ORDINANCE NO. 728

**AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT FOR AN EXCHANGE OF REAL PROPERTY IN THE VICINITY OF MUD SPRINGS ROAD WITHIN THE TOWN LIMITS OF THE TOWN OF PAYSON, AND FINDING THAT THE PARCELS OF REAL PROPERTY TO BE EXCHANGED ARE OF SUBSTANTIALLY EQUAL VALUE.**

**WHEREAS**, the Town of Payson and The Coar Family Trust desire to exchange parcels of real property pursuant to A.R.S. § 9-407 for the purpose of realigning Mud Springs Road; and

**WHEREAS,** the parties have drafted an agreement for such purpose (the "Agreement"); and

**WHEREAS**, the exchange of property provided for in the Agreement will not leave any parcel of real property without access to a public roadway; and

**WHEREAS**, A.R.S. § 9-241 provides that the Town of Payson may receive real property necessary or proper to carry out the purposes of the municipal corporation, within or without its limits,

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

Section 1. That the Agreement for Exchange of Real Property, 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 the respective parcels of real property to be exchanged are described in Exhibit "1" and Exhibit "2" to said Agreement, and are found by the Mayor and Common Council to be of substantially equal value.

Section 3. That F. Robert Edwards, Mayor of the Town of Payson, be and is hereby authorized to execute the Agreement for Exchange of Real Property in substantially the form as attached.

Section 4. That the Town of Payson be and is hereby authorized to open an escrow to consummate the transaction authorized by this Ordinance Number 728.

Section 5. That the Town of Payson be and is hereby authorized to take such other and further actions as may be necessary or appropriate to carrying out the real property exchange provided for herein and the terms of the Agreement, including, but not limited to the publication of a notice of intent to exchange such properties in accordance with A.R.S. § 9-407(C) and the recordation in the Office of the Gila County Recorder of all deeds necessary to carry out the purpose and intent of this Ordinance Number 728.

First Reading OCT 18 2007 G.7

2nd Reading & Public Hrg NOV 01 2007 G.13

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

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

_____
F. Robert Edwards, Mayor

ATTEST:

_____
Silvia Smith, Town Clerk

APPROVED AS TO FORM:

_____
Samuel I. Streichman, Town Attorney

***Prepared by Town of Payson Legal Department***
*SIS drs October 15, 2007 (9 52AM)*
*C \MyFiles\Ordinances\728 Property Exchange on Mud Springs Road wpd*

# EXHIBIT "A"

*to Ordinance No 728*

## AGREEMENT FOR EXCHANGE OF REAL PROPERTY

THIS AGREEMENT made effective this _____ day of _____, 2007, by and between the TOWN OF PAYSON, an Arizona municipal corporation ("Town") and THE COAR FAMILY TRUST DATED JUNE 9, 1994 ("Trust") (collectively, the "Parties").

WHEREAS, the Town is the owner of certain real property which comprises a portion of Mud Springs Road; and

WHEREAS, the Trust is the owner of certain real property which encroaches on a portion of Mud Springs Road; and

WHEREAS, the Parties wish to exchange such parcels of real property,

NOW, THEREFORE, the Parties agree as follows:

1. The Town will transfer to the Trust free and clear of all liens and encumbrances the Town's interest in the property described on Exhibit "1" attached hereto and made a part hereof by this reference.

2. The Trust will transfer to the Town free and clear of all encumbrances the Trust's interest in the property described on Exhibit "2" attached hereto and made a part here of by this reference.

3. The Parties acknowledge, represent and agree that the fair market values of the properties described on Exhibit "1" and on Exhibit "2" are substantially equal.

4. The Parties will establish an escrow with Pioneer Title Company located in Payson, Arizona, to facilitate such transfer and will cause title insurance policies to be issued by such title company for the respective parcels.

5. The Town and the Trust will pay equal shares of all escrow fees.

6. 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. 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) shall be entered 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. 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, whether the same is resolved through arbitration, litigation in a court, or otherwise.

7. Town and Trust each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants, agreements, and obligations contained in herein.

8. Trust shall not assign this Agreement without the written consent of Town, which consent shall not be unreasonably withheld.

9. The Parties agree to undertake such other acts and to execute and deliver all such documents as are reasonably necessary to give full force and effect to and to carry out the intent of this Agreement.

10. 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. Each party represents that the execution, delivery, and performance of this Agreement has been duly authorized by the responsible persons or officers for and of the Party.

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

13. This Agreement constitutes the entire agreement between the Parties hereto 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 Parties.

IN WITNESS WHEREOF, the Parties have executed or caused to be executed by their duly authorized representative, this Agreement, to be effective on the day and year first above written.

**TOWN OF PAYSON,**
an Arizona municipal corporation

By_____
F. Robert Edwards, Mayor

ATTEST:

_____
Silvia Smith, Town Clerk

**COAR FAMILY TRUST**
**DATED JUNE 9, 1994**

By_____
Robert G. Coar, Trustee

By_____
Diane L. Coar, Trustee

## APPROVAL AS TO FORM

The Town of Payson Legal Department has reviewed the foregoing Agreement for Exchange of Real Property and approved it as to form. When reviewing said Agreement for form, the Legal Department considers whether the following situations have been addressed:

1. Identification of parties;
2. Offer and acceptance;
3. Existence of consideration (we do not review to determine if consideration is adequate);
4. 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 this Agreement for other issues. Therefore, approval as to form should not be considered as approval of the appropriateness of the terms or conditions of the Agreement or the underlying transaction. In addition, approval as to the form should not be considered approval of the underlying policy considerations addressed by the Agreement.

Dated: October _____, 2007.

By_____
Samuel I. Streichman, Town Attorney

# EXHIBIT "1"

**Legal Description of Real Property to be Transferred TO THE COAR FAMILY TRUST**

That part of East Granite Dells Road in the Park Payson Subdivision, on Map No. 440 in the office of the Recorder of Gila County, within Section 3, Township 10 North, Range 10 East of the Gila and Salt River Meridian, Town of Payson, Gila County, Arizona more particularly described as follows:

Commencing at the Northwest Corner of Lot 28-B;

Thence S65°18'16"E, a distance of 48.10', along the Northeast line of Lot 28-B and the basis of bearing to the Point of Beginning;
Thence S65°18'16"E, a distance of 212.86';
Thence N41°18'49"W, a distance of 30.76';
Thence N65°18'16"W, a distance of 147.54';
Thence N83°52'45"W, a distance of 39.26' to the Point of Beginning.

Described area 2254 square feet.

Reference: GraniteDell

# EXHIBIT "2"

**Legal Description of Real Property to be Transferred TO THE TOWN OF PAYSON**

That part of Small Tracts Act Survey No. 017 within Section 2 and Lot 1 of the Russell Subdivision within Section 3 shown on Map No. 73 of Gila County Records, Township 10 North, Range 10 East of the Gila and Salt River Meridian, Town of Payson, Gila County, Arizona more particularly described as follows:

Commencing at the West Quarter Corner of Section 2

Thence S0°03'W, a distance of 27.94', along the section line and basis of bearing to the Point of Beginning;
Thence S12°31'09"E, a distance of 111.43', to the east line of the Small Tract Act Survey No. 017 parcel;
Thence N0°35'43"E, a distance of 136.22', to an aluminum cap;
Thence N88°52'35"W, a distance of 25.55', to the West Quarter Corner of Section 2 and the commencing point;
Thence N88°52'35"W, a distance of 12.58';
Thence S24°0'32"E, a distance of 30.85', to the Point of Beginning.

Described area 2254 square feet.