

RESOLUTION NO. 2430

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 LOS PINOS SUBDIVISION (LOS PINOS).

WHEREAS, the subdivision plat for Los Pinos Subdivision has been presented for approval; and

WHEREAS, the developer desires to proceed with construction of the improvements in Los Pinos Subdivision; and

WHEREAS, the Town has negotiated an Agreement to Construct Subdivision Improvements with the developer of Los Pinos 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 Los Pinos 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 2430 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 If the final plat is not recorded within such time period, final plat approval shall be rescinded with no further action and the final plat shall lapse and be of no further effect.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 Kenny J. Evans, 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 \_\_\_\_\_

\_\_\_\_\_  
Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

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

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

# EXHIBIT "1"

to Resolution No. 2430

# FINAL PLAT FOR LOS PINOS

A RE-SUBDIVISION OF LOT 3 AND A PORTION OF LOT 6 OF PAYSON THREE-UNIT TWO PER MAP 654 G.C.R., LOCATED IN THE NE 1/4, OF SECTION 36, TOWNSHIP 11 NORTH, RANGE 10 EAST OF THE GILA AND SALT RIVER MERIDIAN, TOWN OF PAYSON, GILA COUNTY, ARIZONA

JARIAL, L.L.C.  
7152 EAST CANYON DRIVE  
PARADISE VALLEY, ARIZONA 85253  
(602) 413-0356

### DEDICATION

STATE OF ARIZONA )  
COUNTY OF GILA ) SS

KNOW ALL MEN BY THESE PRESENTS:

JARIAL, L.L.C., AN ARIZONA LIMITED LIABILITY CORPORATION HAS SUBDIVIDED UNDER THE NAME OF LOS PINOS, BEING A RESUBDIVISION OF LOT 3 AND A PORTION OF LOT 6 OF PAYSON THREE-UNIT TWO PER MAP 654 G.C.R., LOCATED IN A PORTION OF THE NE 1/4, OF SECTION 36, T. 11 N., R. 10 E., GILRA, GILA COUNTY, ARIZONA, AND HEREBY PUBLISHES THIS PLAT AS AND FOR THE PLAT OF LOS PINOS AND HEREBY DECLARES THAT SAID PLAT SETS FORTH THE LOCATIONS AND GIVES THE MEASUREMENTS AND DIMENSIONS OF THE LOTS AND STREETS CONSTITUTING THE SAME AND THAT EACH LOT AND STREET SHALL BE KNOWN BY THE NUMBER, LETTER, OR NAME THAT IS GIVEN TO EACH RESPECTIVELY ON SAID PLAT, AND HEREBY DEDICATES TO THE TOWN OF PAYSON FOR USE AS SUCH THE STREETS ON SAID PLAT. EASEMENTS ARE HEREBY GRANTED FOR THE PURPOSE SHOWN HEREON. CONSTRUCTION WITHIN EASEMENTS, EXCEPT BY PUBLIC AGENCIES AND UTILITY COMPANIES, SHALL BE LIMITED TO UTILITIES AND WOOD, WIRE, OR REMOVABLE SECTION TYPE FENCING.

IN WITNESS WHEREOF:

JARIAL, L.L.C., AN ARIZONA CORPORATION HAS HEREAUTO CAUSED ITS NAME TO BE SIGNED OF THIS DAY OF 2008.

LUZ ANGELA LOPEZ MANAGER

CARLOS JAVIER LOPEZ TRUSTEE

LUZ ANGELA LOPEZ TRUSTEE

### ACKNOWLEDGMENT

STATE OF ARIZONA )  
COUNTY OF GILA ) SS

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS DAY OF 2008.

LUZ ANGELA LOPEZ, MANAGER OF JARIAL, L.L.C., CARLOS JAVIER LOPEZ, TRUSTEE OF THE CARLOS JAVIER AND LUZ ANGELA LOPEZ FAMILY TRUST, MEMBER OF JARIAL, L.L.C., AND LUZ ANGELA LOPEZ, TRUSTEE OF THE CARLOS JAVIER AND LUZ ANGELA LOPEZ FAMILY TRUST, MEMBER OF JARIAL, L.L.C., AND KNOWN TO ME TO BE MEMBERS OR DESIGNATED AGENTS OF THE LIMITED LIABILITY COMPANY THAT EXECUTED THE DEED OF TRUST AND ACKNOWLEDGED THE DEED OF TRUST TO BE THE FREE AND VOLUNTARY ACT AND DEED OF THE LIMITED LIABILITY COMPANY, BY AUTHORITY OF STATUTE, ITS AGENTS OR ORGANIZATION OR ITS OPERATING AGREEMENT, FOR THE USES AND PURPOSES THEREIN MENTIONED, AND ON OATH STATED THAT THEY ARE AUTHORIZED TO SIGN THIS PLAT AND DEDICATION ON BEHALF OF THE LIMITED LIABILITY COMPANY.

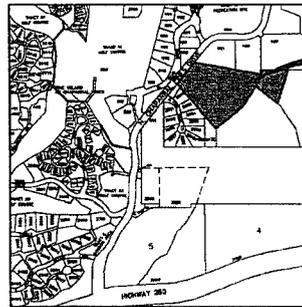
MY COMMISSION EXPIRES: NOTARY PUBLIC

### GENERAL NOTES

- 1) ALL MAINTENANCE AND REPAIR OF STORM WATER AND DRAINAGE FACILITIES IN THIS DEVELOPMENT, WITHIN OR WITHOUT A DRAINAGE EASEMENT, IS THE RESPONSIBILITY OF THE PROPERTY OWNER OR HOA WHERE THE STORM WATER OR DRAINAGE FACILITY IS LOCATED. HOWEVER, THE TOWN OF PAYSON, OR OTHER PUBLIC AGENCIES HAVING JURISDICTION, POSSESS RIGHT OF ACCESS FOR CLEARING, CLEANING, OR CHANNELING, IF NOT PROPERLY MAINTAINED BY THE PROPERTY OWNER OR HOA. ALL FUNDS EXPENDED FOR THIS MAINTENANCE AND/OR REPAIR BY THE TOWN OF PAYSON WILL BE CHARGED TO THE INDIVIDUAL PROPERTY OWNER OR HOA.
- 2) NO LOT IN THIS SUBDIVISION MAY BE FURTHER DIVIDED AND NOT MORE THAN ONE SINGLE FAMILY RESIDENTIAL STRUCTURE MAY BE CONSTRUCTED ON EACH LOT WITHIN THIS SUBDIVISION.
- 3) NATURAL DRAINAGE CONVEYANCES ON LOTS, EITHER WITH OR WITHOUT A DRAINAGE EASEMENT CANNOT BE RELOCATED WITHOUT WRITTEN APPROVAL FROM THE TOWN OF PAYSON. ANY CONSTRUCTION THAT IMPEDES THE DRAINAGE FLOW IN ANY WAY IS STRICTLY PROHIBITED. ANY CONCENTRATED STORM WATER LEAVING ANY LOT SHALL ENTER A NATURAL DRAINAGE CONVEYANCE, PUBLIC STREET, OR DRAINAGE EASEMENT.
- 4) ALL LOTS WITHIN THIS SUBDIVISION ARE HILLSIDE LOTS AND SHALL CONFORM TO THE REQUIREMENTS OF HILLSIDE SUBDIVISIONS IN SECTION 15-07-002-H OF THE TOWN OF PAYSON UNIFIED DEVELOPMENT CODE. AN INDIVIDUAL GRADING AND DRAINAGE PLAN PREPARED BY AN ARIZONA REGISTERED CIVIL ENGINEER FOR EACH OF THESE LOTS SHALL BE SUBMITTED AND APPROVED BY THE PUBLIC WORKS DEPARTMENT PRIOR TO ISSUANCE OF A GRADING PERMIT AND BUILDING PERMIT.
- 5) AREAS OUTSIDE PLATTED BUILDING ENVELOPES SHALL NOT BE DISTURBED IN ANY MANNER EXCEPT FOR DEFENSIBLE SPACE TRIMMING/MAINTENANCE. ANY ACCESSORY STRUCTURES, INCLUDING FENCES, SHALL BE LOCATED WITHIN THE PLATTED BUILDING ENVELOPE. DRIVEWAY WIDTHS OUTSIDE THE BUILDING ENVELOPE ON ALL LOTS SHALL BE LIMITED TO A MAXIMUM OF 14 FEET WIDE UNLESS A GREATER WIDTH IS NEEDED TO MEET FIRE DEPARTMENT REQUIREMENTS.
- 6) ALL DRIVEWAYS IN THIS SUBDIVISION SHALL COMPLY WITH SECTION 503.1.1 AND APPENDIX D-0103.4 OF THE INTERNATIONAL FIRE CODE IN USE BY THE TOWN OF PAYSON AT THE TIME OF CONSTRUCTION.
- 7) ALL BUILDING CONSTRUCTION IN THIS SUBDIVISION SHALL MEET THE CRITERIA OF THE PAYSON TOWN CODE SECTION 150.45B (3) WHICH MAY REQUIRE ADDITIONAL FIRE PROTECTION CONSTRUCTION.

### BASIS OF BEARINGS

BASIS OF BEARING =  
EAST LINE OF THE NORTHEAST 1/4  
OF SECTION 36, T. 11 N., R. 10 E.  
GILA AND SALT RIVER SAGE MERIDIAN,  
ASSUMED AS N 0°19'54" E  
(SHOWN ON DRAWING FP2)



LOCATION MAP  
N.T.S.

Prepared by

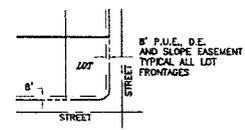


Project No. 27206.08001



### SHEET INDEX

NO.	DESCRIPTION
1	COVER SHEET
2-3	FINAL PLAT



TYPICAL PUBLIC UTILITY, DRAINAGE,  
AND SLOPE EASEMENT

N.T.S.

### LEGEND

- FOUND MONUMENTATION, AS NOTED
- SET 1/2" IRON PIPE LS 12314
- ⊙ C/L SURVEY MONUMENT
- (R) RECORDED INFORMATION
- BOUNDARY LINE
- RIGHT OF WAY LINE
- CENTER LINE
- LOT LINE
- D.E., P.U.E. & S.E.
- D.E. ONLY
- NON VEHICULAR ACCESS EASEMENT
- BUILDING ENVELOPE
- THE LINE
- 302-B5-3 & 6A ASSESSOR'S PARCEL NO.
- D.E. DRAINAGE EASEMENT
- S.E. SLOPE EASEMENT
- P.U.E. PUBLIC UTILITY EASEMENT

### APPROVALS

APPROVED BY THE COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, THIS DAY OF 2008.

BY MAYOR, TOWN OF PAYSON, ARIZONA

ATTEST: TOWN CLERK

APPROVED BY THE TOWN PUBLIC WORKS DIRECTOR OF THE TOWN OF PAYSON, ARIZONA, THIS DAY OF 2008.

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

BY PUBLIC WORKS DIRECTOR

### CERTIFICATION

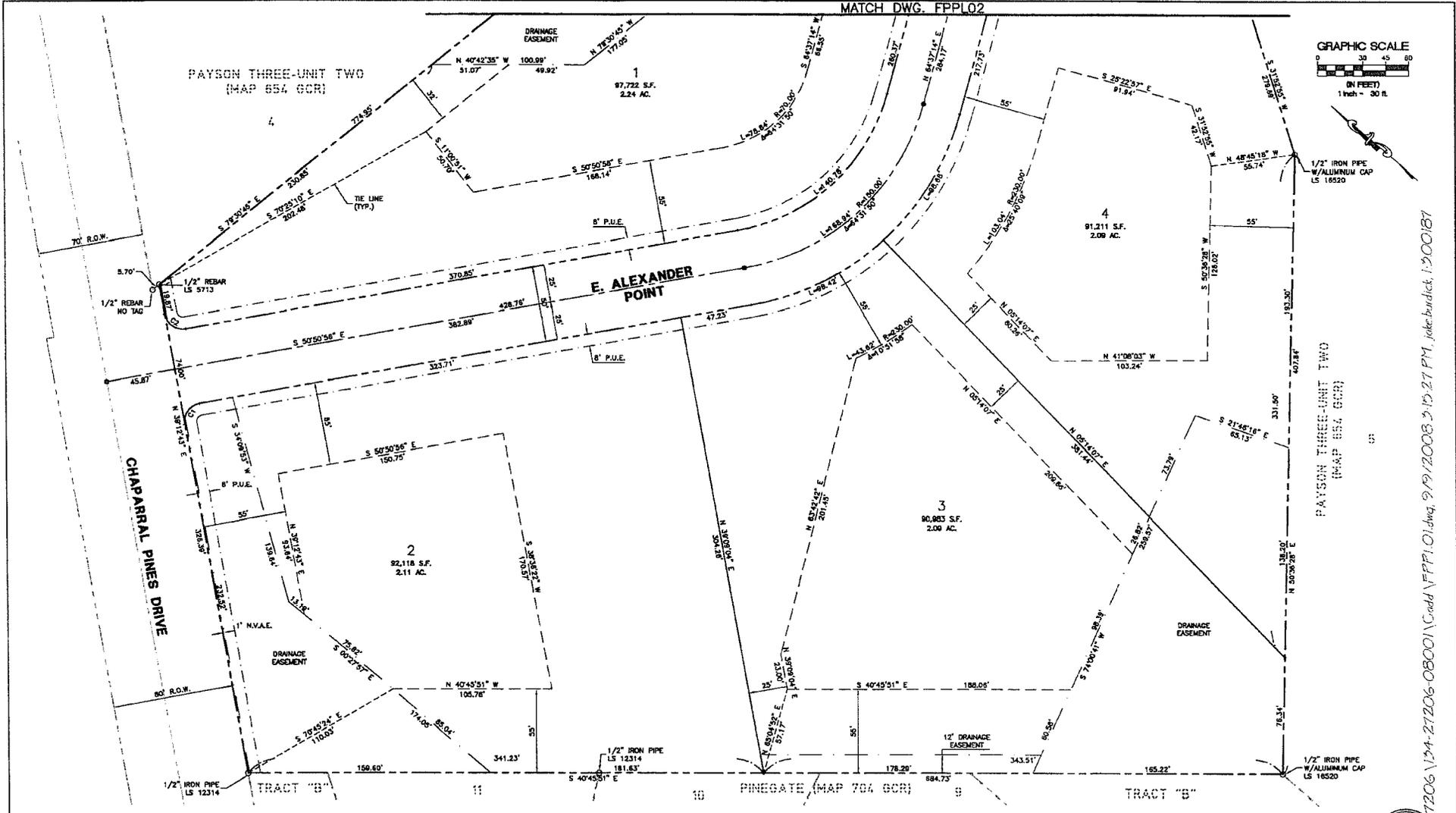
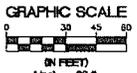
THIS IS TO CERTIFY THAT THE MAP, CONSISTING OF (3) SHEETS, CORRECTLY REPRESENTS A SURVEY MADE UNDER MY SUPERVISION DURING THE MONTH OF JUNE, 2008, THAT THE SURVEY IS COMPLETE, LOT CORNERS ARE MARKED WITH 1/2" IRON PIPE W/ PLASTIC CAP #12314 AND THE MONUMENTS EXIST, THEIR POSITIONS ARE CORRECTLY SHOWN, AND SAID MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.



P: 27206.124-27206-08001 \Cadd\FT\Lawg\_9/19/2008 3:13:53 PM, jls@burdick, 1300187

MATCH DWG. FPPL02

PAYSON THREE-UNIT TWO  
(MAP 654 GCR)



CURVE TABLE			
CURVE	RADIUS	DELTA	TANGENT
C1	12.00'	88°56'21"	18.84'
C2	12.00'	90°03'39"	18.86'

NO.	REVISIONS	DATE	BY	CHK.

**TETRA TECH, INC.**  
221 S. RIMMING HEIGHTS  
PAYSON, AZ 85541-4405  
TEL: (928) 474-4836 FAX: (928) 474-4887

**LOS PINOS**  
PAYSON, ARIZONA

JOB NO. 27206-08001  
DESIGNED BY: RJB  
DRAWN BY: JPS  
CHECKED BY: RJB  
APPROVED BY: RJB  
DATE: 05/13/08

**FINAL PLAT**



SCALE: HORIZ: 1" = 30'  
CONT. INTERVAL: N/A  
DRAWING NO. **FP1**  
SHEET NO. OF: **2 3**

I:\27206-08001\CADD\FPPL01.dwg, 9/9/2008 3:15:27 PM, jps@tetra.com, 1:300187



# EXHIBIT "2"

to Resolution No. 2430

**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

**Los Pinos Subdivision, Payson, Arizona**

**DRAFT**

This Agreement is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between JARIAL, LLC, an Arizona limited liability company ("Subdivider"), and the TOWN OF PAYSON, ARIZONA, an Arizona municipal corporation ("Town") (collectively, the "Parties"). The Parties hereby confirm and agree as follows:

### RECITALS

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

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

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

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

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

## AGREEMENT

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

1. Construction of Subdivision Improvements. Subdivider hereby agrees to construct and install, at its own expense, all subdivision improvements for the Property, as described in Exhibit "B" attached hereto. The Subdivider's obligation to complete the Improvements will arise as of the date of this Agreement (the "Start Date"). The Subdivider's obligation to complete the Improvements is independent of any obligations of the Town contained herein and is not conditioned on the sale of any lots or improvement within the development.
2. Existing Utilities. Any relocation or modification of existing utilities or public improvements to construct the Improvements shall be done at no expense to the public.
3. Assurance of Construction. This Agreement is submitted as an assurance that Subdivider will construct the Improvements as required by A.R.S. § 9-463.01(C)(8) and the Payson Town Code.
4. Start of Construction. Subdivider shall begin construction of the Improvements within six (6) months of the Start Date, and will diligently pursue completion of the Improvements. Subdivider's failure to do substantial work on the Improvements for a period of sixty (60) consecutive calendar days shall be presumptive evidence that Subdivider is failing to diligently pursue construction of the Improvements.
5. Completion of Improvements. The Improvements shall be completed by the Subdivider not more than two (2) years after the Start Date. The Improvements shall not be considered completed unless and until the Improvements have been completed in accordance with all Town regulations and all applicable plans which have been approved by the Town, and after the Town has inspected the Improvements for compliance with the plans and regulations and has accepted the Improvements in accordance with paragraph 6 herein. The period for completion of the Improvements may be extended for good cause shown at the discretion of the Town of Payson or its designated representative.
6. Acceptance of Improvements. The Town shall not accept the Improvements or maintenance responsibility for the Improvements, nor shall the Improvements be deemed accepted unless and until all of the following have occurred:

- (a) The Improvements have been completed in accordance with Paragraph 5 of this Agreement.
- (b) The Improvements and the right-of-way in which the Improvements are located have been dedicated or conveyed to the Town in accordance with the Subdivision Plat or separate instrument, as applicable.
- (c) The dedication or conveyance, as applicable, has been accepted by the Town as evidenced by the approval of the Subdivision Plat or by some other formal action.
- (d) The Town Council has acted to accept the Improvements as built. The Parties anticipate that each portion of the Improvements will be given a preliminary acceptance by the Town or its inspector; however, the Parties understand and acknowledge that no such preliminary acceptance shall be effective as a final acceptance until each of the requirements of this section, including approval by the Town Council, has occurred. The Parties further understand that it shall be the sole responsibility of Subdivider to repair any Improvements which are damaged, fall into disrepair, or are defective prior to acceptance of such Improvements by the Town Council and/or the termination of the warranty period provided for in paragraph 7 herein.
- (e) The Town shall not give final acceptance for the Improvements nor shall such Improvements be deemed accepted until Subdivider's contractor(s) has(have) been paid in full and has(have) furnished complete lien releases to the Subdivider, who shall provide the Town with copies of such complete lien releases.

- 7. Warranty. The Subdivider warrants that the Improvements, each and every one of them, will be free from defects for a period of two (2) years from the date that the Town Council accepts the maintenance of the last Improvement completed by the Subdivider.
- 8. Security. To secure performance of its obligations to construct the Improvements under this Agreement, Subdivider shall establish an escrow account (the "Escrow Account") with Pioneer 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 Four Hundred Sixty-nine Thousand, Two Hundred Seventy-four Dollars (\$469,274.00) 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 disbursement 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 from commitment 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 on file with the Town and, if different, also to the known place of business for Subdivider on file with the Arizona Corporation Commission at the time of the notice and Subdivider shall have an opportunity to cure any such defaults within such period. In addition, if Subdivider materially defaults on its obligations under this Agreement and, after notice and opportunity to cure defaults as provided in this paragraph, the Parties agree that, without election and in addition to any other remedies Town may have against Subdivider for failure to perform as required under this Agreement, the Town may make claim against the loan procured under paragraph 8 hereinabove and receive and use said funds to complete construction of the Improvements. In this connection, the Town shall have the sole discretion in determining a default under this Agreement, which discretion the Town may exercise in any manner that is fair and 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 and superseding 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, except in the case of the sale of Units to third party home buyers in the ordinary course of business; (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 materially affect performance of the Parties under this Agreement.
16. Address of the Parties:

Subdivider: Jarial, LLC Attention: Luz Angela Lopez, Manager 7152 East Caron Drive Paradise Valley, Arizona 85253	Town: Town of Payson Attention: Public Works Director 303 North Beeline Highway Payson, Arizona 85541
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17. Date of Agreement. The date of this Agreement shall for all purposes be the date of the signature of the last Party to sign this Agreement.
18. Controlling Law. This Agreement and the rights of the Parties hereto shall be governed by and construed in accordance with the internal laws of the State of Arizona without regard to conflicts of laws principles.
19. Authority. The Parties acknowledge and warrant that each of them is fully authorized and empowered to execute this Agreement by and through the individual(s) executing hereinafter.
20. Further Documents. The Parties shall execute and deliver any and all such documents and perform any and all such acts as reasonably necessary or required to carry out the matters contemplated by this Agreement.

21. Representations. Each of the Parties acknowledges and warrants that it has been, or has had an opportunity to be, represented by independent counsel. This Agreement is the result of negotiation between the Parties and their respective attorneys, and the terms, conditions, and provisions of this Agreement shall be construed in a fair and even manner regardless of which party drafted this Agreement or any provision or portion thereof.
22. Counterparts. This Agreement may be executed in one or more counterparts. Each executed counterpart shall for all purposes be deemed an original, but all of which together shall constitute in the aggregate but one and the same instrument. The signature pages from one or more counterparts may be removed therefrom and attached to one or more duplicate agreements containing all original signatures.
23. Date of Performance. If this Agreement provides that any time period expires or date for performance specified in this Agreement falls on a non-business day (a Saturday, Sunday, or legal holiday recognized by the Town), such time period or performance deadline shall be extended to the Town's next business day. Except as may otherwise be set forth herein, any performance shall be timely made and completed no later than 5:00 p.m. (Payson time) on the date the performance is due.
24. Complete Agreement. This Agreement and additional written agreements described herein, if any, contain and set forth the entire and exclusive Agreement and understanding between the Parties hereto pertaining to the subject matter of this Agreement and reflect the reasonable expectations of the Parties hereto. This Agreement may not be amended or modified in any way whatsoever without the prior written consent of all Parties to this Agreement.
25. Dispute Resolution. This Agreement shall be governed and construed in accordance with the internal laws of the State of Arizona. With the written consent of both Parties, any dispute, controversy, claim, or cause of action arising out of or related to this Agreement may, but in no event need, be settled by submission to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, A.R.S. § 12-1501, *et seq.* Judgment upon any award rendered by the arbitrator(s), if filed in Arizona Superior Court, shall be filed in the Superior Court of Gila County, Arizona; or any such dispute, controversy, claim, or cause of action may be litigated in the Superior Court of Gila County, Arizona. The venue for any such dispute shall be Gila County, Arizona. 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

**JARIAL, LLC,**  
an Arizona limited liability company

By **DRAFT**  
\_\_\_\_\_   
Kenny J. Evans, Mayor

**DRAFT**  
By: \_\_\_\_\_   
Luz Angela Lopez, Manager

**APPROVAL AS TO FORM**

The Town of Payson Legal Department has reviewed this agreement and approved it as to form, and has determined that said agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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 \_\_\_\_\_, 2008, by Luz Angela Lopez, Manager of Jarial, 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 was signed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by Kenny J. Evans, Mayor of the Town of Payson, on behalf of the Town.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

*Prepared by Town of Payson Legal Department  
September 10, 2008 (1:36PM) SIS:drs  
C:\MyFiles\Subdivisions\Los Pinos\Agmt to Construct.wpd*

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Those lots and tracts as shown on the Los Pinos Subdivision Plat recorded on \_\_\_\_\_, 2008, in the Office of the Gila County Recorder, Gila County, Arizona, as Map Number \_\_\_\_\_.

**EXHIBIT "B"**  
**IMPROVEMENTS**

Those improvements as shown on the "Los Pinos On-Site Improvement Plans," consisting of \_\_\_\_\_ sheets sealed \_\_\_\_\_, 2008, and approved by the Town of Payson on \_\_\_\_\_, 2008.

**EXHIBIT "C"**  
**AGENCY AGREEMENT**

[TO BE SUPPLIED BY DEVELOPER]