

RESOLUTION NO. 2015-03

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, PURSUANT TO ARIZ. REV. STAT. § 28-7201 ET SEQ., EXCHANGING CERTAIN PUBLIC ROADWAY LOCATED WITHIN THE TOWN OF FOUNTAIN HILLS WHICH HAS BEEN FOUND TO BE NO LONGER NECESSARY FOR PUBLIC USE.

WHEREAS, the Town of Fountain Hills (the “Town”) and MCO Properties LP entered into a Final Settlement Agreement, dated December 4, 2001 (the “Original Agreement”), which provided for the approval of a Final Plat of Eagle Ridge North, which was recorded on December 20, 2001, in the Official Records of Maricopa County, Arizona, at Recorder’s No. 2001-1201370 (the “Original Master Plat”); and

WHEREAS, the Original Master Plat provided for dedication of Eagle Ridge Drive to the Town, including an easement for utility and service providers; and

WHEREAS, the Town and MCO Properties Inc., a Delaware corporation (successor in interest to MCO Properties, LP), EN LLC, a Delaware limited liability company and Adero Canyon LLC, a Delaware limited liability company (collectively the “Developer Parties”) entered into an Amended and Restated Final Settlement Agreement (the “Agreement”) that was approved by the Mayor and Town Council of the Town of Fountain Hills (the “Town Council”) on May 1, 2014 (Resolution No. 2014-08) and recorded on May 14, 2014, in the Official Records of Maricopa County, Arizona, at Recorder’s No. 2014-0314508; and

WHEREAS, the scope of the development that is the subject of the Original Agreement and the Restated Agreement has changed, which change will necessitate the abandonment of Eagle Ridge Drive and subsequent dedication of a new substitute public roadway; and

WHEREAS, ARIZ. REV. STAT. § 28-7201 *et seq.* provides for the disposition of unnecessary public roadways; and

WHEREAS, the Mayor and Town Council desire to exchange Eagle Ridge Drive for a new substitute public roadway of substantially equal size pursuant to ARIZ. REV. STAT. § 28-7203; and

WHEREAS, because Eagle Ridge Drive was not constructed, no utilities have been installed within the granted easement; and

WHEREAS, utility providers have consented to the exchange so long as their rights are preserved in the substitute public roadway.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE TOWN COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, as follows:

Section 1. The recitals set forth above are hereby incorporated as if fully set forth herein.

Section 2. The public roadway legally described and depicted as Eagle Ridge Drive on the Original Master Plat (“Old Eagle Ridge Drive”) is hereby declared to be no longer necessary for public use as roadway and is hereby vacated in exchange for a substitute public roadway subject to: (i) the reservation of a public utility easement for existing public utilities; (ii) the same encumbrances, liens, limitations, restrictions and estates as exist on the Property; and (iii) the Developer Parties (a) dedicating property to the Town via plat that is acceptable to the Town as a substitute public roadway and (b) approval of such plat and recording of same not later than February 12, 2015. If such a dedication is not approved by the Town Council at the same meeting as this Resolution, and subsequently recorded by February 12, 2015, this Resolution shall be deemed null and void without further act of the Town Council.

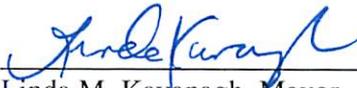
Section 3. Upon recordation of this Resolution in the office of the Maricopa County Recorder, title to the Old Eagle Ridge Drive shall vest in Adero Canyon LLC, subject to the same encumbrances, liens, limitations, restrictions and estates as exist on the land to which it accrues and the terms of this Resolution.

Section 4. The Mayor, the Town Manager, the Town Clerk, and the Town Attorney are hereby authorized and directed to take all steps and to execute and deliver all documents necessary to carry out the purpose and intent of this Resolution.

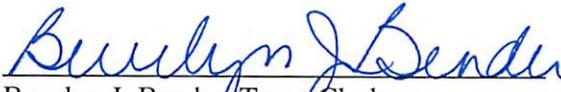
PASSED AND ADOPTED by the Mayor and Council of the Town of Fountain Hills, February 5, 2015.

FOR THE TOWN OF FOUNTAIN HILLS:

ATTESTED TO:



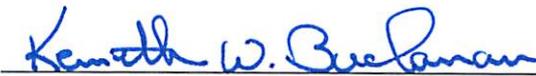
Linda M. Kavanagh, Mayor



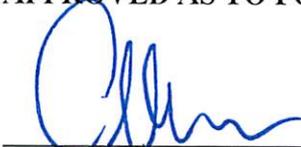
Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:



Kenneth W. Buchanan, Town Manager



Andrew J. McGuire, Town Attorney