

RESOLUTION NO. 2640

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THE SECOND AMENDMENT TO THE AIRPORT LEASE AGREEMENT BETWEEN PAYSON REGIONAL AIRPORT AUTHORITY AND THE TOWN OF PAYSON TERMINATING THE LEASE, AND DECLARING AN EMERGENCY.

WHEREAS, The Town of Payson and the Payson Regional Airport Authority ("PRAA") entered into an Airport Lease Agreement on August 29, 2007 ("the Lease"); and

WHEREAS, the Town and PRAA now believe that the most efficient operation of the Payson Airport and the interests of the citizens of Payson and the users of the Payson Airport will best be served by terminating the Airport Lease and PRAA transferring operations of the Payson Airport to the Town; and

WHEREAS, the Town and PRAA have negotiated a mutually agreeable process for transfer of the Airport operations from PRAA back to the Town; and

WHEREAS, on October 19, 2011, PRAA's Board of Directors approved the Second Amendment to the Lease formalizing such process,

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

Section 1. That the Second Amendment to the Airport Lease Agreement Between the Payson Regional Airport Authority and the Town of Payson Terminating the Airport Lease Agreement ("the Amendment") is hereby approved in substantially the form attached as Exhibit A.

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

Section 3. That the Town of Payson, acting by and through its Mayor and/or its other appropriate officers and officials, is hereby authorized to execute any and all other documents and instruments and to take all other actions necessary or appropriate to carrying out the terms of this Resolution and the Amendment.

Section 4. Whereas, it is necessary for the preservation of the peace, health and safety of the Town of Payson, Arizona, and for the orderly and efficient transfer of the Payson Airport, an emergency is declared to exist, and this Resolution shall become immediately operative and in full force and effect from and after the date of its enactment.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE
TOWN OF PAYSON this 13th day of December, 2011, by the following vote:

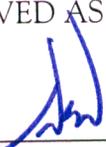
AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk



Timothy M. Wright, Town Attorney

**EXHIBIT A
TO
RESOLUTION 2640**

SECOND AMENDMENT TO THE
AIRPORT LEASE AGREEMENT BETWEEN
THE PAYSON REGIONAL AIRPORT AUTHORITY
AND THE TOWN OF PAYSON
TERMINATING THE AIRPORT LEASE AGREEMENT

This Second Amendment to the Airport Lease Agreement Between the Payson Regional Airport Authority and the Town of Payson (the "Second Amendment") is entered by and between the Payson Regional Airport Authority, an Arizona non-profit corporation ("PRAA"), and the Town of Payson, an Arizona municipal corporation ("Town"), (collectively the "Parties") and shall terminate the Airport Lease Agreement under the terms set forth below.

RECITALS

- A. The Parties entered into the Airport Lease Agreement on August 29, 2007.
- B. The Parties approved the First Amendment to the Airport Lease Agreement in November of 2009. Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Airport Lease Agreement, as amended. The Airport Lease Agreement, as amended, shall be referred to herein as the "Airport Lease."
- C. The Parties appreciate the efforts put forth by PRAA and its volunteers during the last four years, but now believe that the most efficient operation of the Payson Airport and the interests of the citizens of Payson and the users of the Payson Airport will best be served by terminating the Airport Lease, returning operations of the Payson Airport to the Town, and creating an Airport Commission to assist in the strategic and long range planning at the Payson Airport.
- D. The Parties now desire to terminate the Airport Lease pursuant to the terms set forth in this Second Amendment and return the operations of the Payson Airport to the Town via a thorough and orderly process between the effective date of this Second Amendment and January 31, 2012 ("the Transition Period").

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

1. TERMINATION

1.1 This Second Amendment shall be effective on the date of the last signature of the Parties.

1.2 The Parties mutually agree to terminate the Airport Lease as of midnight January 31, 2012.

1.3 As of February 1, 2012, the Parties are released from all obligations under the Airport Lease and shall receive no further benefits under the Airport Lease.

2. TRANSFER OF ASSETS

2.1 Upon the effective date of this Second Amendment, the Parties shall open an escrow account with Pioneer Title.

2.1.1 Reserved.

2.1.2 PRAA shall deposit all of its funds, except those operational funds set forth in Paragraph 3.2.1 below, into the escrow account within five (5) days of the opening of the escrow.

2.1.3 PRAA shall deposit any funds that would be payable to the Town under Section 4.6 (First \$10,000 of hangar revenue) of the Airport Lease into the escrow account upon receipt.

2.1.4 Any funds received by either of the Parties related to the Payson Airport during the Transition Period shall be deposited into the escrow account.

2.1.5 If, during the Transition Period the operational funds retained by PRAA are insufficient for Payson Airport operations, by mutual consent of the Parties, funds may be withdrawn from the escrow account to pay necessary expenses at the Payson Airport.

2.1.6 On February 1, 2012, the funds from the escrow account shall be disbursed to the Town and shall be placed into the Town's Airport Fund for exclusive use at the Payson Airport.

2.2 On or before January 31, 2012, PRAA shall transfer the Leased Premises and all leasehold improvements, and the Town shall re-enter and take possession of the Leased Premises.

2.3 On or before January 31, 2012, PRAA shall transfer to the Town all personal property as described in the Airport Lease and any personal property acquired with airport funds or for airport use.

2.4 As of February 1, 2012, any interests PRAA has in the subleases listed in Exhibit G of the Airport Lease shall revert back to the Town; PRAA shall execute and deliver such assignments as may be necessary to accomplish such reversion; and the Town agrees to accept all obligations under such subleases.

3. TOWN AND PRAA OBLIGATIONS

3.1 Town Obligations

3.1.1 On or before February 1, 2012 the Town shall create the Payson Airport Commission.

3.1.1.1 The Payson Airport Commission shall have the authority to make recommendations to the Mayor and Common Council of the Town on issues related to the Payson Airport.

3.1.1.2 Any such recommendations shall be presented to the Commission's staff advisor and then placed on a Council agenda within sixty (60) days for consideration by the Town Council.

3.1.2 Reserved.

3.1.3 The Town will add the position of "Airport Coordinator" to its pay plan and will offer to hire PRAA's sole employee for such position on or before February 1, 2012.

3.1.4 As of February 1, 2012, the Town will be responsible for all activities relating to the Payson Airport.

3.1.5 As of February 1, 2012, the Town will provide liability insurance for the Airport.

3.1.6 During the Transition Period, the Town will notify the FAA and ADOT of the terms of this Second Amendment.

3.1.7 As of February 1, 2012, any and all obligations of PRAA related to the Airport that are listed in the Airport Lease including the First Amendment, or disclosed to the Town by PRAA shall become the full responsibility of the Town. The Town agrees that as of February 1, 2012, PRAA shall have no further liability whatsoever for any such obligations

3.1.8 Any and all funds derived from the Payson Airport that are received by the Town shall be placed into the Town's Airport Fund for exclusive use at the Payson Airport.

3.2 PRAA Obligations

3.2.1 Transition Period Funds.

3.2.1.1 PRAA shall retain operational funds in the amount of \$40,000.00 for the Transition Period.

3.2.1.2. Such funds may be utilized during the Transition Period for operations at the Payson Airport.

3.2.1.3 Upon the earlier of the end of the litigation in ACD v. PRAA (CV2011-285) or December 31, 2012, PRAA shall transfer any remaining operations funds from the Transition Period to the Town and provide the Town with a final accounting for all funds utilized during the Transition Period.

3.2.2 PRAA will cooperate with the Town's audit of PRAA's financial records.

3.2.3 During the Transition Period, PRAA shall inventory all personal property described in the Airport Lease and any personal property acquired with airport funds or for airport use. The Town shall review such inventory and upon approval, such personal property will transfer to the Town at the end of the Transition Period. If necessary, PRAA shall execute and deliver a bill of sale for such personal property.

3.2.4 Except as set forth in this Second Amendment, PRAA shall continue to fulfill all of its obligations under the Airport Lease during the Transition Period.

3.2.5 Any obligations of PRAA that are not related to the Airport shall remain the full responsibility of PRAA. PRAA agrees that the Town shall have no obligation to discharge such responsibilities.

3.2.6 Any obligations of PRAA related to the Payson Airport not listed in the Airport Lease or disclosed to the Town shall remain the full responsibility of PRAA. The Town shall have no liability whatsoever for any such obligations.

3.2.7 PRAA shall terminate its liability insurance on the Payson Airport on February 1, 2012 and shall seek a refund of any excess premiums. Any such premium refund will be provided to the Town within two (2) business days following receipt by PRAA.

3.2.8 PRAA shall not represent itself as a representative of the Town or as having any authority over the Payson Airport on or after February 1, 2012. No member of the Town's Airport Commission shall also remain a director of PRAA after December 31, 2012.

3.2.9 On or before December 31, 2012, PRAA shall take steps to dissolve the nonprofit corporation.

3.3 Mutual Obligations

3.3.1 Each Party shall designate a representative to facilitate the terms of this Second Amendment.

3.3.2 During the Transition Period, the Parties shall coordinate and give notice to all sublessees, contractors, and other persons utilizing the Payson Airport of the transfer of the Airport back to the Town of Payson.

3.3.3 During the Transition Period, the Parties will coordinate a media/public outreach to notify the public of the transfer of the Airport back to the Town. Such outreach may include a TOP Talk segment, KMOG Town Day show, press releases, public meetings, etc.

3.3.4 Each Party agrees in good faith to execute such further or additional documents or take such further actions as may be necessary or appropriate to fully carry out the intent and purpose of this Second Amendment. PRAA agrees to execute any Power of Attorney or other documents necessary to facilitate this Termination and the transfer of assets and payments hereunder.

4. SUBLEASES

4.1 The Town Yard Sublease executed in August 2007 between the Parties is terminated as of midnight on January 31, 2012.

4.2 All subleases as described in Exhibit J of the Airport Lease and any other subleases entered into by PRAA during the Airport Lease are hereby assigned to the Town, and the Town shall be entitled to any and all rents and other benefits of such subleases.

5. RECORDS/DOCUMENTS

5.1 PRAA will transfer originals or copies of all of its records to the Town of Payson during the Transition Period. Such records shall include, but not be limited to: financial records, bank records, insurance certificates, employment records, meeting records, subleases, deposit records, utility records, and base aircraft lists.

6. OTHER TERMS

6.1 **Counterparts.** This Second Amendment may be executed in 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.

6.2 **Authority.** The Parties acknowledge and warrant that each of them is fully authorized and empowered to execute this Second Amendment by and through the individual(s) executing hereinafter.

6.2.1 The Town approved this Second Amendment on _____, 2011 at a Special Council Meeting. See Resolution _____.

6.2.2 PRAA approved this Second Amendment on October 19, 2011 at a PRAA Board Meeting by a vote of 6 in favor and 0 opposed.

6.3 **Entire Agreement.** This Second Amendment 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 have executed this Second Amendment.

PAYSON REGIONAL
AIRPORT AUTHORITY
an Arizona nonprofit corporation

TOWN OF PAYSON,
an Arizona municipal corporation

By _____
Jon Barber, its President

By _____
Kenny J. Evans, Mayor

Dated

Dated

APPROVAL AS TO FORM: The Town of Payson Legal Department has reviewed this agreement and approved it as to form.

By _____
Timothy M. Wright, Town Attorney
Payson, Arizona

Dated