

LEGAL DEPARTMENT
TOWN OF PAYSON
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Samuel I. Streichman
Town Attorney
Extension 208

Timothy M. Wright
Deputy Town Attorney
Extension 277

MEMORANDUM
September 18, 2008

TO: Mayor and Common Council

FROM: Legal Department

SUBJECT: Resolution 2435 (Airport Land Purchase From the TomCol)

The Town and the TomCol Group have been in negotiations for the Town to purchase 13.50 acres of land from the recent land exchange property for future airport purposes. The Town anticipates using FAA and ADOT funds for a majority of the purchase price and normally the Town would wait for the grants and then purchase the property. This process may take up to three years. In this particular case, the TomCol group has indicated there are other potential purchasers for the land and therefore the Town desires to get the property under contract immediately. In anticipation of this situation, the Town budgeted \$520,000.00 in this year's budget to begin the property purchases.

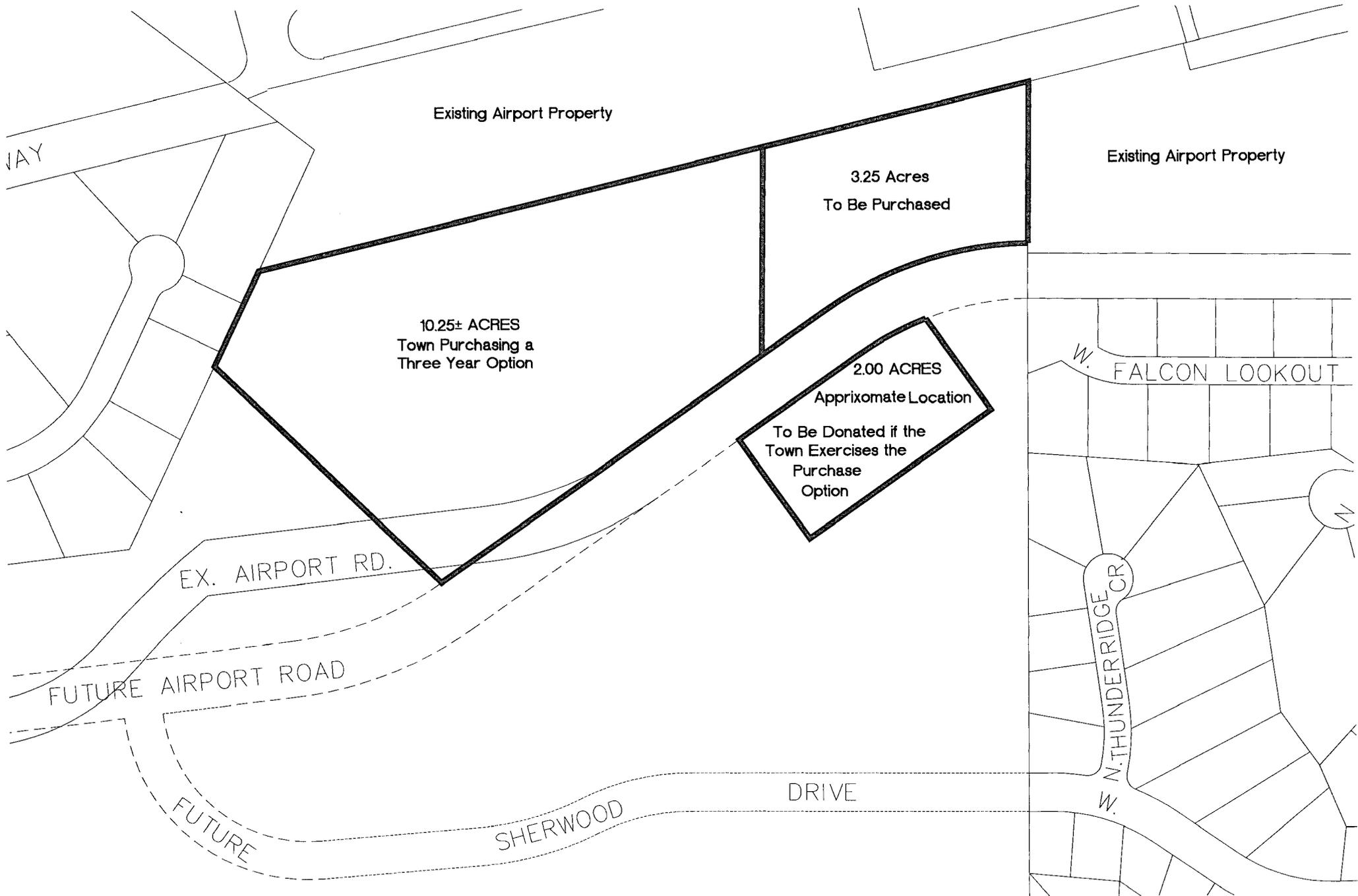
The Land Purchase Agreement attached to Resolution 2435 allows the Town to purchase the first 3.25 acres outright with the \$520,000 in this year's budget and to obtain a three year option for the remaining 10.25 acres. The Town would need FAA and/or ADOT funds to purchase this second parcel. Additionally, if the Town exercises its option on the 10.25 acres, the TomCol Group will donate an additional two acres to the Town.

Attached to this Memorandum is a Term Sheet summarizing the Land Purchase Agreement, as well as a map showing the various parcels.

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Term Sheet for Land Purchase (as negotiated between Tom Collins and LaRon Garret)

1. The estimated purchase price for the overall property is \$160,000.00 per acre.
2. The overall estimated price for the 13.5 acres is \$2,160,000.00.
3. The current purchase price for the 3.25 acres adjacent to the airport is \$520,000.00.
4. The final purchase price for the remaining 10.25 acres will depend upon the FAA Appraisal.
5. The agreement includes a purchase option on the remaining 10.25 acres at a cost of \$114,800.00 per year (the "Option").
6. The Option will run for up to three years.
7. The Town will pay \$114,800.00 annually to the TomCol Group for the Option. The Option payment will be due on the anniversary of the closing, i.e. at the end of each Option year.
8. If the Town exercises its Option mid year, the Option cost for that year will be prorated from the closing date anniversary to the date of the purchase.
9. The Town and the TomCol Group will split escrow and closing fees equally.
10. The TomCol Group will allow the Town and its agents access to the 13.25 acres to perform the FAA Environmental Study and Cost Appraisal.
11. The TomCol Group will donate the additional 2 acre parcel for the observation area upon the Town exercising its purchase option.
12. If the per acre value of the FAA appraisal exceeds the \$160,000.00 per acre, then the parties will renegotiate the purchase price on the remaining 10.25 acres in an amount not to exceed the FAA appraisal. Under FAA rules, the Town is required to purchase property at the appraised value. In the renegotiation, the Town will attempt to apply some/all of the Option payments toward the new purchase price.



RESOLUTION NO. 2435

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A LAND PURCHASE AGREEMENT WITH TOM COL INVESTMENTS CO., LLC. (PURCHASE OF ADDITIONAL AIRPORT PROPERTY)

WHEREAS, the Town of Payson desires to acquire three portions of property owned by Tom Col Investments Co., LLC ("TomCol") adjacent to the Payson Airport; and

WHEREAS, the Town has the finances to purchase one of the properties immediately, wishes to purchase an option on a second, and Tom Col has agreed to donate the third upon the Town exercising its option; and

WHEREAS, the Town and Tom Col have negotiated a Land Purchase Agreement to accomplish these purposes,

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

Section 1. That the Land Purchase Agreement between Tom Col Investments Co., LLC and the Town of Payson, attached hereto as Exhibit "1" and incorporated herein as though set forth in full at this point, be and is hereby approved in substantially the form as set forth in said Exhibit "1".

Section 2. That Kenny J. Evans, Mayor of the Town of Payson, be and is hereby authorized to execute such Agreement in substantially the form attached.

Section 3. That Kenny J. Evans, Mayor of the Town of Payson, be and is hereby authorized to sign and execute any and all other documents required by the Agreement, the property escrow, or any other documents necessary to carry out the purposes of the Agreement.

Section 4. 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 said Agreement and this Resolution 2435.

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

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ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk

Samuel I. Streichman, Town Attorney

**EXHIBIT 1
TO
RESOLUTION 2435**

EXHIBIT "1"

to Resolution No. 2435

LAND PURCHASE AGREEMENT

This Land Purchase Agreement ("Agreement") is entered into this ____ day of _____, 2008, by and between the Town of Payson, an Arizona municipal corporation (the "Town"), and Tom Col Investment Co., an Arizona limited liability company ("TomCol"), collectively, the "Parties."

RECITALS

- A. TomCol is the owner of real property located within the Town of Payson, County of Gila, State of Arizona.
- B. The Town desires to acquire three portions of TomCol's real property described in Exhibit "A" ("the 3.25 acre parcel"), Exhibit "B" ("the 10.25 acre parcel"), and Exhibit "C" ("the 2.00 acre parcel") (collectively "the Parcels").
- C. The Town desires to use Federal Aviation Administration ("FAA") and Arizona Department of Transportation ("ADOT") grant funds to finance the purchase of the 3.25 acre parcel and the 10.25 acre parcel.
- D. The Town is in the process of applying for FAA and ADOT grants to purchase the 3.25 acre parcel and the 10.25 acre parcel.
- E. The Town has budgeted funds in its current year budget for the purchase of the 3.25 acre parcel.
- F. TomCol desires to sell the 3.25 acre parcel to the Town.
- G. The Town desires to purchase and TomCol desires to sell on a three year purchase option on the 10.25 acre parcel.
- H. TomCol desires to donate the 2.00 acre parcel to the Town if the Town purchases the 3.25 acre parcel and the 10.25 acre parcel.

In consideration of the mutual promises and covenants set forth in this Agreement, TomCol agrees to sell to the Town that certain real property described in Exhibit "A" attached hereto ("the 3.25 acre parcel" or "the Property"), sell to the Town a three (3) year option on that certain real property described in Exhibit "B" attached hereto ("the 10.25 acre parcel"), and donate to the Town that certain real property described in Exhibit "C" attached hereto ("the 2.00 acre parcel") on the terms and conditions set forth in this Agreement.

*Amended 9-17-08
10:15 am*

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1. Sale of the 3.25 Acre Parcel.

- 1.1 Purchase of the 3.25 Acre Parcel. TomCol agrees to sell and the Town agrees to purchase the 3.25 acre parcel.
- 1.2 Purchase Price. The purchase price for the 3.25 acre parcel shall be Five Hundred Twenty Thousand Dollars (\$520,000.00).
- 1.3 Payment of Purchase Price. The Town shall pay TomCol the full purchase price, payable by deposit in escrow on or before the close of escrow, unless the Town elects to cancel this Agreement as provided herein.
- 1.4 Transfer of the 3.25 Acre Parcel. A lot line adjustment survey shall be recorded incorporating the 3.25 acre parcel into certain real property owned by the Town as described in Exhibit "D" attached hereto. TomCol shall also execute, in favor of the Town, a general warranty deed to the 3.25 acre parcel.

2. Sale of a Three (3) Year Purchase Option on the 10.25 Acre Parcel.

- 2.1 Purchase of a Three (3) Year Purchase Option on the 10.25 Acre Parcel. TomCol agrees to sell and the Town agrees to purchase a three (3) year purchase option on the 10.25 acre parcel ("the Option"). Such Option shall run for three years from the date of the close of escrow.
- 2.2 Purchase Price. The Town shall pay One Hundred Fourteen Thousand Eight Hundred Dollars (\$114,800.00) per year for the Option (the "Option Payment").
- 2.3 Option Payment. The Town shall pay the Option Payment to TomCol on the one-year anniversary of the close of escrow and each year anniversary following, for a total period of three (3) years. If the Town exercises the Option sooner than the anniversary of the closing in any year, the Option Payment for that year shall be prorated.
- 2.4 Terms of the Option.
- a. The Town may exercise the Option at any time during the Option's three-year period.
 - b. The Town shall give TomCol thirty (30) days notice of its intent to exercise the Option.
 - c. Upon the Town exercising the Option, the Parties shall open an escrow and shall take reasonable steps to complete the sale of the 10.25 acre parcel within sixty (60) days. Such escrow shall follow the provisions of Paragraphs 4, 5, and 6 of this Agreement
 - d. The purchase price of the 10.25 acre parcel shall be the FAA appraisal for the 3.25 acre parcel and the 10.25 acre parcel less Five Hundred Twenty Thousand Dollars (520,000.00).
 - e. If the FAA appraisal exceeds One Hundred Sixty Thousand Dollars (\$160,000.00) per acre, the Parties will renegotiate the purchase price for the 10.25 acre parcel in an amount not to exceed the FAA appraisal for the 3.25

acre parcel and the 10.25 acre parcel, less Five Hundred Twenty Thousand Dollars (\$520,000.00), and some or all of the amounts paid for the Option shall be credited to the purchase price.

- 2.5 Right of Entry. During the term of the Option, the Town, its agents, representatives, or subcontractors may enter the 10.25 acre parcel for the purpose of completing the environmental study, an appraisal, or any other studies or information needed for the FAA or ADOT.
- 2.6 Recording of the Option. A document noticing the Option shall be recorded with the Gila County Recorder's Office.
3. Donation of the 2.00 Acre Parcel.
 - 3.1 If the Town exercises the Option, TomCol shall donate the 2.00 acre parcel to the Town without cost or contribution from the Town.
 - 3.2 A document noticing the Town's right to receive the 2.00 acre parcel upon exercising the Option shall be recorded with the Gila County Recorder's Office.
4. Escrow.
 - 4.1 Establishment of Escrow. An escrow for this transaction shall be established with Pioneer Title Agency (the "Escrow Agent") and such escrow shall be opened on or before October 15, 2008. 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, the Town and TomCol 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.
 - 4.2 Opening and Closing Dates.
 - a. Escrow shall be deemed open on the date on which the Town arranges the opening with Escrow Agent (the "Opening Date").
 - b. The closing of the transaction described in Paragraph 1 above and escrow opened to accommodate it shall occur on or before October 24, 2008, unless extended by its terms or extended by agreement of the Parties (referred to in this Agreement as the "Closing" or "the Close of Escrow").
 - 4.3 Closing Costs.
 - a. All real property taxes on the property shall be paid by TomCol;
 - b. Improvement liens and other special assessments, if any, shall be paid in full by TomCol on or before the Close of Escrow;

- c. TomCol 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. Any other closing and/or escrow costs shall be divided between TomCol and the Town;
 - e. TomCol agrees that all closing costs and commissions payable by TomCol shall be deducted from TomCol's proceeds at the Close of Escrow;
 - f. On or before the Close of Escrow, the Town agrees to deposit with the Escrow Agent an amount sufficient to pay all closing costs payable by the Town.
- 4.4 Form 1099-B. Upon the Close of Escrow, Escrow Agent is hereby authorized and instructed to file with the U. S. Internal Revenue Service Form 1099-B, Proceeds from Real Estate, Broker and Barter Exchange Transactions, as required by Section 6045(e)(2)(A) of the Internal Revenue Code of 1986, as amended.
- 4.5 Certification as to "Non-Foreign" Status. At or before the Closing, TomCol shall deliver or cause to be delivered to the Town a certification signifying that TomCol, as transferor of the Property, is not a foreign corporation, foreign partnership, foreign trust, foreign estate or foreign person.
- 4.6 Property Conveyance. At or before the Close of Escrow, TomCol shall convey title to the Town of the 3.25 acre parcel by a lot line adjustment survey and a general warranty deed, both in a form and substance satisfactory to the 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 the Town; and
 - b. Any additional matters accepted in writing by the Town.
- 4.7 Title Policy.
- a. At the Close of Escrow, the Town shall be provided at TomCol'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 Section 2.3.c, in the amount of Five Hundred Twenty Thousand (\$520,000.00), together with any endorsements required by the 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 the Town that fee simple title to the Property is vested in the Town, subject only to the usual printed exceptions and exclusions contained in such title insurance policy, and to any other matters approved by the Town in writing;
 - b. The title policy required by Section 4.7.a above shall contain such endorsements as shall be reasonably required by the Town; and

- c. The obligations of TomCol 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 the Close of Escrow.

5. Title and Environmental Matters.

- 5.1 Preliminary Title Report. Promptly following the Opening Date, Escrow Agent shall deliver a current commitment for title insurance (the "Report") issued by Escrow Agent on the Property to the Town and TomCol. The Report shall show the status of title to the Property as of the date of the Report.
- 5.2 Environmental Report. As soon as reasonably possible following the Open Date, the Town may conduct, at its option, a Phase I Environmental Audit of the Property (the "Phase I Report"). The cost of the Phase I Report shall be paid by the Town.
- 5.3 Review Period.
 - a. The Town shall have until twenty (20) days from receipt of the Report or Amended Report or Phase I Report, respectively, to approve or disapprove the status of title as shown by the Report, any supplemental or amended title report showing additional exceptions to title (an "Amended Report") and the condition of the Property described in the Phase I Report. If the Town is dissatisfied with any exception to title as shown in the Report or an Amended Report or with any matter disclosed in the Phase I Report, then, at the Town's sole option, the Town may either cancel this Agreement by giving notice of cancellation to TomCol and Escrow Agent or the Town may provisionally accept the title subject to TomCol's removal of any disapproved matters, exceptions or objections, in which case TomCol shall use its best efforts to remove the matters, exceptions or objections or obtain title insurance endorsements satisfactory to the Town against such matters, exceptions and objections before the Close of Escrow. If TomCol cannot remove such matters, exceptions and objections before the Close of Escrow, then upon demand of the Town all obligations shall terminate, or the Town may waive any of such matters, exceptions and objections and the transaction shall close as scheduled.
 - b. Notwithstanding anything herein contained to the contrary, it is understood and agreed that title to the Property shall be delivered to the Town at the Close of Escrow free and clear of all monetary liens and encumbrances;
 - c. Upon a cancellation in accordance with the provisions of this Section 5.3, all documents deposited in escrow by the Town shall be returned to the Town, all documents deposited in escrow by TomCol shall be returned to TomCol, and this Agreement shall terminate, whereupon the Parties shall have no further liability hereunder.

6. Matters Relating to the Escrow Period.

- 6.1 Possession. Possession of the Property shall be delivered to the Town upon the Close of Escrow. From time to time prior to the Close of Escrow, the Town, its representatives, agents, or subcontractors may enter upon the Property for the purpose of conducting a Phase I Environmental Audit of the Property, an environmental study, an appraisal, or any other studies or information needed for the FAA or ADOT. The Town agrees to reimburse TomCol for any damage suffered by TomCol arising out of the Town's exercise of the rights granted by this Section 6.1 (unless resulting from TomCol's negligence) and this agreement shall survive the Close of Escrow or the cancellation of this Agreement.
- 6.2 Information. Within ten (10) days following the Opening Date, TomCol shall provide the Town with copies of all surveys, site plans, studies, engineering reports, environmental studies, agreements pertaining to any water rights or supply any other materials prepared for TomCol or in TomCol's possession relating to the Property not previously provided to the Town or its agents. If this Agreement is canceled, all of the information so provided shall be returned to TomCol; otherwise, the Town may retain such information.
- 6.3 Risk of Loss. Except as provided in Section 6.1 of this Agreement, the risk of loss or damage to the Property and all liability to third persons until the Close of Escrow shall be borne by TomCol.

7. Representations and Warranties.

- 7.1 TomCol's Representations and Warranties. TomCol makes the following representations and warranties which shall apply to the Parcels, 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 TomCol which are required for the execution, delivery and performance by TomCol of this Agreement and each of the documents and agreements to be delivered by TomCol 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 TomCol at the Closing constitutes a legal, valid and binding obligation of TomCol, enforceable against TomCol in accordance with its terms;
 - c. Violations; Consents; Defaults. Neither the execution of this Agreement nor the performance hereof by TomCol will result in any breach or violation of the terms of any law, rule, ordinance or regulation or of any decree, judgment or order to which TomCol is a party now in effect from any court or governmental body. There are no consents, waivers, authorizations or approvals from any third party necessary to be obtained by TomCol in order

to carry out the transactions contemplated by this Agreement. The execution and delivery of this Agreement and performance hereof by TomCol 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 Parcels, or any indenture, mortgage, lease, agreement, or other instrument to which TomCol is a party or by which TomCol or any of its assets may be bound;

- d. Litigation. TomCol is not a party to any pending or threatened action, suit, proceeding or investigation, at law or in equity or otherwise in, for or by any court or governmental board, commission, agency, department or officer arising from or relating to the Parcels. TomCol is not subject to, nor to the best of TomCol's knowledge does any basis exist for, any order, judgment, decree or governmental restriction which would adversely affect either the Parcels or the contemplated use thereof as a park/water recharge facility by the Town.
- e. Governmental Restrictions. TomCol has not received, nor is aware of, any notifications, restrictions or stipulations from the United States of America, the State of Arizona, Gila County, or any other governmental authority requiring any work to be done on the Parcels or threatening the use of the Parcels. To the best of TomCol's knowledge, there are no pending or threatened condemnation proceedings affecting any portion of the Parcels;
- f. Leases and Agreements. There are no unrecorded leases, arrangements, agreements, understandings, options, contracts, or rights of first refusal affecting or relating to the Parcels in any way;
- g. Encroachments, etc. No improvements of any third person encroach upon the Parcels. To the best of TomCol's knowledge, no person has any unrecorded right, title or interest in the Parcels, whether by right of adverse possession, prescriptive easement or otherwise. To the best of TomCol's knowledge, the recorded easements, rights-of-way, covenants, and other title exceptions and survey matters do not adversely affect the current beneficial use of the Parcels;
- h. Compliance. TomCol has complied, in all respects, with all laws, ordinances, rules, regulations, requirements and orders of federal, state, or local governments and/or their agencies with respect to the Parcels;
- i. Environmental Matters. Neither TomCol nor the Parcels is in 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 Parcels nor any underlying groundwater contains any material concentrations of regulated

- substances, hazardous substances, hazardous materials, toxic substances, or similar substances, residues, and waste;
- b. Special Districts. The Parcels are not located within any water conservation, irrigation, soil conservation, weed or insect abatement, or other similar district, any special improvement district;
 - c. Taxes. TomCol does not have any liability for any taxes, or any interest or penalty in respect thereof, of any nature that may be assessed against the Town or that are or may become a lien against the Parcels;
 - d. Accuracy of Information. The information furnished by TomCol to the Town in accordance with the provisions of this Agreement is true, complete and accurate;
 - e. Historic or Archaeological Sites. To the best of TomCol's knowledge, there are no sites of historic or archaeological significance within the Parcels;
 - f. Information. There is no material information or document not disclosed or provided by TomCol to the Town, directly or indirectly relating to the ownership or use of the Parcels;
 - g. Authority of TomCol. TomCol has full power and authority to enter into and to perform its obligations under this Agreement. The persons executing this Agreement on behalf of TomCol 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. TomCol has all necessary power and authority to own its properties and to conduct its business as now owned and conducted by TomCol;
 - h. Governmental Agreements. The Town, or any other successor to the Town as owner of the Parcels, shall not be responsible or liable for performance of any agreements or representations made by TomCol to any governmental authority having jurisdiction over the Parcels which are not described in this Agreement or a matter of public record or which have not been disclosed to the Town prior to Closing and either agreed to in writing or waived by the Town prior to Closing. TomCol shall indemnify and hold harmless the Town for, from and against all such agreements, representations and obligations;
 - i. Bankruptcy. There are no attachments, executions, assignments for the benefit of creditors, receiverships, conservatorships or voluntary or involuntary proceedings in bankruptcy or pursuant to any other debt or relief laws which have been filed by TomCol, or contemplated by TomCol, or are pending in current judicial or administrative proceedings against TomCol; and
 - j. TomCol's Indemnity. TomCol shall indemnify the Town for, from and against any costs, expenses and liabilities resulting from any damages caused by TomCol or its agents to the Parcels after the closing.

7.2 Town's Representations and Warranties. The 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. The 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 the 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 the Town at the Closing constitutes a legal, valid and binding obligation of the Town, enforceable against the Town in accordance with its terms.

8. Additional Covenants. TomCol hereby covenants and agrees to indemnify and hold the Town harmless for, from and against any and all claims, damages, costs and expenses (including attorneys' fees) relating in any way to the Parcels and accruing prior to the Close of Escrow, even though now unknown and unsuspected. TomCol further covenants and agrees to indemnify and hold the Town harmless for, from and against any and all claims, damages, costs and expenses (including attorneys' fees) relating in any way to the federal or state income tax treatment of the donation of a portion of the Parcels, the sale of a portion of the Parcels, or the reporting of such transaction by TomCol for federal and state income tax purposes.

9. Closing Documents.

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

- a. The Documents in the form required by Section 4.6 of this Agreement;
- b. An Affidavit of Value if required by law; and
- 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 the Town to record the Option and donation commitment, and to otherwise consummate this transaction in accordance with the terms of this Agreement.

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

- 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.

10. Remedies.

- 10.1 TomCol's Remedies. If the Town fails to perform when due any act required by this Agreement, then TomCol's sole and exclusive remedy shall be to cancel this Agreement and the escrow, without further liability hereunder, such cancellation to be effective immediately upon TomCol giving written notice of cancellation to the Town and Escrow Agent.
- 10.2 Town's Remedies. If TomCol fails to perform any act required by this Agreement, the Town may seek any remedies available at law or in equity, including but not limited to specific performance.
- 10.3 Post-Closing Remedies. The limitations on remedies contained in this Section 10 shall apply only to any defaults under this Agreement arising prior to the date of Closing. The remedies of the Parties hereto for the breach of any agreements, covenants or warranties which this Agreement specifically provides are to survive the Close of Escrow shall not be so limited and with respect to such defaults after the date of the Close of Escrow the parties shall have the full right to pursue any remedies available at law or in equity.

11. General Provisions.

- 11.1 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.
- 11.2 Dispute Resolution. This Agreement shall be governed and construed in accordance with the internal laws of the State of Arizona. 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.; and 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.

11.3 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 other obligations under this Agreement.

11.4 Time. Time is of the essence of this Agreement.

11.5 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 TomCol and the 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 deposit 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 States mail. A copy of any notice given to a party shall also be given to Escrow Agent by regular mail.

Address for TomCol: Tom Col Investment Co.

Attention: Thomas F. Collins, Manager

Address for Town: Town of Payson
303 North Beeline Highway
Payson, Arizona 85541
Attention: Town Engineer

With a copy to: Town of Payson
303L North Beeline Highway
Payson, Arizona 85541
Attention: Town Attorney

11.6 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.

- 11.7 Time Periods. Except as expressly provided for herein, the time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (Payson time) on the last day of the applicable time period provided for herein. If the time for the performance of any obligation or taking any action under this Agreement expires on a Saturday, Sunday or legal holiday, the time for performance or taking such action shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.
- 11.8 Cancellation (A.R.S. §38-511). This Agreement is subject to the provisions of A.R.S. § 38-511 which provides for cancellation of Agreements by the municipality for certain conflicts of interest.
- 11.9 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.
- 11.10 Entire Agreement; Modification. This Agreement, together with Exhibits "A", "B", "C", and "D", 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 the Town and TomCol.
- 11.11 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.
- 11.12 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 TomCol and the 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.
- 11.13 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.

- 11.14 Assignment. TomCol shall not assign or subcontract the Agreement or any part thereof without the written consent of the Town, and any attempted assignment or subcontracting in violation of this Paragraph shall render this Agreement void and of no effect. The Town may withhold its consent for any or no reason.
- 11.15 Non-Appropriation. Nothing herein shall be construed as obligating the Town to expend, or as involving the Town in any Agreement or other obligation for the future payment of money in excess of appropriations authorized by law and administratively allocated for this Agreement.
- 11.16 Authority. The Parties acknowledge and warrant that each of them is fully authorized and empowered to execute this Agreement by and through the individual(s) executing hereinafter.
- 11.18 Entire Agreement. This Agreement contains and sets forth the entire and exclusive agreement and understanding between the Parties hereto pertaining to the subject matter and all prior or contemporaneous oral or written agreements shall have no effect.

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

 Tom Col Investment Co., an Arizona Limited Liability Company
 By: Thomas F. Collins
 Its: Manager

TOWN OF PAYSON, a political subdivision of the State of Arizona

By _____
 Kenny J. Evans, Mayor

STATE OF ARIZONA)
) ss.
 County of Gila)

The foregoing Land Purchase Agreement was signed before me this _____ day of _____, 2008, by Thomas F. Collins, Manager of Tom Col Investment Co., an Arizona limited liability company, on behalf of the company.

My commission expires:

 Notary Public

STATE OF ARIZONA)
) ss.
County of Gila)

The foregoing Land Purchase Agreement was signed before me this _____ day of _____, 2008, by Kenny J. Evans, Mayor of the Town of Payson, on behalf of the Town.

My commission expires: _____

Notary Public

APPROVAL AS TO FORM

The Town of Payson Legal Department has reviewed this contract and approved it as to form. When reviewing this contract for form, the Legal Department considers whether the following situations have been addressed:

- A. Identification of parties;
- B. Offer and acceptance;
- C. Existence of contract consideration (we do not review to determine if consideration is adequate);
- D. That certain provisions specifically required by statute are included (i.e., provisions concerning non-availability of funds and conflict of interest, A.R.S. § 38-511).

We have not reviewed the contract for other issues. Therefore, approval as to form should not be considered as approval of the appropriateness of the terms or conditions of the contract or the underlying transaction. In addition, approval as to the form should not be considered approval of the underlying policy considerations addressed by the contract.

Dated: _____ day of _____, 2008

By _____
Samuel I. Streichman, Town Attorney

September 17, 2008 (9:46AM)
C:\MyFiles\Agreements and Contracts\Real Estate Contracts\TomCol Agreement.wpd

Exhibit A
(3.25 acre parcel)
to
Land Purchase
Agreement
between
Town of Payson
and
Tom Col Investment Co.

LEGAL DESCRIPTION PARCEL "A"

A portion of Parcel-1 according to Record of Survey / Parcel Creation Map No. 3518 A-N, G.C.R., being a portion of Government Lots 16, 17 and Tract-40 all situate in a portion of the Northeast Quarter of Section 32, Township 10 North, Range 10 East of the Gila & Salt River Meridian, Town of Payson, Gila County, Arizona, being described as follows;

Commencing at a found B.L.M. brass capped monument being A.P. No. 2 of aforesaid tract-40 and A.P. No. 4 of Tract-38, said point being on the line between corner No. 4 and corner No. 5 of Homestead Entry Survey No. 611, G.C.R., from which the aforesaid corner No. 4 bears N24°49'39"E a distance of 239.25 feet;

Thence: N76°00'05"E [Basis of Bearing] along the North line of aforesaid Tract-40, a distance of 932.71 to a set ½" rebar w/tag marked "LS #5713", said point being the **Point of Beginning**;

Thence: continuing N76°00'05"E along the North line of aforesaid Tract-40, a distance of 492.45 feet to a found B.L.M. brass capped monument being A.P. No. 1 of aforesaid tract-40, the Northeast corner of aforesaid Government Lot 16 and the Northwest corner of Government Lot 11, said point being on the East line of aforesaid Section 32;

Thence: S00°00'14"E along the West line of aforesaid Government Lot 11 and the East line of aforesaid Government Lot 16 and aforesaid Section 32, a distance of 286.70 feet to a found ½" rebar w/tag marked "LS 24516" on the Northerly Right-of-Way line of Airport Road, said point being a point of Curvature of a curve to the Left being Concave to the Southeast, having a Radius of 650.00 feet a Central Angle of 34°27'42" and a Radial Bearing of S01°14'06"E;

Thence: along the Arc of the aforesaid curve and Northerly Right-of-Way line of Airport Road, a distance of 390.96 feet to a point being a found ½" rebar w/tag marked "LS 24516";

Thence: S54°18'12"W along the aforesaid Northerly Right-of-Way line of Airport Road, a distance of 138.60 feet to a set ½" rebar w/tag marked "LS #5713";

Thence: N00°00'14"W leaving the aforesaid Northerly Right-of-Way line of Airport Road, a distance of 370.42 feet to the **Point of Beginning**.

All as shown on attached Exhibit "B", made a part hereof by this reference.

Encloses ±3.25 Acres

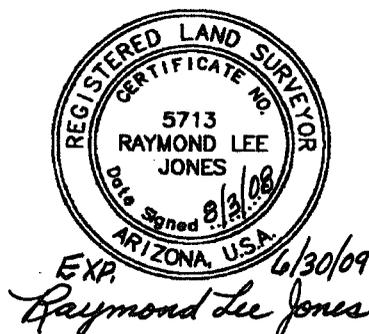
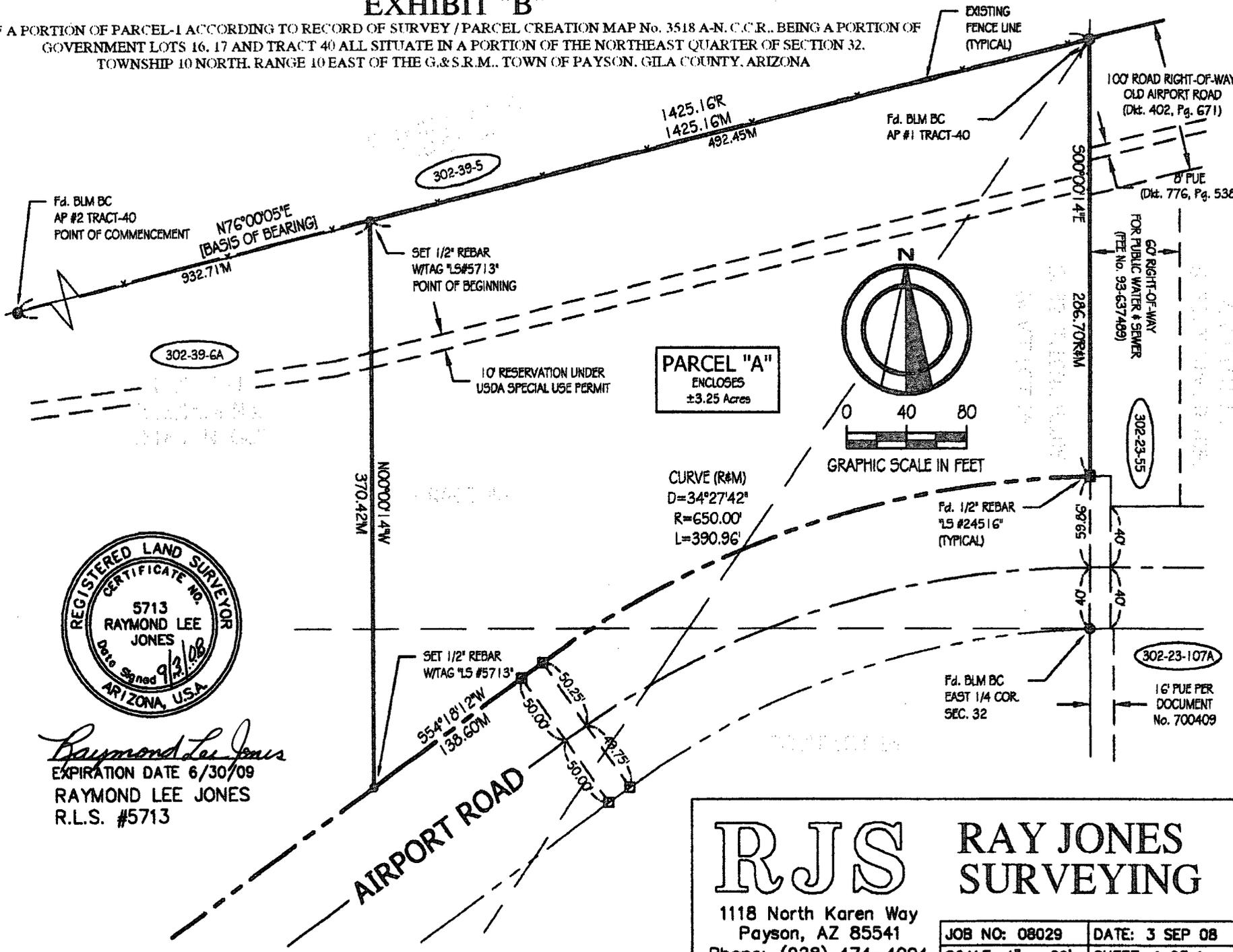


EXHIBIT "B"

OF A PORTION OF PARCEL-1 ACCORDING TO RECORD OF SURVEY / PARCEL CREATION MAP No. 3518 A-N.C.C.R., BEING A PORTION OF GOVERNMENT LOTS 16, 17 AND TRACT 40 ALL SITUATE IN A PORTION OF THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 10 NORTH, RANGE 10 EAST OF THE G.&S.R.M., TOWN OF PAYSON, GILA COUNTY, ARIZONA

P.2
(928) -474-9150
Christopher A. Roszko
Sep 03 08 02:56P



Raymond Lee Jones
EXPIRATION DATE 6/30/09
RAYMOND LEE JONES
R.L.S. #5713

RJS RAY JONES SURVEYING

1118 North Karen Way
Payson, AZ 85541
Phone: (928) 474-4004

JOB NO: 08029	DATE: 3 SEP 08
SCALE: 1" = 80'	SHEET: 1 OF 1

Exhibit B
(10.25 acre parcel)
to
Land Purchase
Agreement
between
Town of Payson
and
Tom Col Investment Co.

LEGAL DESCRIPTION
10.25 ACRE
OPTION PARCEL

A portion of Parcel-1 according to Record of Survey / Parcel Creation Map No. 3518 A-N, C.C.R., also being a portion of Government Tract-40 all situate in a portion of the Northeast Quarter of Section 32, Township 10 North, Range 10 East of the Gila & Salt River Meridian, Town of Payson, Gila County, Arizona, being described as follows;

Beginning at a found B.L.M. brass capped monument being A.P. No. 2 of aforesaid Tract-40 and A.P. No. 4 of Tract-38, said point being on the line between corner No. 4 and corner No. 5 of Homestead Entry Survey No. 611, G.C.R., from which the aforesaid corner No. 4 bears N24°49'39"E a distance of 239.25 feet;

Thence N76°00'05"E [Basis of Bearing] along the North line of aforesaid Tract-40, a distance of 932.71 feet;

Thence S00°00'14"E a distance of 370.42 feet to a point on the Northerly Right-of-Way line of Airport Road;

Thence S54°18'12"W along the aforesaid Northerly Right-of-Way line of Airport Road, a distance of 708.07 feet to a point being a set ½" rebar w/tag marked "LS #5713";

Thence N46°35'27"W leaving the aforesaid Northerly Right-of-Way line of Airport Road a distance of 563.13 feet to a point being a set ½" rebar w/tag marked "LS #5713 on the line between corner No. 4 and corner No. 5 of Homestead Entry Survey No. 611, G.C.R. from which the aforesaid corner No. 5 bears S24°49'39"W a distance of 363.59 feet;

Thence N24°49'39"E along the line between corner No. 4 and corner No. 5 of Homestead Entry Survey No. 611, G.C.R., a distance of 188.38 feet to the Point of Beginning.

Encloses ± 10.25 Acres

Exhibit C
(2.00 acre parcel)
to
Land Purchase
Agreement
between
Town of Payson
and
Tom Col Investment Co.

LEGAL DESCRIPTION PARCEL "A"

A portion of Parcel-1 according to Record of Survey / Parcel Creation Map No. 3518 A-N, G.C.R., being a portion of Government Lots 16, 17 and Tract-40 all situate in a portion of the Northeast Quarter of Section 32, Township 10 North, Range 10 East of the Gila & Salt River Meridian, Town of Payson, Gila County, Arizona, being described as follows;

Commencing at a found B.L.M. brass capped monument being the Southeast corner of aforesaid Section 32;

Thence: N00°15'59"W [Basis of Bearing] along the East line of aforesaid Section 32, a distance of 2,526.87 feet to a found B.L.M. brass capped monument being the East ¼ corner of aforesaid Section 32, said point being the point of Curvature of a Curve to the Left, being Concave to the Southeast, having a Radius of 550.00 feet, a Central Angle of 11°34'06" and a Radial Bearing of S01°29'37"E and being on the Southerly Right-of-Way line of Airport Road as shown on Record of Survey Map No. 2796, Gila County Records;

Thence: along the Arc of the aforesaid Curve and Southerly Right-of-Way line, a distance of 111.05 feet to a set ½" rebar w/tag marked "LS #5713" being the **Point of Beginning**;

Thence: S17°12'37"E leaving the aforesaid Southerly right-of-Way line, a distance of 200.83 feet to a set ½" rebar w/tag marked "LS #5713", said point being the point of Curvature of a Curve to the Left, being Concave to the Southeast, having a Radius of 350.00 feet, a Central Angle of 25°00'48" and a Radial Bearing of S10°41'00"E;

Thence: along the Arc of the aforesaid Curve a distance of 152.80 feet to a set ½" rebar w/tag marked "LS #5713";

Thence: S54°18'12"W a distance of 251.67 feet to a set ½" rebar w/tag marked "LS 5713";

Thence: N35°03'52"W a distance of 200.00 feet to a set ½" rebar w/tag marked "LS 5713", said point being on the Southerly Right-of-Way line of Airport Road as shown on Record of Survey Map No. 2796, Gila County Records;

Thence: N54°18'12"E along the aforesaid Southerly Right-of-Way line, a distance of 249.47 feet to a found ½" rebar w/tag marked "LS #24516", said point being the point of Curvature of a Curve to the

EXHIBIT "B"

OF A PORTION OF PARCEL-1 ACCORDING TO RECORD OF SURVEY / PARCEL CREATION MAP No. 3518 A-N, C.C.R., BEING A PORTION OF GOVERNMENT LOTS 16, 17 AND TRACT 40 ALL SITUATE IN A PORTION OF THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 10 NORTH, RANGE 10 EAST OF THE G.&S.R.M., TOWN OF PAYSON, GILA COUNTY, ARIZONA

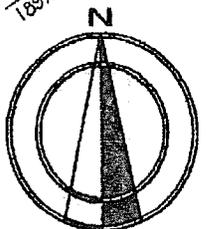
CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	11°34'06"	550.00	111.05
C2	22°38'04"	550.00	217.28
C3	25°00'48"	350.00	152.80



EXPIRATION DATE 6/30/09
 RAYMOND LEE JONES
 R.L.S. #5713

AIRPORT ROAD EASEMENT
 PER G.C.R. MAP No. 2796

PARCEL "A"
 ENCLOSES
 ±2.00 Acres



0 40 80
 GRAPHIC SCALE IN FEET

60' RIGHT-OF-WAY
 FOR PUBLIC WATER & SEWER
 (FEE No. 93-G37489)

AIRPORT ROAD

POINT OF BEGINNING

N00°15'59"W
 (BASIS OF BEARING)

Fd. BLM BC
 EAST 1/4 COR.
 SEC. 32

16' PUE PER
 DOCUMENT
 No. 700409

Fd. 1/2" PIPE
 'LS #16520"

WOODHILL - UNIT TWO
 G.C.R. MAP No.'s 710-710D

Fd. BLM BC
 S/E COR.
 SEC. 32

POINT OF COMMENCEMENT

RJS

RAY JONES SURVEYING

1118 North Karen Way
 Payson, AZ 85541
 Phone: (928) 474-4004

JOB NO: 08029	DATE: 11 SEP 08
SCALE: 1" = 80'	SHEET: 1 OF 1

P. 1

(928) -474-9150

Christopher R. Roszka

Sep 11 08 02:51P

302-23-55

302-39-GA

302-23-107A

302-90-323

Exhibit D
(Town owned parcel)
to
Land Purchase
Agreement
between
Town of Payson
and
Tom Col Investment Co.



PATENT NO. 53-103460-01
LEGAL DESCRIPTION
EXHIBIT A

That portion of Government Lots 11 and 19 of Section 33, Township 11 North, Range 10 East, of the Gila and Salt River Meridian, Gila County, Arizona, more particularly described as follows:

BEGINNING at the West $\frac{1}{4}$ Corner of said Section 33;

Thence: N 00°11'46"E, along the West line of said Section 33, a distance of 387.50 feet to NW Corner of said Government Lot 11;

Thence: N 75°59'05"E, along the North line of said Government Lot 11 and Government 19, a distance of 2,731.44 feet to a point on the North-South Mid Section line of said Section 33, being the NE Corner of said Government Lot 19;

Thence: S 00°01'52" E, along said North-South Mid Section line, 82.44 feet;

Thence: S 75°59'05"W, parallel with said North line of Government Lot 19, a distance of 505.81 feet to the P.C. of a curve to left, concave to the SE, having a central angle of 39°52'03" and a radius of 460.00 feet;

Thence: Southwesterly, along the arc of said curve, 320.08 feet;

Thence: S 36°07'02"W, 826.92 feet to a point on the East-West Mid Section line of said Section 33;

Thence: N 89°59'02"W, along said East-West Mid Section line, 87.55 feet to the C-W. 1/16 Corner;

Thence: S 89°57'37"W, along said East-West Mid Section Line, 1325.59 feet to the POINT OF BEGINNING.