. If Subdivider materially defaults on its obligations under this Agreement, the Parties agree that, in addition to any other remedies Town may have against Subdivider for failure to perform as required under this Agreement, Town shall have and is hereby granted the right, at its sole discretion, to initiate a process to replat the Property to revert to acreage of approximately the same boundary configurations of record existing before the Subdivision Plat for the Property was recorded. Subdivider hereby authorizes Town to execute on behalf of Subdivider all documents necessary to replat the Property, and appoints Town as its agent and attorney-in-fact to do so. The replat may exclude any dedications to the public which were made on the Subdivision Plat or by separate instrument which are deemed necessary to serve the portions of the Property which are not replatted or to necessarily serve the public. Subdivider shall pay the reasonable costs incurred in replatting. Prior to initiating any action to replat the Property or any portion of Property, Town shall give forty-five (45) days first-class mailed notice to Subdivider at its last known address and Subdivider shall have an opportunity to cure any such defaults within such period. In addition, if Subdivider materially defaults on its obligations under this Agreement and, after notice and opportunity to cure defaults as provided in this paragraph, the Parties agree that, without election and in addition to any other remedies Town may have against Subdivider for failure to perform as required under this Agreement, the Town may make claim against the Escrow Account established under Paragraph 8 hereinabove and receive and use said funds to complete construction of the Improvements. In this connection, the Town shall have the sole discretion in determining a default under this Agreement, which discretion the Town may exercise in any manner, whether or not the exercise of such discretion is fair or reasonable under the circumstances.

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

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

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

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

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

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

14. No Waiver. No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor shall it be deemed to be a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the Town and the Subdivider; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default of the same type. The Town's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Subdivider.

15. Notice. The Subdivider agrees to provide written notice to the Town, within ten (10) days of the occurrence of (1) a change of name, corporate identity, or address of the Subdivider; (2) intent to transfer, or transfer of title to the Property by deed, or transfer of title to the Property by deed, contract, or operation of law; (3) the foreclosure of a lien against the Property or a portion of the Property, (4) the filing of a voluntary or involuntary petition of bankruptcy respecting the Subdivider; (5) any other event that may affect performance of the Parties under this Agreement.

16. Address of the Parties:

Subdivider:
Hurlburt Development, Inc.
Attention: Hallie Overman, President
P. O. Box 576
Payson, Arizona 85547

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

17. Date of Agreement. The date of this Agreement shall for all purposes be the date of the signature of the last Party to sign this Agreement.

18. Controlling Law. This Agreement and the rights of the Parties hereto shall be governed by and construed in accordance with the internal laws of the State of Arizona without regard to conflicts of laws principles.

19. Authority. The Parties acknowledge and warrant that each of them is fully authorized and empowered to execute this Agreement by and through the individual(s) executing hereinafter.

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

21. Representations. Each of the Parties acknowledges and warrants that it has been, or has had an opportunity to be, represented by independent counsel. This Agreement is the

result of negotiation between the Parties and their respective attorneys, and the terms, conditions, and provisions of this Agreement shall be construed in a fair and even manner regardless of the party who drafted this Agreement or any provision or portion thereof.

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

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

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

25. Dispute Resolution. This Agreement shall be governed and construed in accordance with the internal laws of the State of Arizona. With the written consent of both Parties, any dispute, controversy, claim, or cause of action arising out of or related to this Agreement may, but in no event need, be settled by submission to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, A.R.S. § 12-1501, *et seq*. Judgment upon any award rendered by the arbitrator(s), if filed in Arizona Superior Court, shall be filed in the Superior Court of Gila County, Arizona; or any such dispute, controversy, claim, or cause of action may be litigated in the Superior Court of Gila County, Arizona. The venue for any such dispute shall be Gila County, Arizona, and both Parties consent in advance to such venue and jurisdiction and waive any right to object that Gila County is an inconvenient or improper forum based upon lack of venue. Neither Party shall be entitled to recover from the other party any of its attorneys' fees, costs, or expert witness fees incurred in any such dispute, controversy, claim, or cause of action, but each party shall bear its own attorneys' fees without contribution from the other party, whether the same is resolved through arbitration, litigation in a court, or otherwise.

26. Cancellation. This Agreement is subject to the provisions of A.R.S. § 38-511, the terms of which are incorporated herein by reference. Said statute provides, among other things, that if any person significantly involved in initiating, negotiating, securing, drafting or

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

27. Town Business License. The Developer shall provide the Town with a copy of its Town business license. If the Developer 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 Payson Town Code.

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

TOWN OF PAYSON,
an Arizona municipal corporation

By DRAFT
Kenny J. Evans, Mayor

ATTEST:

Silvia Smith, Town Clerk

HURLBURT DEVELOPMENT, INC.,
an Arizona corporation

By DRAFT
Hallie Overman, President

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 _____, 2009.

By_____
Samuel I. Streichman, Town Attorney

STATE OF ARIZONA)
) ss.
County of Gila)

The foregoing Agreement to Construct Subdivision Improvements was signed before me this _____ day of _____, 2009, by Hallie Overman, President of Hurlburt Development, Inc., an Arizona corporation, for and on behalf of the corporation.

_____
Notary Public

My commission expires:
_____

STATE OF ARIZONA)
) ss.
County of Gila)

The foregoing Agreement to Construct Subdivision Improvements was signed before me this _____ day of _____, 2009, by Kenny J. Evans, Mayor of the Town of Payson, for and on behalf of the Town.

_____
Notary Public

My commission expires:
_____

Prepared by Town of Payson Legal Department
January 14, 2009 (11:14AM) SIS:drs
C:\MyFiles\Subdivisions\Chilson Ranch\Agreement to Construct.wpd

EXHIBIT "A"
LEGAL DESCRIPTION

Those lots and tracts as shown on the Chilson Ranch Phase One Subdivision Plat recorded on _____, 2009, in the Office of the Gila County Recorder, Gila County, Arizona, as Map Number _____.

EXHIBIT "B"
IMPROVEMENTS

Those improvements as shown on the "Site Improvements Plans for Chilson Ranch Phase 1", consisting of 50 sheets sealed on September 17, 2008, and approved by the Town of Payson on October 6, 2008.

EXHIBIT "C"

Agency Agreement

AGENCY AGREEMENT

This Agreement has been entered into by and between HURLBURT DEVELOPMENT INC., an Arizona corporation hereinafter referred to as the Principal, and Pioneer Title Agency, Inc., an Arizona corporation, hereinafter referred to as the Custodian, on the 14th, day of January, 2009

RECITALS:

The Principal desires to employ the Custodian to act as a depository of monies to be placed with the Custodian by the Principal from time to time for the purpose of disbursing to contractors, subcontractors, mechanics, and materialmen, who may do work, or provide materials in the improvement or development work (the "Improvements") on certain premises described as the CHILSON RANCH PHASE ONE SUBDIVISION, a subdivision situated in the Town of Payson, County of Gila, State of Arizona, described in that certain Agreement to Construct Subdivision Improvements between the Principal and the Town of Payson, (the "Property"), all in accordance with certain contracts and agreements which are now or shall be hereafter entered into by the Principal, or its duly authorized agents, for that purpose.

The Custodian desires to act in that capacity in being the custodian of any and all funds deposited with it by the Principal for the general purpose immediately outlined above, and for the disbursement of such funds as it may be directed to do from time to time by the Principal or its duly authorized agents, in furtherance of that purpose and in accordance with Paragraph 4 hereunder.

It is the intention of the Principal and the Custodian in entering into this Agreement that any contractors, subcontractors, mechanics, or materialmen concerned with the construction of the Improvements shall not be construed or considered to be a third party beneficiary, either incidentally or directly to this Agreement.

The Improvements which are subject to this Agreement are those improvements in that certain Agreement to Construct Subdivision Improvements, and approved by the Town of Payson on _____.

Now therefore, in consideration of the mutual covenants and agreements contained herein, it is agreed by and between the parties hereto, and only the parties hereto as follows:

AGREEMENTS:

1. The Principal shall deposit with the Custodian the total accumulative sum of $ 3,338,454.99 which is the maximum proposed amount to be expended by

the Principal from the custodial account herein provided for and created, together with any additional sums as may be required in the future for the completion of the Improvements upon the Property. In addition, the Principal shall deposit with the Custodian those amounts referred to in Paragraphs 3 and 8 hereunder. The total sum shall be paid over to the Custodian in whole.

2. As an integral part of the Agency Agreement the Principal has and will submit to the Custodian certain documents and instructions to be utilized in the disbursement of funds as contemplated by this Agreement.

The following shall constitute the basic documents to be submitted by the Principal in this connection:

(A) Executed copies of all contracts and agreements between the Principal and/or its duly authorized agents, and those persons or entities furnishing labor or materials, and/or doing the work on the improvements to the Property.

(B) An executed copy of the original of any evidence of authority given by the Principal to any of its agents appointed to direct disbursements from the custodial funds created hereby.

(C) Any and all instructions which, from time to time, may be relative to the disbursement or remittance by the Principal.

3. It is the express agreement of the Principal and the Custodian that the funds actually held by the Custodian from time to time in accordance herewith and none other, shall constitute a fund for the payment of costs of the Improvements to the Property, together with the payment of any and all fees due to the Custodian for the performance of its services hereunder.

4. Principal shall submit to Pioneer Title Agency, Inc., as Custodian, any and all documents pertaining to contracts and agreements between the Principal and those parties who would provide services or materials in connection with the Improvements contemplated on the Property and to further direct disbursements from the custodial fund created hereby for the purpose of paying such suppliers of labor and/or material in performance of such work. The Custodian is hereby authorized to rely on the written authorization of the Principal in the disbursing of funds from the custodial fund during the work in progress as contemplated by this Agreement; provided, however, that the Custodian shall not disburse any funds relating to the Improvements until a written approval for such disbursement has been received from an authorized representative of the Town of Payson (the "Town") as provided in that

Agreement to Construct Subdivision Improvements between the Principal and the Town (the "Improvement Construction Agreement").

5. The Custodian hereunder shall receive a duly executed lien waiver or receipt acceptable to it in the case of each party to whom a disbursement is authorized to be made. It is expressly understood and agreed by the parties hereto, however, that the Custodian shall have no responsibility or obligation to make an inspection of the Property upon which the work is to be accomplished or the supplies to be delivered, prior to such disbursement, and shall be entitled to rely specifically upon the authorization of the Principal for such disbursement. The Custodian is expressly relieved of any and all responsibilities in connection with the Agreement and any disbursements made hereunder, save and except the duty and responsibility to disburse in accordance with the instruction of the Designated Agent with the exception of the ultimate responsibility of acting as a depository for the funds deposited with it under the terms of this Agreement.

6. It is understood and agreed upon, that all monies on deposit with the Custodian shall be the property of the Principal until such time as disbursements are made therefrom in accordance with this Agreement, except only as the Town shall have the ability to use such funds in accordance with the default provision of the Improvement Construction Agreement.

7. The Principal hereby indemnifies the Custodian against all costs, damages, expenses and liability which the custodian may incur or sustain in connection with complying with this Agreement or as a result of any court action arising therefrom. If conflicting demands are made upon the Custodian as to any monies at any time held by it as Custodian hereunder, the Custodian may hold said monies or any documents pertaining thereto until the rights of the parties are determined by an appropriate court of law, or the Custodian may interplead any and all documents held by it hereunder, pending the outcome of such litigation in which even the Custodian shall be relieved of any and all liability to the Principal hereunder.

8. The fee to be paid Custodian by Principal in carrying out this Agreement is the file Escrow Fee based upon the amount of the total funds required to complete the Improvements and said fee shall be advanced with the initial disbursement.

9. This Agreement and the right 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 law principles.

10. The parties acknowledge and warrant that each of them is fully authorized and empowered to execute this Agreement by and through the individuals executing hereinafter.

11. 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 attorney, 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.

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

13. 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 or rather reflect the reasonable expectations of the parties hereto. This Agreement may not be rescinded, cancelled, terminated, supplemented, amended or modified in any way whatsoever without the prior written consent of all parties to this Agreement.

14. This Agreement shall be binding upon and shall inure to the benefit of the representatives, successors, and assigns of the parties hereto; provided, however, that neither party shall assign any of its rights or obligations under this Agreement without the written consent of the other party hereto.

In witness hereof, this Agreement has been entered into on the date first above written.

PRINCIPAL:

HURLBURT DEVELOPMENT INC.,
an Arizona corporation

BY: _____
Hallie Quezenberry

PIONEER TITLE AGENCY, INC.
an Arizona corporation

BY: _____
Teresa L. Brownlee