

LEGAL DEPARTMENT  
**TOWN OF PAYSON**  
303L NORTH BEELINE HIGHWAY  
PAYSON, ARIZONA 85541  
(928) 474-5242  
FAX: (928) 474-8472  
E-MAIL: TOPLEGAL@QWESTOFFICE.NET

SAMUEL I. STREICHMAN  
TOWN ATTORNEY  
EXTENSION 208

TIMOTHY M. WRIGHT  
DEPUTY TOWN ATTORNEY  
EXTENSION 277

## MEMORANDUM

August 29, 2008

**TO: MAYOR AND COMMON COUNCIL**  
**CC: DEBRA A. GALBRAITH, TOWN MANAGER**  
**FROM: SAMUEL I. STREICHMAN, TOWN ATTORNEY**  
**SUBJECT: BISON COVE ASSIGNMENT AND ASSUMPTION OF RIGHTS AND OBLIGATIONS**

At the Town Council meeting of August 7, 2008, the Mayor and Common Council adopted Resolution No. 2412, approving an agreement with Bison Cove, LLC to extend the time for use of its water credits until April 17, 2018. Paragraph 16 of the agreement allows Bison Cove, LLC to assign its rights and obligations under the agreement with the consent of the Town. Bison Cove, LLC now wishes to assign its rights and obligations and is seeking the Town's consent to do so. Resolution No. 2426 has been prepared to provide the consent of the Town to the assignment of the rights and obligations of Bison Cove, LLC to Seven Mile Max, LLC. The letter from Mr. Sam Ciatu, Esq. asking for the Town's consent on behalf of Bison Cove, LLC is attached as Exhibit "A" to Resolution No. 2426. The Assignment of Rights and Obligations is attached as Exhibit "B" to Resolution No. 2426.

SEP 04 2008 G.16

RESOLUTION NO. 2426

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, GRANTING AND AUTHORIZING THE MAYOR TO SIGN AND ACKNOWLEDGE THE TOWN OF PAYSON'S CONSENT TO THE ASSIGNMENT AND ASSUMPTION OF RIGHTS AND OBLIGATIONS PERTAINING TO THE AGREEMENT FOR EXTENSION OF TIME TO UTILIZE TOWER WELL ERU CREDITS AND FOR THE CONSTRUCTION OF EVERGREEN AND MANZANITA STREETS BETWEEN THE TOWN OF PAYSON AND BISON COVE, LLC (BISON COVE, LLC).

WHEREAS, the Mayor and Common Council of the Town of Payson adopted Resolution No. 2412 at their regularly scheduled meeting of August 7, 2008; and

WHEREAS, Resolution No. 2412 approved an Agreement with Bison Cove, LLC for Extension of Time to Utilize Tower Well ERU Credits and for the Construction of Evergreen and Manzanita Streets (the "Agreement"); and

WHEREAS, Bison Cove, LLC wishes to transfer the property which is the subject of the Agreement to Seven Mile Max, LLC; and

WHEREAS, in connection with the transfer of the subject property, Bison Cove, LLC has requested the Town's consent to the Assignment and Assumption of Rights and Obligations under the Agreement from Bison, LLC to Seven Mile Max, LLC (the "Assignment"). The letter of request as attached hereto, marked Exhibit "A" and made a part hereof; and

WHEREAS, The consent of the Town is required for the Assignment; and

WHEREAS, the Town wishes to grant its consent to the Assignment,

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

Section 1. That the Assignment and Assumption of Rights and Obligations, marked Exhibit "B", attached hereto and made a part hereof, be and is hereby approved in substantially the form as attached.

Section 2. That Kenny J. Evans, Mayor of the Town of Payson, be and is hereby authorized to execute the Town's consent to the Assignment and Assumption of Rights and Obligations, in substantially the form attached as Exhibit "B".

Section 3. 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 this Resolution No. 2426.

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:

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Silvia Smith, Town Clerk

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Samuel I. Streichman, Town Attorney

# EXHIBIT "A"

to Resolution No. 2426

Sam Ciatu, Esq.

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Attorney-At-Law  
10953 N. Frank Lloyd Wright Blvd.  
Suite 110  
Scottsdale, AZ 85259  
480-248-2281  
Fax: 480-248-2279  
E-mail: samciatu@bisonhomes.com

August 28, 2008

To: Mayor and Common Council of the Town of Payson, Arizona (c/o Sam Streichman)

From: Sam Ciatu, Esq.

Re: Bison Cove

Bison Cove, LLC respectfully requests the Town's approval of the assignment and assumption of its rights and obligations under that certain agreement the subject of Resolution 2412 passed August 7, 2008. The assignee, Seven Mile Max, LLC, is already associated with the subject property, and the assignment and assumption will take place in connection with the transfer of that property to Seven Mile Max, LLC. The substance of the assignment and assumption is reflected in the attached form, which would be executed upon effectuation of the actual transfer of the property, estimated for early September, in substantially the form as attached.

Thank you for your consideration at the September 4, 2008 council meeting. If you have any questions, please don't hesitate to contact me or the principal of Bison Cove, LLC, Gary Martinson, at 480-837-8700.

Sincerely,

Sam Ciatu, Esq.

# EXHIBIT "B"

to Resolution No. 2426

## 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

## ASSIGNMENT AND ASSUMPTION OF RIGHTS AND OBLIGATIONS

**Date:** September \_\_\_, 2008

**Assignor:** Bison Cove, LLC, an Arizona limited liability company

**Assignee:** Seven Mile Max, LLC, an Arizona limited liability company

**Town:** Town of Payson, an Arizona municipal corporation

## RECITALS

- A. Assignor and Town have entered into that certain Agreement for Extension of Time to Utilize Tower Well ERU Credits and for the Construction of Evergreen and Manzanita Streets dated August 20, 2008 (the "**Development Agreement**").
- B. Assignor and Assignee intend to enter into an agreement whereby the real property the subject of the Development Agreement will be transferred from Assignor to Assignee.
- C. As a condition to said real property transfer, and simultaneous therewith, Assignor and Assignee wish to substitute Assignee for Assignor in the Development Agreement such that Assignee shall have all of the rights, and all of the obligations, of Assignor under the Development Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, the parties hereto state, confirm and agree as follows:

## AGREEMENT

1. **Recitals.** The Recitals set forth above are acknowledged by the parties to be true and correct and are incorporated herein by this reference.
2. **Assignment and Assumption.** Assignor hereby assigns all of its right, title and interest in, to and under the Development Agreement to Assignee, and Assignee hereby assumes all of Assignors' obligations under the Development Agreement (the "**Assignment**"). This Assignment is expressly conditioned upon Assignor obtaining Town's prior written consent, which consent is,

pursuant to the Development Agreement, not to be unreasonably withheld or delayed.

3. **Recordation.** This instrument shall be recorded by the Town in its entirety in the official records of Gila County, Arizona.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement the day and year first above written.

BISON COVE, LLC,  
an Arizona limited liability company

By: Bison Communities, LLC  
an Arizona limited liability company

By: \_\_\_\_\_  
Gary A. Martinson, Manager

SEVEN MILE MAX, LLC,  
an Arizona limited liability company

By: \_\_\_\_\_  
Scott A. Nelson, Manager

**TOWN'S CONSENT TO ASSIGNMENT:**

The Town hereby consents to the above Assignment.

TOWN OF PAYSON  
an Arizona municipal Corporation

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

ATTEST:

By: \_\_\_\_\_  
Silvia Smith, Town Clerk

STATE OF ARIZONA            )  
  ) ss  
\_\_\_\_\_ County            )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of September, 2008, by Gary A. Martinson, as Manager of Bison Communities, LLC, on behalf of Bison Cove, LLC.

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

STATE OF ARIZONA            )  
  ) ss  
\_\_\_\_\_ County            )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of September, 2008, by Scott A. Nelson, as Manager of Seven Mile Max, LLC.

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

STATE OF ARIZONA            )  
  ) ss.  
County of Gila            )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of September, 2008, by Kenny J. Evans, Mayor of the Town of Payson, on behalf of the Town.

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