SUMMARY OF AGENDA ITEM

MEETING DATE: 09/06/07 **SUBMITTED BY: Legal / Engineering Depts.**

RESOLUTION/ORDINANCE # 2322

TITLE: A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A REAL PROPERTY PURCHASE AGREEMENT WITH PAYSON OVERLOOK PROJECT, LLC..

PURPOSE:

The purpose of this resolution is to approve a purchase contract for approximately 1.41 acres located between McLane Road and the Payson Event Center Property. The intended use for this property is to be a regional storm water detention basin.

SUMMARY OF CHANGES TO ACCOMPLISH THIS PURPOSE:

N/A – New Resolution

RECOMMENDED COUNCIL ACTION:

Approval of Resolution No. 2322

BACKGROUND:

This property is located between the Payson Event Center Property and S. McLane Road. A portion of the property is currently a low area that detains storm water. The intent is to expand this low lying area into a regional storm water detention basin that could serve the Payson Event Center, the proposed hotel development on the Payson Event Center site and the planned residential development on the hill immediately north of the event center property. The property is Parcel Two on the attached map.

Discussions with the property concerning the potential purchase of this property have been ongoing for some time. An appraisal was completed on this property in January, 2007 determining the value to be $175,000. The owner is willing to sell the property for the appraised value. The current budget approved by the Council includes funds to purchase this property. The plan is that the Town will purchase the property initially and have it available to meet any additional storm water detention requirements created by modifications to the Payson Event Center. In addition, there is potential for additional storm water detention on this site that can by used by the proposed hotel and residential developments adjacent to the Event Center site. Each developer will be charged a pro-rata share of the property and development costs as they use volume in the detention basin.

SEP 0 6 2007 G.4

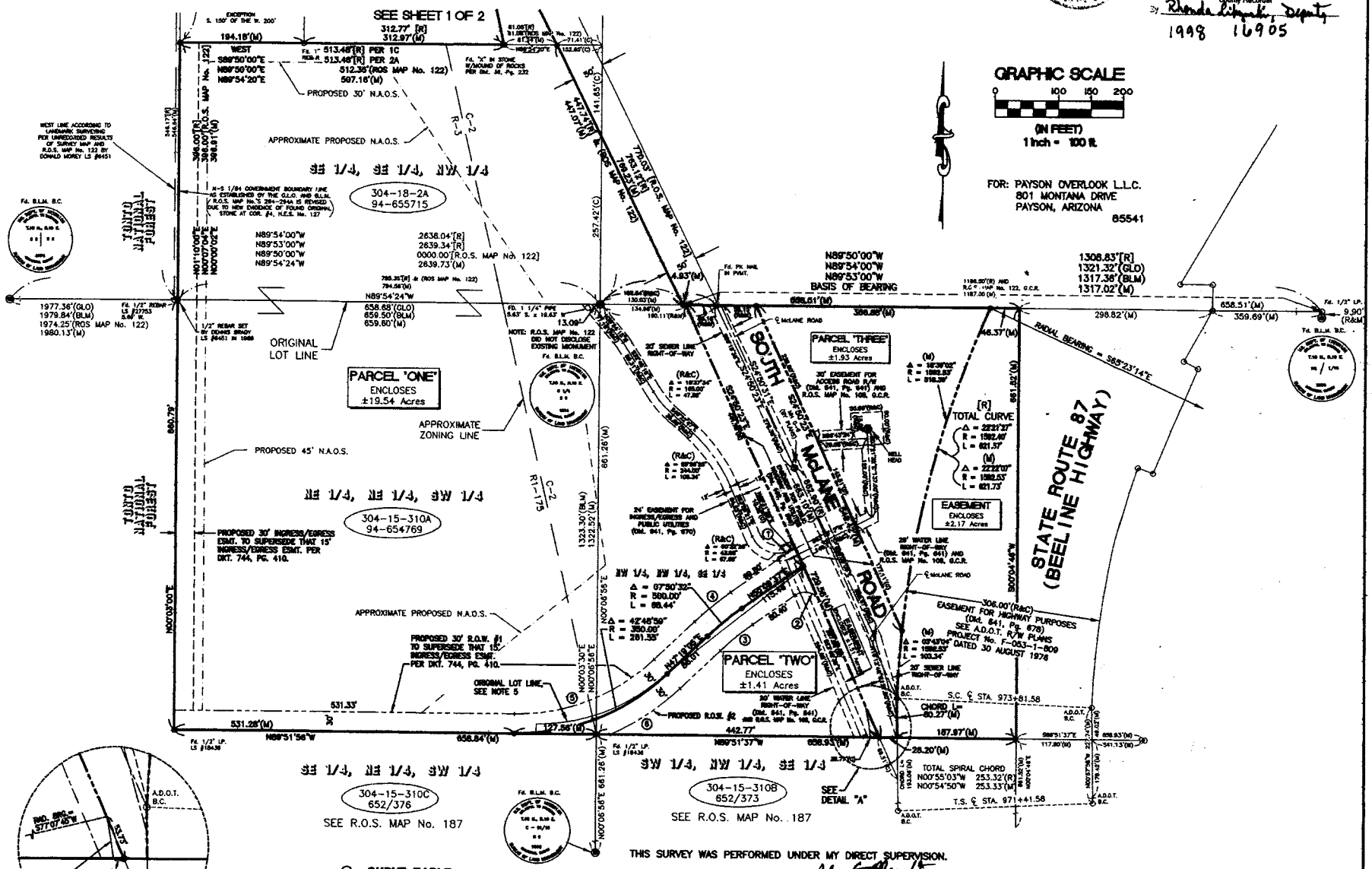
1634

RECORD OF SURVEY / LOT LINE ADJUSTMENT

OF A PORTION OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 9, TOWNSHIP 10 NORTH, RANGE 10 EAST OF THE GILA AND SALT RIVER MERIDIAN, TOWN OF PAYSON, GILA COUTNY, ARIZONA

State of Arizona, County of Gila ss;
I do hereby certify that the within instrument was filed and recorded at the request of Chand Land Surveying
Date 4-8-98 Time 8:15 Fee $ Map No. 16,17
Official Records, Records of Gila County, Arizona. WITNESS my hand and official seal the day and year first above written.
Linda Haught Ortega
County Recorder
By Rhonda Lipinski, Deputy
1998 16905

RECORDER'S SEAL GILA COUNTY ARIZONA



THIS SURVEY WAS PERFORMED UNDER MY DIRECT SUPERVISION.

BLAIR C. MEGGITT, R.L.S. #18436

REGISTERED LAND SURVEYOR CERTIFICATE NO. 18436 BLAIR C. MEGGITT Date Signed 10-2-98 ARIZONA, U.S.A.

PAYSON EVENT CENTER

○ CURVE TABLE

CURVE	RADIUS	LENGTH	DELTA
1	25.00'	34.91'	80°00'00"
2	25.00'	43.63'	100°00'00"
3	470.00'	64.33'	07°50'32"
4	530.00'	72.54'	07°50'32"
5	320.00'	239.13'	42°48'59"
6	380.00'	131.96'	19°53'51"

JOB NO. 96005

SHEET 2 OF 2

APEX LAND SURVEYING
600 E. HWY. 260
SUITE "14"
PAYSON, ARIZONA 85541
PHONE (520) 474-8484

1634

APEX LAND SURVEYING File: E:\SURVPROJ\96005\96005FP-R Plotted: 1998-10-19 14:29:50

RESOLUTION NO. 2322

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A REAL PROPERTY PURCHASE AGREEMENT WITH PAYSON OVERLOOK PROJECT, L.L.C.

WHEREAS, Payson Overlook Project, L.L.C., is the owner of a parcel of real property located in the vicinity of the Payson Event Center property; and

WHEREAS, it is in the interest of the Town of Payson to purchase such real property for use as a detention basin for the Payson Event Center property; and

WHEREAS, Payson Overlook Project, L.L.C., desires to sell such real property to the Town of Payson; and

WHEREAS, for such purpose a Real Property Purchase Agreement has been prepared which describes such real property and the terms of its purchase and sale,

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

Section 1. That the Real Property Purchase Agreement Between Payson Overlook Project, L.L.C., and the Town of Payson, attached hereto marked Exhibit "A" and made a part hereof by this reference, be and is hereby approved in substantially the form as attached.

Section 2. That F. Robert Edwards, Mayor of the Town of Payson, be and is hereby authorized to execute said Agreement in substantially the form attached as Exhibit "A".

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 of this Resolution and the terms of said Agreement.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this _____ day of _____, 2007, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

_____
F. Robert Edwards, Mayor

Prepared by Town of Payson Legal Department
SIS:drs August 20, 2007 (9:28AM)
C:\MyFiles\Resolutions\2322 Real Property Purchase from Payson Overlook Project.wpd

SEP 0 6 2007 G.4

ATTEST:

Silvia Smith, Town Clerk

APPROVED AS TO FORM:

Samuel I. Streichman, Town Attorney

EXHIBIT "A"

to Resolution No. 2322

REAL PROPERTY PURCHASE AGREEMENT

This Real Property Purchase Agreement ("Agreement") is entered into this _____ day of _____, 2007, by and between the Town of Payson, an Arizona municipal corporation ("Town"), and Payson Overlook Project, L.L.C. ("Project"), collectively the "Parties."

RECITALS

A. Project is the owner of approximately 1.41 acres of land located within the Town of Payson, Gila County, State of Arizona, more particularly described on Exhibit "A" attached hereto and incorporated herein ("Property").

B. Project desires to sell the Property to the Town.

C. Town desires to purchase the Property from Project.

AGREEMENT

In consideration of the mutual promises and covenants set forth herein, Project agrees to sell and Town agrees to buy the Property on the terms and conditions set forth in this Agreement.

1. Terms of Sale.

1.1 Purchase of the Property. Town agrees to and shall purchase the Property from Project and Project agrees to and shall sell the Property to the Town.

1.2 Purchase Price. The purchase price for the Property shall be One Hundred Seventy-five Thousand Dollars ($175,000.00), payable by deposit in escrow on or before the close of escrow, unless Town elects to cancel this Agreement as provided herein.

2. Escrow.

2.1 Establishment of Escrow. An escrow for this transaction shall be established with Pioneer Title Insurance Agency ("Escrow Agent"). Such escrow shall be opened on or before September 15, 2007. This Agreement shall constitute escrow instructions to the Escrow Agent and a copy shall be deposited with Escrow Agent for this purpose. Should Escrow Agent require the execution of its standard form printed escrow instructions, Town and Project agree to execute same; however, such instructions shall be construed as secondary to this Agreement, and if there are conflicts between the terms of this Agreement and the terms of the printed Escrow Instructions, the terms of this Agreement shall control.

2.2 Opening and Closing Dates.

A. Escrow shall be deemed opened on the date on which the Town arranges the opening with Escrow Agent ("Opening Date").

b. The closing of this transaction and escrow (referred to in the Agreement as "Closing" or the "Close of Escrow") shall occur on or before October 31, 2007, unless extended by agreement of the Parties.

2.3 Closing Costs.

a. Real property taxes assessed against the Property shall be pro-rated to the Close of Escrow. All real property taxes imposed or due prior to Close of Escrow shall be paid in full by Project on or before Close of Escrow;
b. Improvement liens and other special assessments, if any, shall be paid in full by Project on or before the Close of Escrow;
c. Town shall pay the cost to issue an Extended Coverage Owner's Policy of Title Insurance and the cost of any endorsements issued in connection with such policy;
d. All other closing costs shall be equally divided between Town and the Project;
e. Project agrees that all closing and other costs payable by Project shall be deducted from Project's proceeds at the Close of Escrow;
f. On or before the Close of Escrow, Town agrees to deposit with Escrow Agent an amount sufficient to pay all closing costs payable by Town.

2.4 Deeds. At the Close of Escrow, Project shall convey title to the Property to Town by general warranty deed, in a form and substance satisfactory to Town, subject to no defects, exceptions, easements, encumbrances, covenants, conditions, restrictions, mining claims or liens, except:

a. The matters set forth on any survey or preliminary title report (other than the standard printed exceptions) which have been accepted in writing by Town; and
b. Any additional matters accepted in writing by Town.

2.5 Title Policy.

a. At the Close of Escrow, Town shall be provided at Town's cost with an Alta Extended Coverage Owner's Policy of Title Insurance issued by Escrow Agent, to be paid for as set forth in Paragraph 2.3(c), in the amount of One Hundred Seventy-five Thousand Dollars ($175,000.00), together with any endorsements required by Town and specifically insuring over any mechanics' and materialmen's liens on the Property, notwithstanding that work may have been performed on the Property effective as of the Close of Escrow, insuring Town that Fee Simple Title to the Property is vested in Town, subject only to the usual printed exceptions and exclusions contained in such title insurance policy, and to any other matters approved by Town in writing;
b. The title policy required by Section 2.6(a) above shall contain such endorsements as shall be reasonably required by Town;
c. The obligations of Project to provide the title policy shall be satisfied if, at the Close of Escrow, Escrow Agent, or a title company approved by the Town has issued a binding commitment to issue the title policy in the form required by this Section and if such title policy is delivered within a reasonable time following Close of Escrow.

3. Title and Environmental Matters.

3.1 Preliminary Title Report. Promptly following the Opening Date, Escrow Agent shall deliver a current commitment for title insurance ("Report") issued by Escrow Agent on the Property to Town. The Report shall show the status of title to the Property as of the date of the Report.

3.2 Environmental Report. As soon as reasonably possible following the Open Date, Project shall cause to be conducted a Phase I Environmental Audit of the Property ("Phase I Report"). The Phase I Report shall be provided to the Town for its review. The cost of the Phase I Report shall be paid by Project.

3.3 Review Period.

1. Town shall have until fourteen (14) days from receipt of the Report or any Amended Report, respectively, to approve or disapprove the status of title as shown by the Report or any Amended Report, or any supplemental title report showing additional exceptions to title ("Amended Report"). If Town is dissatisfied with any exception to title as shown in the Report or an Amended Report, then, at Town's sole option, Town may either cancel this Agreement by giving notice of cancellation to Project and Escrow Agent or Town may provisionally accept the title subject to Project's removal of any disapproved matters, exceptions or objections, in which case Project shall use its best efforts to remove the matters, exceptions or objections or obtain title insurance endorsements satisfactory to Town against such matters and objections before the Close of Escrow. If Project cannot remove such matters, exceptions and objections before the Close of Escrow, then, upon demand of Town, all obligations shall terminate, or Town may waive in writing any of such matters, exceptions and objections and the transaction shall close as scheduled.
2. Town shall have until fourteen (14) days from receipt of the Phase I Report to approve or disapprove the condition of the Property described in the Phase I Report. If Town is dissatisfied with any matter disclosed in the Phase I Report, then, at Town's sole option, Town may either cancel this Agreement by giving notice of cancellation to Project and Escrow Agent or Town may give notice to Project and Escrow Agent that Town desires a Phase II Report ("Phase II Report") to be prepared. Town also may, for any reason, give notice to Project and Escrow Agent that Town desires a Phase II Report. In such case, Project shall cause to be prepared a Phase II Report. The cost of the Phase II Report shall be paid by Project. In the event that either the Phase I Report or the Phase II Report Identifies any contamination in, on, or under the Property, or in any way concludes that contamination exists in, on, or under the Property, then, the Project' shall successfully remediate any and all of such contamination prior to the Close of Escrow. The cost of the remediation of such contamination shall be paid by Project. If Project cannot remediate any of such contamination to the satisfaction of Town before the Close of Escrow, then this Agreement shall terminate and the transaction shall not close unless the Parties otherwise provide in writing.
3. Notwithstanding anything herein contained to the contrary, it is understood and agreed that title to the Property shall be delivered to Town at the Close of Escrow free and clear of all liens and encumbrances and environmental contamination.

d. Upon a cancellation or termination in accordance with the provisions of this Section 3.3, all documents deposited in escrow by Town shall be returned to Town, all documents deposited in escrow by Project shall be returned to Project, and this Agreement shall terminate, whereupon the Parties shall have no further liability hereunder.

4. Matters Relating to the Escrow.

4.1 Possession. Possession of the Property shall be delivered to Town immediately upon Close of Escrow. Project shall deliver the Property as barren land free and clear of all debris and material of any kind.

4.2 Risk of Loss. The risk of loss or damage to the Property and all liability to third persons until the Close of Escrow or actual delivery of the Property to the Town, whichever is later, shall be borne by Project.

5. Representations and Warranties.

5.1 Project's Representations and Warranties. Project makes the following representations and warranties which shall apply to the Property, which are agreed to constitute a material part of the consideration hereunder, which are true and accurate as of the Opening Date, will be true and accurate as of the Close of Escrow, and which shall survive the Close of Escrow:

a. Action. All actions on the part of Project which are required for the execution, delivery and performance by Project of this Agreement and each of the documents and agreements to be delivered by Project at the Closing have been duly and effectively taken;

b. Enforceable Nature of Agreement. This Agreement and each of the documents and agreements to be delivered by Project at the Closing, constitutes a legal, valid and binding obligation of Project, enforceable against Project in accordance with its terms;

c. Consents; Defaults. There are no consents, waivers, authorizations, or approvals from any third party necessary to be obtained by Project in order to carry out the transactions contemplated by this Agreement. The execution and delivery of this Agreement and performance hereof by Project will not conflict with, or result in a breach of, any of the terms, conditions or provisions of, or constitute a default under or result in the creation of any new, or the acceleration of any existing, lien, charge, or encumbrance upon the Property, or any indenture, mortgage, lease, agreement, or other instrument to which Project is a party or by which Project or any of its assets may be bound;

d. Leases and Agreements. There are no unrecorded leases, arrangements, agreements, understandings, options, contracts, or rights-of-first refusal affecting or relating to the Property in any way;

e. Encroachments, etc. No improvements of any third person encroach upon the Property. To the best of Project's knowledge, no person has any unrecorded right, title, or interest in the Property, whether by right of adverse possession, prescriptive easement, or otherwise.

f. Environmental Matters. Neither Project nor the Property is in any material violation of any applicable environmental law, regulation, ordinance, or order of any government entity, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability

Act, as amended, the Resource Conservation and Recovery Act, as amended, the Federal Clean Water Act, as amended, the Federal Clean Air Act, as amended, the Federal Toxic Substances Control Act, as amended, and any regulations promulgated thereunder, or any other Federal, State or local laws relating to contamination of or adverse effects on the environment, and neither the Property nor any underlying groundwater contains any material concentrations of regulated substances, hazardous substances, hazardous materials, toxic substances, or similar substances, residues, and wastes;

g. Accuracy of Information. The information furnished by Project to the Town in accordance with the provisions of this Agreement is true, complete, and accurate;

h. Historic or Archeological Sites. To the best of Project's knowledge, there are no sites of historic or archeological significance within the Property;

i. Information. There is no material information or document not disclosed or provided by Project to Town, directly or indirectly relating to the ownership or use of the Property;

j. Authority of Project. Project has full power and authority to enter into and to perform its obligations under this Agreement;

k. Governmental Agreements. Town, or any other successor to Town as owner of a portion of the Property, shall not be responsible or liable for performance of any agreements or representations made by Project to any governmental authority having jurisdiction over the Property which are not described in this Agreement or a matter of public record or which have not been disclosed to Town prior to Closing and either agreed to in writing or waived by Town prior to Closing. Project shall indemnify and hold harmless Town for, from, and against all such agreements, representations, and obligations;

5.2 Town's Representations and Warranties. Town makes the following representations and warranties which are agreed to constitute a material part of the consideration hereunder, which are true and accurate as of the date of this Agreement, and will be true and accurate as of the Close of Escrow, and which shall survive the Close of Escrow.

a. Authority. Town has full power and authority to enter into and to perform its obligations under this Agreement. The persons executing this Agreement on behalf of Town have full power and authority to do so and to perform every act and to execute and deliver every document and instrument necessary or appropriate to consummate the transactions contemplated hereby; and

b. Enforceable Nature of Agreement. This Agreement and each of the documents and agreements to be delivered by Town at the Closing constitutes a legal, valid, and binding obligation of Town, enforceable against Town in accordance with its terms.

6. Additional Covenants. Project hereby covenants and agrees to indemnify and hold Town harmless for, from, and against any and all claims, damages, costs, and expenses (including attorneys' fees) relating in any way to the Property and accruing prior to delivery of possession of the Property even though now unknown and unsuspected.

7. Closing Documents.

7.1 Project's Closing Documents. On or before the Close of Escrow, Project shall deposit into escrow the following documents for delivery to Town at the Close of Escrow, each of which shall have been duly executed and, where appropriate, acknowledged, and shall be in form and substance reasonably satisfactory to Town and Town's legal counsel:

a. The Deed in the form required by Section 2.4 of this Agreement;
b. An Affidavit of Value, if required by law;
c. A fully executed counterpart of this Agreement; and
d. Such other documents as may be necessary or appropriate to transfer and convey all of the Property to Town and to otherwise consummate this transaction in accordance with the terms of this Agreement.

7.2 Town's Closing Documents. On or before the Close of Escrow, Town shall deposit into escrow the following documents for delivery to Project at the Close of Escrow, each of which shall have been duly executed and, where appropriate, acknowledged, and shall be in form and substance reasonably satisfactory to Project:

a. An Affidavit of Value, if required by law;
b. A fully executed counterpart of this Agreement; and
c. Such other documents as may be necessary or appropriate to consummate this transaction in accordance with the terms of this Agreement.

8. General Provisions.

8.1 Binding Effect. The provisions of this Agreement are binding upon and shall inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and assigns.

8.2 Dispute Resolution. This Agreement shall be governed and construed in accordance with the internal laws of the State of Arizona. In particular, this Agreement is subject to the provisions of A.R.S. § 38-511, the terms of which are incorporated herein, and which provides for cancellation of contracts by the municipality for certain conflicts of interest. With the written consent of both Parties, any dispute, controversy, claim, or cause of action arising out of or related to this Agreement may, but in no event need, be settled by submission to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, A.R.S. § 12-1501, *et seq.* Judgment upon any award rendered by the arbitrator(s), if filed in Arizona Superior Court, shall be filed in the Superior Court of Gila County, Arizona; or any such dispute, controversy, claim, or cause of action may be litigated in the Superior Court of Gila County, Arizona. The venue for any such dispute shall be Gila County, Arizona, and both Parties consent in advance to such venue and jurisdiction and waive any right to object that Gila County is an inconvenient or improper forum based upon lack of venue. Neither Party shall be entitled to recover from the other party any of its attorneys' fees, costs, or expert witness fees incurred in any such dispute, controversy, claim, or cause of action, but each party shall bear its own attorneys' fees without contribution from the other party, whether the same is resolved through arbitration, litigation in a court, or otherwise.

8.3 Waivers. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding unless executed in writing by the party making the waiver. Either party may waive any provision of this Agreement intended for its benefit; provided, however, such waiver shall in no way excuse the other party from the performance of any of its obligations under this Agreement.

8.4 Construction. This Agreement shall be construed according to the internal law of Arizona without the application of any principles of conflicts of law that would require or permit the application of the laws of any other jurisdiction.

8.5 Time. Time is of the essence of this Agreement and all of its parts.

8.6 Notices.

Notices shall be in writing and shall be given by personal delivery, by deposit in the United States mail, certified mail, return receipt requested, postage prepaid, or by express delivery service, freight prepaid, in each case by delivery to Project and Town at the addresses set forth hereunder or at such other address as a party may designate in writing. The date notice is given shall be the date on which the notice is delivered, if notice is given by personal delivery, or the date of deposit in the mail or with an express delivery service, if the notice is sent through the United States mail or by express delivery service. Notice shall be deemed to have been received on the date on which the notice is delivered, if notice is given by personal delivery, one business day following such deposition with the express delivery service if notice is sent by express delivery service, or three days following such deposit in the mail if notice is sent through the United Sates mail. A copy of any notice given to a party shall also be given to Escrow Agent by regular mail.

Address for Project:	Payson Overlook Project, L.L.C. c/o EWB, Inc. 2525 East Camelback Road #720 Phoenix, Arizona 85016
Address for Town:	Town of Payson 303 North Beeline Highway Payson, Arizona 85541 Attention: Town Manager

8.7 Further Documentation. Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

8.8 Covenant as to Conflict of Interest. This Agreement is subject to the provisions of A.R.S. § 38-511, the provisions of which are hereby incorporated herein.

8.9 Headings and Counterparts. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement.

8.10 Entire Agreement. This Agreement together with Exhibit "A" constitutes the entire agreement between the Parties pertaining to the subject matter contained

in this Agreement. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, are superseded by and merged in this Agreement. No supplement, modification, or amendment of this Agreement shall be binding unless in writing and executed by Town and Project.

8.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.

8.12 No Partnership; Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between Project and Town. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization, or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.

10.13 Construction of Agreement. This Agreement shall be construed and interpreted according to its plain meaning and no presumption shall be deemed to apply in favor of or against the party drafting this Agreement. The Parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement and has had a reasonable opportunity to review this Agreement.

In witness whereof, the Parties hereto have executed this Agreement as of the date first above written.

TOWN OF PAYSON,
an Arizona municipal corporation

By:_____
F. Robert Edwards, Mayor

PAYSON OVERLOOK PROJECT, L.L.C.,
an Arizona limited liability company

By_____

Escrow Agent hereby accepts employment to handle the escrow established by this Agreement in accordance with the terms set forth in this Agreement.

PIONEER TITLE AGENCY

By:_____

Its:_____

Prepared by Town of Payson Legal Department
SIS:drs August 17, 2007 (12:01PM)
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EXHIBIT "A"

LEGAL DESCRIPTION

LEGAL DESCRIPTION
OF
SOUTHWEST REGIONAL STORM WATER
DETENTION BASIN

A parcel of property located in the south one-half of Section 9, T10N, R10E, G&SRB, Gila County, Arizona, more particularly described as follows:

Parcel "Two" as shown on Record of Survey / Lot Line Adjustment Map, Recorded as Map No. 1634 on Oct. 26, 1998, Gila County Recorders Office, Gila County, Arizona.