

RESOLUTION NO. 2764

A RESOLUTION OF THE MAYOR AND PAYSON TOWN COUNCIL, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THE FIRST AMENDMENT TO THE AGREEMENT FOR EXTENSION OF TIME TO UTILIZE TOWER WELL ERU CREDITS AND FOR THE CONSTRUCTION OF EVERGREEN AND MANZANITA STREETS.

(AMENDMENT TO AGREEMENT WITH SEVEN MILE MAX, SUCCESSOR IN INTEREST TO BISON COVE, L.L.C.)

WHEREAS, on August 20, 2008, the Town and Bison Cove, LLC ("Bison Cove") entered into an Agreement for Extension of Time to Utilize Tower Well ERU Credits and for the Construction of Evergreen and Manzanita Streets ("the Agreement"); and

WHEREAS, Seven Mile Max, L.L.C. ("Seven Mile Max") is Bison Cove's successor in interest in the Agreement; and

WHEREAS, in order to facilitate expedited construction of infrastructure in the area of the land subject to the Agreement, the Town and Seven Mile Max desire to amend the Agreement,

NOW, THEREFORE, THE MAYOR AND COUNCIL DO HEREBY RESOLVE AS FOLLOWS:

Section 1. The First Amendment to the Agreement between the Town of Payson and Seven Mile Max, L.L.C., attached as Exhibit 1, is approved in substantially the form attached.

Section 2. Kenny J. Evans, Mayor of the Town of Payson, is authorized to sign the Amendment in substantially the form attached.

Section 3. The Town of Payson is authorized to take further actions as are necessary to carry out the purposes of this Resolution.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this 17th day of April, 2014, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

Kenny J. Evans, Mayor

APR 17 2014 *D./**

ATTEST:

Silvia Smith, Town Clerk

APPROVED AS TO FORM:



Timothy M. Wright, Town Attorney

EXHIBIT A
LEGAL DESCRIPTION
OF
THE LAND

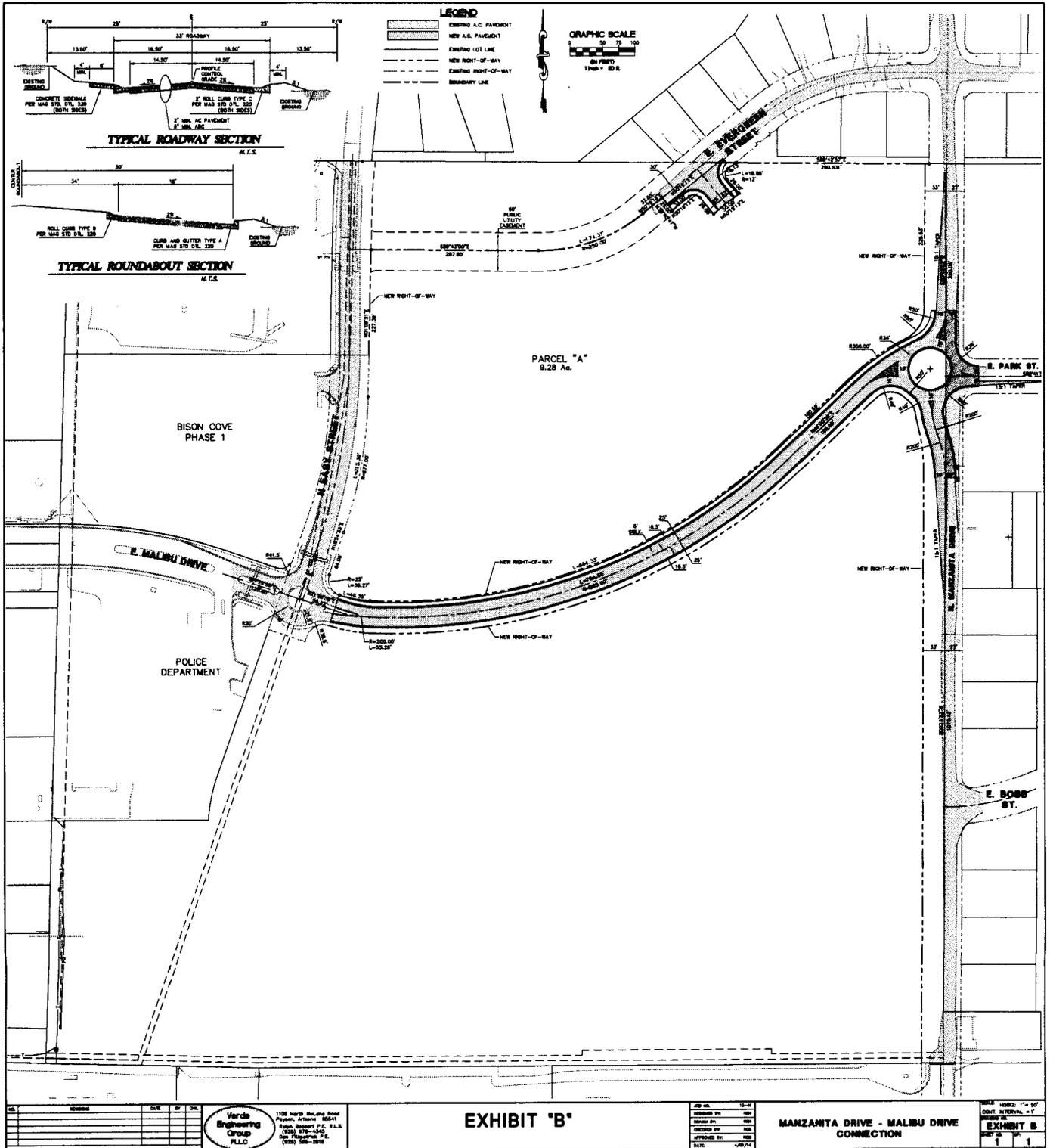
A Parcel of Real Property situated in Gila County, Arizona, described as follows:

Parcel "Two-B" as shown on Record of Survey recorded as Survey Map No. 3918, Records of Gila County, Arizona, being a portion of the Northwest Quarter of Section 3, Township 10 North, Range 10 East of the Gila and Salt River Meridian, Gila County, Arizona;

EXCEPT that portion of the Easy Street Right of Way included in the Second Amended Final Plat for Bison Cove Condominiums Phase I recorded as Map No. 791A through 791E, Gila County Recorder's Office, Gila County, Arizona.

EXHIBIT B

NOTE: The Original Full Size Copy of Exhibit B is the Plan by Verde Engineering Group Dated April 1, 2014 Submitted to the Public Works Director on April 1, 2014



NO.	REVISION	DATE	BY	CHK.

Verde Engineering Group, LLC
 1100 North Malibu Road
 Malibu, California 90261
 Registration P.E. No. 11111
 Registration P.E. No. 11111
 Registration P.E. No. 11111
 Registration P.E. No. 11111

EXHIBIT "B"

JOB NO.	13-01
ISSUED BY	
DESIGNED BY	
CHECKED BY	
APPROVED BY	
DATE	4/01/14

MANZANITA DRIVE - MALIBU DRIVE CONNECTION

SHEET NO. 1 OF 1	
CONTRACT NO. 13-01	
PROJECT NO. 13-01	
DATE 4/01/14	

Exhibit 1

To

Resolution 2764

**(showing the current provisions of the
Agreement and the amended provisions)**

WHEN RECORDED, RETURN TO:

Silvia Smith, Town Clerk
Town of Payson
303 North Beeline Highway
Payson, Arizona 85541
Phone: 928-474-5242

**FIRST AMENDMENT TO THE
AGREEMENT FOR EXTENSION OF TIME TO UTILIZE
TOWER WELL ERU CREDITS
AND FOR THE
CONSTRUCTION OF EVERGREEN AND MANZANITA STREETS**

This First Amendment to the Agreement for Extension of Time to Utilize Tower Well ERU Credits and for the Construction of Evergreen and Manzanita Streets (“the Amendment”) is entered into by the Town of Payson, an Arizona municipal corporation (“Town”), and Seven Mile Max, LLC, an Arizona limited liability company (“Seven Mile Max”) (collectively, the “Parties”).

RECITALS

1. On August 20, 2008, the Town and Bison Cove, LLC (“Bison Cove”) entered into an Agreement for Extension of Time to Utilize Tower Well ERU Credits and for the Construction of Evergreen and Manzanita Streets (“the Agreement”). The Agreement was recorded in the Gila County Record’s Office at 2008-012856.
2. Seven Mile Max is the successor in interest to Bison Cove on the real property described in Exhibit A of the Agreement (“the Land”), attached unchanged as Exhibit A to this Amendment.
3. In order to facilitate expedited construction of infrastructure in the area of the Land, the Parties desire to amend Paragraphs 2, 3, 4, 5, and 7 of the Agreement.

FIRST AMENDMENT

A. Seven Mile Max is Bison Cove’s successor in interest as the owner of the Land and shall be substituted for Bison Cove in the Agreement.

B. Paragraph 2 of the Agreement is amended, and shall read as follows:

~~2. **Term.** The Term of this Agreement shall commence on the Effective Date and shall terminate on June 30, 2018.~~

2. **Term.** The Term of this Agreement shall commence on the Effective Date and shall terminate on April 17, 2021.

B. Paragraph 3 of the Agreement is amended, and shall read as follows:

~~3. **Use of Water Credits.** Any and all Tower Well ERU Credits (as that term is defined in the Agreement between the Town and Terra Payson 40, L.L.C. and Terra Star Valley 40, L.L.C., dated April 15, 2005, and as that term is defined in Resolution Numbers 2052 and 2226 of the Town), purchased by Bison Cove from Terra Star Valley 40, L.L.C., on or before December 31, 2006, will be extended and recognized and accepted by the Town between April 17, 2015 (their current expiration date pursuant to Resolution Number 2052 and Resolution Number 2226) and April 17, 2018, pursuant to Resolution Number 2412, provided that Bison Cove or its successor, as the case may be, pays to the town an amount equal to the Town's then existing Water Development Fee less the amount paid by Bison Cove for each Credit; provided, however, that in no event shall the amount paid to the Town be less than zero (0). Between April 17, 2015 and April 17, 2018, use of the Credits shall be governed by Resolution Number 2226. On or before April 18, 2010, Bison Cove may use each Credit as provided in the agreement between the Town and Terra Payson 40, L.L.C. and Terra Star Valley 40, L.L.C., dated April 15, 2005 and Resolution Number 2052).~~

3. **Use of Water Credits.** The 245 Tower Well ERU Credits (as that term is defined in the Agreement between the Town and Terra-Payson 40, L.L.C. and Terra-Star Valley 40, L.L.C., dated April 15, 2005), purchased by Bison Cove from Terra-Star Valley 40, L.L.C., less the 11 Tower Well ERU Credits already utilized, for a current total of 234 are:

- (a) transferred from Bison Cove to Seven Mile Max and the Town acknowledges such transfer;
- (b) converted to a Water Development Impact Fee credit in the amount of one million, one hundred fifty eight thousand, three hundred dollars (\$1,158,300.00); and
- (c) such credit shall be recognized and accepted by the Town through April 17, 2021, pursuant to Resolution Number 2412 and Resolution Number 2764 upon the completion of the improvements described in Paragraph 4. Such Water Development Impact Fee credit, or portions thereof, may be utilized by Seven Mile Max to pay the then existing Water Development Impact Fee for development upon the Land.

D. Paragraph 4 of the Agreement is amended, and shall read as follows:

~~4. **Construction of Streets.** On or before April 17, 2015, Bison Cove shall commence and complete construction of the following:~~

~~— A. — Evergreen Street from Easy Street to Manzanita Street; and,~~

~~— B. — Manzanita Street from the north edge of Evergreen Street to the south lot line of the adjoining Bison Cove real property. The Bison Cove real property is described on Exhibit "A" attached hereto (the "Land").~~

Such portions of Evergreen and Manzanita Streets shall be constructed fully in compliance with the dimensions and specifications being prepared by Tetra Tech, Inc., as approved by the Town Engineer. The construction of such streets shall not be complete until each is finished to the satisfaction of the Town and accepted thereby.

4. **Construction of Streets.**

A. On or before December 31, 2014, Seven Mile Max shall construct and dedicate to the Town the portions of E. Evergreen Street, E. Malibu Drive, N. Manzanita Drive, and the traffic control and other improvements related to such streets, as depicted on Exhibit B (“the Improvements”). On or before December 31, 2014, Seven Mile Max shall dedicate to the Town that portion of N. Easy Street which has already been constructed on the property, as depicted on Exhibit B. Seven Mile Max shall dedicate the real property upon which the Improvements are constructed to the Town as right of way.

B. Notwithstanding subsection A above, E. Malibu Drive may be constructed upon an easement granted to the Town prior to final acceptance of the improvements. If E. Malibu is constructed upon an easement, upon development of portions of the Land to the north of E. Malibu and to the south of E. Malibu, such easement shall be dedicated to the Town as right of way.

C. Upon development of the Land, Seven Mile Max shall (i) dedicate the right of way for the construction of the west side of Manzanita in accordance with Town standards; and (ii) not be required to construct any portion of Manzanita except as shown in Exhibit B.

D. Seven Mile Max shall not be required at any time to dedicate or construct any portion of Evergreen not shown on Exhibit B.

E. Other than the sidewalks depicted in Exhibit B, Seven Mile Max shall not be required to construct any pedestrian, trail, or PATS improvements on the Land.

F. Due to Malibu Drive being constructed for Town benefit prior to the property development, no permit or inspection fee for the Malibu Drive improvements will be charged.

E. Paragraph 5 of the Agreement is amended, and as amended shall read as follows:

~~5. **Warranty.** Bison Cove shall warrant to the Town the construction of Evergreen and Manzanita Streets against defective workmanship and/or defective materials for a period of two (2) years from the date of the Town’s acceptance of such streets.~~

5. **Warranty.** Seven Mile Max shall warranty the Improvements against defective workmanship and/or defective materials for a period of two (2) years from the date of the Town’s acceptance of the Improvements.

F. Paragraph 7 of the Agreement is amended, and as amended shall read as follows:

~~7. **Default.** Bison Cove’s failure to perform any obligation on its part to be performed under this Agreement, within thirty (30) days after notice of non-performance, shall constitute an event of default under this Agreement. In the event that the default consists of the failure to construct Evergreen or Manzanita Streets as provided for herein by April 17,~~

~~2015, the extension of the time for the use of Tower Well ERU Credits set forth herein shall be void for all purposes and such credits shall expire, in the event of such default, on April 17, 2015, and no notice of default shall be required in such event.~~

7. **Default.** Seven Mile Max's failure to perform any obligation on its part to be performed under the Agreement and the First Amendment, within thirty (30) days after notice of non-performance, shall constitute an event of default under the Agreement. In the event that the default consists of the failure to construct the Improvements by December 31, 2014, the conversion to a Water Development Impact Fee credit and the extension of the 234 Tower Well ERU Credits shall be void for all purposes and such credits shall expire as of April 17, 2015.

G. Notices to Seven Mile Max shall be made to:

Seven Mile Max
Attention Scott Nelson, Manager
51 West 3rd Street, Suite E-110
Tempe, AZ 85281-2831

H. Except as amended in Paragraphs A-G above, all other terms of the Agreement shall remain in full force and effect.

The Parties have executed this First Amendment this _____ day of _____, 2014.

TOWN OF PAYSON
an Arizona municipal Corporation

SEVEN MILE MAX, LLC
an Arizona limited liability company

By: _____
Kenny J. Evans, Mayor

By: _____
Scott A. Nelson, Manager

ATTEST:

By: _____
Silvia Smith, Town Clerk

APPROVAL AS TO FORM

By: _____
Timothy M. Wright, Town Attorney

STATE OF ARIZONA)
) ss.
County of Gila)

The First Amendment between the Town of Payson and Seven Mile Max, LLC, was signed before me this ____ day of _____, 2014, by Kenny J. Evans, Mayor of the Town of Payson, on behalf of the Town.

Notary Public

My commission expires:

STATE OF ARIZONA)
) ss
_____ County)

The First Amendment between the Town of Payson and Seven Mile Max, LLC was signed before me this ____ day of _____, 2014, by Scott A. Nelson, its Manager.

Notary Public

My commission expires:

Exhibit 1
To
Resolution 2764
(clean copy)

WHEN RECORDED, RETURN TO:

Silvia Smith, Town Clerk
Town of Payson
303 North Beeline Highway
Payson, Arizona 85541
Phone: 928-474-5242

**FIRST AMENDMENT TO THE
AGREEMENT FOR EXTENSION OF TIME TO UTILIZE
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2. Seven Mile Max is the successor in interest to Bison Cove on the real property described in Exhibit A of the Agreement (“the Land”), attached unchanged as Exhibit A to this Amendment.
3. In order to facilitate expedited construction of infrastructure in the area of the Land, the Parties desire to amend Paragraphs 2, 3, 4, 5, and 7 of the Agreement.

FIRST AMENDMEMENT

- A. Seven Mile Max is Bison Cove’s successor in interest as the owner of the Land and shall be substituted for Bison Cove in the Agreement.
- B. Paragraph 2 of the Agreement is amended, and shall read as follows:
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The Parties have executed this First Amendment this _____ day of _____, 2014.

TOWN OF PAYSON
an Arizona municipal Corporation

SEVEN MILE MAX, LLC
an Arizona limited liability company

By: _____
Kenny J. Evans, Mayor

By: _____
Scott A. Nelson, Manager

ATTEST:

By: _____
Silvia Smith, Town Clerk

APPROVAL AS TO FORM

By: 
Timothy M. Wright, Town Attorney

STATE OF ARIZONA)
) ss.
County of Gila)

The First Amendment between the Town of Payson and Seven Mile Max, LLC, was signed before me this ____ day of _____, 2014, by Kenny J. Evans, Mayor of the Town of Payson, on behalf of the Town.

Notary Public

My commission expires:

STATE OF ARIZONA)
) ss.
_____ County)

The First Amendment between the Town of Payson and Seven Mile Max, LLC was signed before me this ____ day of _____, 2014, by Scott A. Nelson, its Manager.

Notary Public

My commission expires:
