RESOLUTION NO. 2223

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE ADDENDUM NO. 1 TO THE AGREEMENT TO CONSTRUCT SUBDIVISION GRADING IMPROVEMENTS BETWEEN HIGHLANDS AT THE RIM, L.L.C., AND THE TOWN OF PAYSON.

WHEREAS, on or about July 30, 2003, the Town of Payson and Highlands at The Rim, L.L.C., entered into an Agreement to Construct Subdivision Grading Improvements (the "Agreement"); and

WHEREAS, Highlands at The Rim, L.L.C., has requested that the Town extend the time allowed for performance of its obligations under the Agreement; and

WHEREAS, for such purpose, Addendum No. 1 to the Agreement has been prepared,

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

Section 1. That Addendum No. 1 to the Agreement to Construct Subdivision Grading Improvements, set forth on Exhibit "A" attached hereto, be and is hereby approved in substantially the form set forth on Exhibit "A".

Section 2. That F. Robert Edwards, Mayor of the Town of Payson, be and is hereby authorized to execute said Addendum No. 1 to the Agreement to Construct Subdivision Grading Improvements attached as Exhibit "A" in substantially the form set forth therein.

Section 3. That the Town of Payson be and is hereby authorized to take and perform such other and further actions as are necessary or appropriate to carrying out the purposes provided for in this Resolution Number 2223.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this _____ day of _____, 2006, 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 October 26, 2006 (3:45PM)
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EXHIBIT "A"

to Resolution No. 2223

ADDENDUM NO. 1 TO
AGREEMENT FOR SUBDIVISION GRADING IMPROVEMENTS
BETWEEN
HIGHLANDS AT THE RIM, L.L.C.
AND
THE TOWN OF PAYSON

THIS ADDENDUM to the July 30, 2003 Agreement for Subdivision Grading Improvements between Highlands at The Rim, L.L.C. ("Subdivider"), and the Town of Payson ("Town") (the "Agreement") is made this _____ day of _____, 2006. Subdivider and Town agree to the following amendments and modifications to the Agreement:

A. Paragraph 1 of the Agreement is hereby amended, and as amended shall read as follows:

1. Construction of Subdivision Grading Improvements. Subdivider hereby agrees that all lot grading will be in accordance with an acceptable plan for each individual lot approved by the Town of Payson Public Works Engineer. Subdivider also hereby agrees to re-vegetate, at its own expense, all graded lots that do not have a current building permit within seven years of the date of the Agreement, or before July 30, 2010. The Subdivider's obligation to complete the re-vegetation 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

B. Paragraph 1 of the Agreement is hereby amended, and as amended shall read as follows:

3. Assurance of Construction. This Agreement is submitted as an assurance that Subdivider will construct either buildings on the graded lot within seven years or Subdivider will re-vegetate each graded lot.

C. Paragraph 21 is hereby added to the Agreement, and shall read as follows:

21. Substitute Assurances. Subdivider may provide to Town such substitute assurances as are acceptable to the Town of Payson Public Works Engineer.

D. All security required under the Agreement shall be maintained in effect until July 30, 2010.

E. All other terms and conditions of the Agreement shall be unchanged and shall remain in full force and effect as written.

[SIGNATURES ON FOLLOWING PAGE]

HIGHLANDS AT THE RIM, L.L.C.,
an Arizona limited liability company

By: Payson Equities, L.L.C.
an Arizona limited liability company, Manager

By: H. Wilson/Rino, L.L.P.
an Arizona limited liability partnership, Manager

By:_____
Gerald R. Palmer, General Partner

By: Triune Holdings of Arizona, Inc.,
an Arizona corporation, Manager

By:_____
Frank K. Christopher, President/CEO

By: Erwin Associates, Inc.,
an Arizona corporation, Manager

By:_____
William Erwin, President/CEO

TOWN OF PAYSON,
an Arizona municipal corporation

By:_____
F. Robert Edwards, Mayor

APPROVED AS TO FORM:

_____
Samuel I. Streichman, Town Attorney

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing Addendum No. 1 to Agreement to Construct Subdivision Grading Improvements was signed before me this _____ day of _____, 2006, by Gerald R. Palmer, General Partner of H. Wilson/Rino, L.L.P., member of Payson equities, L.L.C., manager of Highlands at the Rim, L.L.C., on behalf of the company.

_____
Notary Public

My commission expires:
_____

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing Addendum No. 1 to Agreement to Construct Subdivision Grading Improvements was signed before me this _____ day of _____, 2006, by Frank K. Christopher, President and CEO of Triune Holdings of Arizona, Inc., manager of Highlands at the Rim, L.L.C., on behalf of the company.

_____
Notary Public

My commission expires:

_____

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing Addendum No. 1 to Agreement to Construct Subdivision Grading Improvements was signed before me this _____ day of _____, 2006, by William S. Erwin, President and CEO of Erwin Associates, Inc., manager of Highlands at the Rim, L.L.C., on behalf of the company.

_____
Notary Public

My commission expires:

_____

STATE OF ARIZONA)
) ss.
County of Gila)

The foregoing Addendum No. 1 to Agreement to Construct Subdivision Grading Improvements was signed before me this _____ day of _____, 2006, by F. Robert Edwards, Mayor of the Town of Payson, on behalf of the Town.

_____
Notary Public

My commission expires:

_____

SIS:drs October 12, 2006 (5:32PM)
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