

MEMORANDUM

TO: Fred Carpenter, Town Manager
FROM: Barbara Brewer, Mayor
SUBJECT: Forest Edge Rezoning
DATE: May 18, 2006

Please include an item on the May 24 agenda for possible consideration of the attached addendum to the Town's agreement with Terra-Payson 40, L.L.C., and Terra Star-Valley 40, L.L.C.

Thank you.

Barbara Brewer

MAY 24 2006 H.I.

ADDENDUM TO WATER AGREEMENT

THIS ADDENDUM TO WATER AGREEMENT ("Agreement") is entered into as of this ____ day of May, 2006, by and between TERRA-PAYSON 40, L.L.C., an Arizona limited liability company ("TP"), TERRA STAR-VALLEY 40, L.L.C., an Arizona limited liability company ("TSV" collectively, TP and TSV shall be referred to as "Terra") and the TOWN OF PAYSON, ARIZONA, a municipal corporation under the laws of the State of Arizona.

RECITALS

- A. The Town and Terra are parties to that certain Water Agreement dated April 15, 2005, approved by the Town Council on April 24, 2005 (the "April Water Agreement").
- B. The Town and Terra are parties to that certain Water Agreement dated March 23, 2006, approved by the Town Council on August 25, 2005 (the "August Water Agreement").
- C. The Town Council accepted Terra's tender of the required water, water pipeline and other required documentation on April 27, 2006.
- D. Terra has performed under the terms of the April Water Agreement and the August Water Agreement.
- E. The parties have determined that it is in the best interest of both the Town and Terra to modify and restrict the timing in which ERU Credits granted to Terra under the April Water Agreement and the August Water Agreement may be utilized.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree to modify the April Water Agreement and the August Water Agreement as follows:

1. Recitals. The recitals set forth above are acknowledged by Terra and the Town to be true and correct and are hereby incorporated herein by this reference.
2. Release of ERU Credits. The Town and Terra agree that Terra may utilize the 1,000 ERU Credits granted to Terra pursuant to the April Water Agreement and the August Agreement in accordance with the schedule attached hereto as Exhibit "A" and incorporated herein by this reference (the "ERU Schedule"). ERU Credits shall become available for use by Terra, including Terra's successors and assigns, in the year specified in the ERU Schedule. If any ERU Credits are not used in the year specified in the ERU Schedule, such unused ERU credits shall roll over to subsequent years and may be used in any subsequent year prior to the ERU Credit Expiration Date (as defined in Paragraph 3

below). Only those ERU Credits allocated in a specific year in the ERU Schedule, and those ERU Credits carried over from a prior year or prior years, shall be available for utilization by Terra, including Terra's successors and assigns, in any year. (By way in of example, the ERU Schedule allocates 176 ERU Credits in 2006 and 212 ERU Credits in 2007 and 336 ERUC Credits in 2008. Terra may utilize no more than 176 ERU Credits in 2006. However, if Terra only utilizes 76 ERU Credits in 2006, Terra would be permitted to utilize 312 ERU Credits in 2007. If Terra only used 302 ERU Credits in 2007, Terra would be permitted to utilized 346 ERU Credits in 2008.)

3. **Termination of ERU Credits.** The 1,000 ERU Credits granted to Terra and its successors and assigns under the terms of the April Water Agreement and the August Water Agreement shall expire on December 31, 2011 (the "ERU Credit Expiration Date").
4. **No Further Amendment.** Except as expressly amended hereby, all other provisions of the April Water Agreement and the August Water Agreement, as originally written, shall remain in full force and effect.
5. **Inurement.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns, if any, of the respective parties hereto.
6. **Counterparts.** This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Terra and the Town have executed this Agreement effective as of the date set forth above.

TERRA-PAYSON 40, L.L.C.,
an Arizona limited liability company

By: Terra Capital Group, Inc.,
its Manager

By: _____
Mike Horton, President

TERRA-PAYSON 40, L.L.C.,
an Arizona limited liability company

By: Terra Capital Group, Inc.,
its Manager

By: _____
Mike Horton, President

TOWN OF PAYSON, ARIZONA
an Arizona municipal corporation

By: _____
Barbara G. Brewer, Mayor

EXHIBIT "A"

ERU SCHEDULE

[To be attached.]

Terra Star Valley 40 L.L.C.
As of April 24, 2006

Yearly Equivalent Residential Unit Utilization

	2006	2007	2008	2009	2010	2011	Total
	176	212	300	174	81	57	1000

ERUs may be moved forward or backward as demand dictates. ERUs are valid through December 31, 2011.