

AGENDA

TUSAYAN TOWN COUNCIL REGULAR MEETING

PURSUANT TO A.R.S. § 38-431.02 & §38-431.03

Wednesday, August 15, 2012 @ 6:00 P.M.

Tusayan Town Hall Building

845 Mustang Drive, Tusayan Arizona

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the Tusayan Town Council and to the general public that the Tusayan Town council will hold a meeting and public hearing open to the public at 6:00 p.m. on Wednesday, August 15, 2012 at Tusayan Town Hall, 845 Mustang Drive. If authorized by a majority vote of the Tusayan Town Council, an executive session may be held immediately after the vote and will not be open to the public. The Council may vote to go into executive session pursuant to A.R.S. § 38-431.03.A.3 for legal advice concerning any matter on the agenda, including those items set forth in the consent and regular agenda sections. The Town Council may change, in its discussion, the order in which any agenda items are discussed during the course of the meeting.

Persons with a disability may request a reasonable accommodation by contacting the Town Manager (928) 638-9909 as soon as possible.

As a reminder, if you are carrying a cell phone, electronic pager, computer, two-way radio, or other sound device, we ask that you silence it at this time to minimize disruption of today's meeting.

TOWN COUNCIL REGULAR MEETING AGENDA

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

2. ROLL CALL

MAYOR BRYAN
VICE MAYOR MONTOYA

COUNCILMEMBER FITZGERALD
COUNCILMEMBER RUETER
COUNCILMEMBER SANDERSON

** One or two Council Members may attend by telephone*

3. CALL TO THE PUBLIC FOR ITEMS NOT ON THE AGENDA

Members of the public may address the Council on items not on the printed agenda. The Council may not discuss, consider or act upon any matter raised during public comment. Comments will be limited to three minutes per person.

Members of the audience who wish to speak to the Council on an item listed as Public Hearing should complete a Request to Speak Card and turn it into the Town Clerk. Speakers will be limited to three minutes each.

4. CEREMONIAL AND INFORMATIONAL MATTERS

5. CONSENT AGENDA

ITEMS ON THE CONSENT AGENDA ARE ROUTINE IN NATURE AND WILL BE ACTED ON WITH ONE MOTION AND ONE VOTE. PUBLIC HEARING ITEMS ARE DESIGNATED WITH AN ASTERISK (*). MEMBERS OF THE COUNCIL OR STAFF MAY ASK THE

MAYOR TO REMOVE ANY ITEM FROM THE CONSENT AGENDA TO BE DISCUSSED AND ACTED UPON SEPARATELY.

A. Accounts Payable Billings

7. PUBLIC HEARING

A. Consideration and possible approval of a resolution adopting the "Town of Tusayan Final Budget for Fiscal Year 2012/2013".

8. ACTION ITEMS

A. Consideration, discussion and possible reaffirmation of financial commitment by the Town to the Tusayan Community Park Project.

B. Consideration, discussion and possible approval of a resolution and ordinance establishing Council/Manager form of governance.

C. Consideration, discussion and possible approval of escrow instructions for dedication of 40 acres to the Town of Tusayan from the Stilo Group.

D. Consideration, discussion and possible action on participation in the Arizona State Retirement System.

9. DISCUSSION ITEMS

A. Discussion of process for development of a five-year Capital Improvement Program (CIP) for the Town of Tusayan.

B. Discussion on recruitment of permanent Town Manager and Town Clerk.

10. TOWN MANAGER'S REPORT

11. FUTURE AGENDA ITEMS

12. COUNCIL MEMBERS' REPORTS

13. MAYOR'S REPORT

14. MOTION TO ADJOURN

CERTIFICATION OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at the General Store in Tusayan Arizona on this _____ day of the month of _____ in the year 2012, the Agenda of the Tusayan Town Council date of regular meeting, on the 15th day of the month of August and the year 2012 in accordance with the statement filed by the Tusayan Town Council.

Posted at _____ AM/PM this _____ day of _____, 2012. _____
Signature of person posting the agenda

RESOLUTION No. _____

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF TUSAYAN, COCONINO COUNTY, ARIZONA, ADOPTING AND DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE TOWN CLERK AND ENTITLED "TOWN OF TUSAYAN FINAL BUDGET FOR FISCAL YEAR 2012-13."

BE IT RESOLVED, by the Mayor and Common Council of the Town of Tusayan, Coconino County, Arizona:

That certain document entitled "Town of Tusayan Final Budget for Fiscal Year 2012-13," three copies of which are on file in the office of the Town Clerk, is hereby declared a public record, and said copies are ordered to remain on file with the Town Clerk.

Passed and adopted by a majority vote of the Mayor and Common Council of the Town of Tusayan, Coconino County, Arizona at the meeting held on August 15, 2012.

Grey Bryan, Mayor

ATTEST:

APPROVED AS TO FORM:

Laura Matthews, Interim Town Clerk

William J. Sims, Town Attorney

**Town of Tusayan
Five Year Financial Plan**

TOWN OF TUSAYAN TOTAL BUDGET SUMMARY	2009-10	2010-11	2011-12	2011-12	2011-12	2011-12	2012-13	2013-14	2014-15	2015-16
Revenue	Actual	Actual	Adopted	Actual to 5/31/12	Revised	Projected	Projected	Projected	Projected	Projected
General Fund	\$0.00	\$2,258,309	\$2,276,500	\$2,268,705.92	\$2,564,500	\$2,578,160	\$2,579,560	\$2,605,002	\$2,606,487	
Streets Fund	\$0.00	\$54,112	\$45,000	\$43,284.16	\$45,000	\$76,000	\$76,000	\$76,000	\$76,000	
Water Enterprise Fund	\$0.00	\$0	\$1,000,000	\$0.00	\$0	\$1,200,000	\$1,200,000	\$1,200,000	\$1,200,000	
Trust & Agency Fund	\$0.00	\$16,120	\$100,000	\$187,139.92	\$250,000	\$100,000	\$100,000	\$100,000	\$100,000	
Grants	\$0.00	\$0	\$500,000	\$0.00	\$0	\$500,000	\$500,000	\$500,000	\$500,000	
Total Revenue Budget	\$0.00	\$2,328,541	\$3,921,500	\$2,499,130.00	\$2,859,500	\$4,454,160	\$4,455,560	\$4,481,002	\$4,482,487	
Expenses										
General Fund	\$0.00	\$871,584	\$1,877,800	\$1,054,650.18	\$1,600,300	\$2,549,000	\$1,927,500	\$1,888,500	\$1,898,400	
Streets Fund	\$0.00	\$0	\$25,000	\$100,289.06	\$114,000	\$50,000	\$50,000	\$50,000	\$50,000	
Water Enterprise Fund	\$0.00	\$0	\$1,000,000	\$0.00	\$0	\$1,200,000	\$1,200,000	\$1,200,000	\$1,200,000	
Trust & Agency Fund	\$0.00	\$15,331	\$100,000	\$211,637.44	\$250,000	\$100,000	\$100,000	\$100,000	\$100,000	
Grants	\$0.00	\$0	\$500,000	\$0.00	\$0	\$500,000	\$500,000	\$500,000	\$500,000	
Total Expense Budget	\$0.00	\$886,915	\$3,502,800	\$1,366,576.68	\$1,964,300	\$4,399,000	\$3,777,500	\$3,738,500	\$3,748,400	
Total Operating Balance (Deficit)	\$0.00	\$1,441,626	\$418,700	\$1,132,553.32	\$895,200	\$55,160	\$678,060	\$742,502	\$734,087	

GENERAL FUND	2009-10	2010-11	2011-12	2011-12	2011-12	2012-13	2013-14	2014-15	2015-16
	Actual	Actual	Adopted	Actual to 5/31/12	Revised	Projected	Projected	Projected	Projected
Beginning General Fund Balance	\$0.00	(\$108,520)	\$1,044,800	\$1,278,205.00	\$1,278,205	\$2,242,405	\$2,271,565	\$2,923,625	\$3,640,126
Less Operating Reserve	\$0.00	\$0	\$1,000,000	\$1,000,000.00	\$1,000,000	\$1,000,000	\$1,000,000	\$1,500,000	\$2,000,000
Available General Fund Balance	\$0.00	(\$108,520)	\$44,800	\$278,205.00	\$278,205	\$1,242,405	\$1,271,565	\$1,423,625	\$1,640,126
Revenue									
Sales Tax	\$0.00	\$2,020,868	\$2,000,000	\$2,089,522.44	\$2,300,000	\$2,300,000	\$2,300,000	\$2,300,000	\$2,300,000
Business License	\$0.00	\$300	\$500	\$660.00	\$500	\$500	\$500	\$500	\$500
Develop Services Permit Fees	\$0.00	\$5,372	\$75,000	\$6,731.18	\$75,000	\$75,000	\$75,000	\$75,000	\$75,000
Fines	\$0.00	\$0	\$24,000	\$0.00	\$0	\$0	\$0	\$24,000	\$24,000
State Shared Sales Tax	\$0.00	\$56,491	\$35,000	\$39,872.74	\$40,000	\$46,660	\$48,060	\$49,502	\$50,987
State Shared Income Tax	\$0.00	\$145,999	\$125,000	\$105,500.07	\$125,000	\$153,000	\$153,000	\$153,000	\$153,000
Vehicle License Tax	\$0.00	\$27,269	\$17,000	\$20,204.15	\$21,000	\$0	\$0	\$0	\$0
Misc. Income	\$0.00	\$0	\$0	\$3,916.00	\$0	\$0	\$0	\$0	\$0
Interest Income	\$0.00	\$2,010	\$0	\$2,299.34	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000
Total Revenue	\$0.00	\$2,258,309	\$2,276,500	\$2,268,705.92	\$2,564,500	\$2,578,160	\$2,579,560	\$2,605,002	\$2,606,487
Expenses									
Mayor & Council	\$0.00	\$22,185	\$86,500	\$64,885.66	\$89,000	\$117,000	\$136,000	\$132,000	\$141,000
Manager/Clerk	\$0.00	\$92,315	\$308,000	\$176,232.68	\$288,000	\$422,000	\$402,000	\$397,000	\$397,000
Legal	\$0.00	\$185,074	\$159,000	\$51,867.79	\$193,000	\$139,000	\$139,000	\$139,000	\$139,000
Court & Prosecutor	\$0.00	\$21,131	\$122,500	\$0.00	\$40,000	\$10,000	\$79,500	\$54,500	\$54,500
Planning & Studies	\$0.00	\$36,109	\$300,000	\$185,809	\$135,000	\$255,000	\$100,000	\$100,000	\$100,000
Development & Permits	\$0.00	\$0	\$185,000	\$0.00	\$55,000	\$340,000	\$240,000	\$240,000	\$240,000
Public Safety	\$0.00	\$262,908	\$370,000	\$314,932.00	\$363,500	\$385,000	\$380,000	\$370,000	\$370,000
Facilities & Grounds	\$0.00	\$251,862	\$196,800	\$242,400.60	\$411,800	\$401,000	\$71,000	\$71,000	\$71,900
Parks & Recreation	\$0.00	\$0	\$150,000	\$18,522	\$25,000	\$330,000	\$230,000	\$235,000	\$235,000
Contingency	\$0.00	\$0	\$0	\$0.00	\$0	\$150,000	\$150,000	\$150,000	\$150,000
Total General Fund	\$0.00	\$871,584	\$1,877,800	\$1,054,650.18	\$1,600,300	\$2,549,000	\$1,927,500	\$1,888,500	\$1,898,400
Annual Fund Balance Change	\$0.00	\$1,386,725	\$398,700	\$1,214,055.74	\$964,200	\$29,160	\$652,060	\$716,502	\$708,087
ENDING GENERAL FUND BALANCE	(\$108,520)	\$1,278,205	\$1,443,500	\$2,492,260.74	\$2,242,405	\$2,271,565	\$2,923,625	\$3,640,126	\$4,348,213

	2009-10	2010-11	2011-12	2011-12	2011-12	2011-12	2012-13	2013-14	2014-15	2015-16
	Actual	Actual	Adopted	Actual to 5/31/12	Revised	Projected	Projected	Projected	Projected	Projected
STREETS FUND										
Beginning Fund Balance	\$0.00	\$0.00	\$0	\$54,112.00	\$54,112	(\$14,888)	\$11,112	\$37,112	\$63,112	\$63,112
Revenue										
Highway User Funds	\$0.00	\$54,112.00	\$45,000	\$43,284.16	\$45,000	\$54,000	\$54,000	\$54,000	\$54,000	\$54,000
Vehicle License Tax	\$0.00	\$0.00	\$0	\$0.00	\$0	\$22,000	\$22,000	\$22,000	\$22,000	\$22,000
Total Revenue	\$0.00	\$54,112.00	\$45,000	\$43,284.16	\$45,000	\$76,000	\$76,000	\$76,000	\$76,000	\$76,000
Expenses										
Street Lights Capital	\$0.00	\$0.00	\$0	\$78,918.94	\$79,000	\$0	\$0	\$0	\$0	\$0
Sidewalk Maintenance	\$0.00	\$0.00	\$15,000	\$21,289.00	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000
Landscape Maintenance	\$0.00	\$0.00	\$10,000	\$81.12	\$5,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000
Total Expenses	\$0.00	\$0.00	\$25,000	\$100,289.06	\$114,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000
Ending Fund Balance Streets	\$0.00	\$54,112.00	\$20,000	(\$2,892.90)	(\$14,888)	\$11,112	\$37,112	\$63,112	\$89,112	

	2009-10	2010-11	2011-12	2011-12	2011-12	2012-13	2013-14	2014-15	2015-16
	Actual	Actual	Adopted	Actual to 5/31/12	Revised	Projected	Projected	Projected	Projected
WATER ENTERPRISE FUND									
Revenue									
User Charges	\$0.00	\$0.00	\$1,000,000	\$0.00	\$0	\$1,200,000	\$1,200,000	\$1,200,000	\$1,200,000
Other	\$0.00	\$0.00	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0
Total Revenue	\$0.00	\$0.00	\$1,000,000	\$0.00	\$0	\$1,200,000	\$1,200,000	\$1,200,000	\$1,200,000
Expenses									
Operating Expenses	\$0.00	\$0.00	\$1,000,000	\$0.00	\$0	\$1,200,000	\$1,200,000	\$1,200,000	\$1,200,000
Capital Improvements	\$0.00	\$0.00	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0
Total Expenses	\$0.00	\$0.00	\$1,000,000	\$0.00	\$0	\$1,200,000	\$1,200,000	\$1,200,000	\$1,200,000
Ending Fund Balance	\$0.00	\$0.00	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0

TRUST AND AGENCY ACCOUNTS
Stilio Development Agency Acct

	2009-10	2010-11	2011-12	2011-12	2011-12	2012-13	2013-14	2014-15	2015-16
	Actual	Actual	Adopted	Actual to 5/31/12	Revised	Projected	Projected	Projected	Projected
Ending Fund Balance	\$0.00	\$0.00	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0

Revenue	\$0.00	\$16,120.00	\$100,000	\$187,139.92	\$250,000	\$100,000	\$100,000	\$100,000	\$100,000
Expense	\$0.00	\$15,331.00	\$100,000	\$211,637.44	\$250,000	\$100,000	\$100,000	\$100,000	\$100,000
Balance	\$0.00	\$789.00	\$0	(\$24,497.52)	\$0	\$0	\$0	\$0	\$0

Budget Detail
Mayor and Council

	2010-11	2011-12	2011-12	2011-12	2011-12	2012-13	2013-14	2014-15	2015-16
	<u>Actual</u>	<u>Adopted</u>	<u>YTD 05/31/12</u>	<u>Revised</u>	<u>Projected</u>	<u>Projected</u>	<u>Projected</u>	<u>Projected</u>	<u>Projected</u>
Training and Travel		\$12,500	\$4,265.52	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000
Publication		\$25,000	\$3,857.12	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000
Supply		\$10,000	\$1,476.70	\$10,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
Insurance		\$15,000		\$15,000	\$20,000	\$25,000	\$30,000	\$30,000	\$30,000
Dues		\$8,000		\$8,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000
Elections		\$15,000	\$7,219.25	\$15,000	\$5,000	\$9,000	\$0	\$0	\$9,000
ADWR Fee		\$1,000		\$1,000	\$0	\$0	\$0	\$0	\$0
Mayor & Council Compensation	0	\$0	\$0.00	\$0	\$20,000	\$30,000	\$30,000	\$30,000	\$30,000
Technology Stipend	0	\$0	\$0.00	\$0	\$15,000	\$15,000	\$15,000	\$15,000	\$15,000
	\$ 22,185		\$44,299.07						
Totals	<u>\$22,185</u>	<u>\$86,500</u>	<u>\$64,885.66</u>	<u>\$89,000</u>	<u>\$117,000</u>	<u>\$136,000</u>	<u>\$132,000</u>	<u>\$141,000</u>	

*

Cost Center Purpose: To account for direct expenses related to Mayor and Council, and all other costs of operating the community not assigned to other cost centers.

Training and Travel Costs for attending training and conferences for Mayor and Council
 Publication Costs of legal notices and publications required by law except for planning and zoning
 Supply Costs of supplies and purchases to support the Mayor and Council
 Insurance General operating and liability insurance for the Town of Tusayan
 Dues Dues for the Town of Tusayan (League of Cities, NW Mayors, etc.)
 Elections All costs (publication, fees, etc.) for conducting elections for Tusayan
 Mayor & Council Compensation Allowance for Mayor and Council to receive compensation for serving as elected officials
 Technology Stipend Payment to Mayor and Council for computer, cell phone and technology costs incurred as an elected official

Budget Detail
Manager & Support

	2010-11	2011-12	2011-12	2011-12	2011-12	2012-13	2013-14	2014-15	2015-16
	<u>Actual</u>	<u>Adopted</u>	<u>YTD 05/31/12</u>	<u>Revised</u>	<u>Projected</u>	<u>Projected</u>	<u>Projected</u>	<u>Projected</u>	<u>Projected</u>
Part time Staff					\$12,000	\$12,000	\$12,000	\$12,000	\$12,000
Finance & Accounting	\$35,000	\$35,000	\$3,605.65	\$35,000	\$35,000	\$40,000	\$40,000	\$40,000	\$40,000
Marketing	\$75,000	\$75,000		\$25,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000
Supply	\$10,000	\$10,000		\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000
Travel & Training	\$0	\$0	\$5,527.39	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000
Communications	\$5,000	\$5,000	\$3,507.63	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
web	\$8,000	\$8,000		\$8,000	\$20,000	\$15,000	\$10,000	\$10,000	\$10,000
Manager Compensation	\$125,000	\$125,000		\$125,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000
Clerk Compensation	\$50,000	\$50,000		\$50,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000
Interim Public Mgt	\$0	\$0		\$20,000	\$20,000	\$0	\$0	\$0	\$0

\$163,592.01

Totals \$ 92,315 \$ 308,000 \$ 176,232.68 \$ 288,000 \$ 422,000 \$ 402,000 \$ 397,000 \$ 397,000

Cost Center Purpose: **To account for the costs of the Town Manager, Town Clerk and finance and accounting costs and services for Tusayan**

- Part Time Staff Allowance for payments to part time employees related to administration of Tusayan
- Finance and Accounting To pay for bookkeeping services and annual audit costs
- Marketing To pay for advertising and promotion costs to promote Tusayan as a destination
- Supply To pay for costs of supply for Manager, Clerk and finance activities
- Travel & Training To pay for registration, travel and training for the Manager, Clerk and finance personnel
- Communications To pay for cell phone costs for Manager, Clerk & finance personnel
- Web To pay for the costs of establishing and maintaining a Tusayan website
- Manager Compensation To pay costs of the Manager as an employee of Tusayan
- Clerk Compensation To pay costs of the Town Clerk as an employee of Tusayan
- Interim Public Mgt To pay contract costs for interim staff and consultants under contract with Interim Public Management

Budget Detail
Legal Services

	2010-11	2011-12	2011-12	2011-12	2012-13	2013-14	2014-15	2015-16
	Actual	Adopted	YTD 05/31/12	Revised	Projected	Projected	Projected	Projected
General Counsel Sims		\$84,000	\$20,186.46	\$84,000	\$84,000	\$84,000	\$84,000	\$84,000
Serv Hill		\$0		\$0	\$0	\$0	\$0	\$0
Litigation Allowance		\$75,000		\$95,000	\$50,000	\$50,000	\$50,000	\$50,000
Advertising Notice		\$0	\$6,286.79	\$10,000				
special counsel				\$4,000	\$5,000	\$5,000	\$5,000	\$5,000
			\$25,394.54					
Totals	185074	159,000	51,867.79	193,000	139,000	139,000	139,000	139,000

Cost Center Purpose: To account for General Counsel and litigation costs incurred by Tusayan

- General Counsel To pay for services of William Sims as contract general counsel
- Services Hill To pay for services by prior legal counsel Hill
- Litigation Allowance To pay for contract legal services defending Tusayan in litigation; or paying for litigation authorized by Council
- Advertising There should be no costs, unless there is court ordered publication of litigation or defense actions
- Special Counsel To pay for special counsel as may be appointed by the Mayor and Council for legal advice on a specialized issue outside of General Counsel services

**Budget Detail
Court & Prosecutor**

	2010-11	2011-12	2011-12	2011-12	2012-13	2013-14	2014-15	2015-16
	<u>Actual</u>	<u>Adopted</u>	<u>YTD 05/31/12</u>	<u>Revised</u>	<u>Projected</u>	<u>Projected</u>	<u>Projected</u>	<u>Projected</u>
Judge contract		\$48,000	\$0.00	\$40,000	\$0	\$25,000	\$25,000	\$25,000
PT Clerk		\$30,000	\$0.00	\$0	\$0	\$0	\$15,000	\$15,000
computer capital		\$15,000	\$0.00	\$0	\$0	\$15,000		
computer support		\$2,500	\$0.00	\$0	\$0	\$2,500	\$2,500	\$2,500
supply		\$2,000	\$0.00	\$0	\$0	\$2,000	\$2,000	\$2,000
Furnishing Fixtures		\$25,000	\$0.00	\$0	\$0	\$25,000	\$0	\$0
Contract Prosecutor		\$0	\$0.00	\$0	\$10,000	\$10,000	\$10,000	\$10,000

Total Expense \$ 21,131 \$122,500 \$0.00 \$40,000 \$10,000 \$79,500 \$54,500 \$54,500

Cost Center Purpose: To pay for the costs of Prosecution and Municipal Court activity incurred by Tusayan

- Judge Contract To pay for a contract judge to serve the Municipal Court
- PT Clerk To pay for contract services for a part-time Court Clerk
- Computer Capital To pay the one time costs for purchasing computer hardware and software for the Court and Prosecutor functions
- Computer Support To pay the ongoing maintenance and operating costs of the court computer hardware and software for the Court and Prosecutor
- Supply To pay for supplies for the operation of the Court and Prosecutor
- Furnishing and Fixture: To pay the one time costs of purchasing furniture and equipment for the Court and Prosecutor
- Contract Prosecutor To pay for the costs of contracted prosecution services for Tusayan

**Budget Detail
Planning & Studies**

	2010-11	2011-12	2011-12	2011-12	2012-13	2013-14	2014-15	2015-16
	<u>Actual</u>	<u>Adopted</u>	<u>YTD 05/31/12</u>	<u>Revised</u>	<u>Projected</u>	<u>Projected</u>	<u>Projected</u>	<u>Projected</u>
Housing Needs Assessment		\$50,000		\$15,000	\$50,000	\$0	\$0	\$0
Development Fees Study		\$25,000	\$0.00	\$0	\$0	\$0	\$0	\$0
General Plan Update		\$75,000		\$0	\$75,000	\$0	\$0	\$0
Municipal Water		\$0		\$0	\$0	\$0	\$0	\$0
General Engineering Projects		\$25,000		\$25,000	\$25,000	\$25,000	\$25,000	\$25,000
Rewrite Code and Permits Project		\$50,000		\$20,000	\$30,000	\$0	\$0	\$0
Contract Planning Services		\$75,000		\$75,000	\$75,000	\$75,000	\$75,000	\$75,000
			\$185,808.99					

Total Expenses **\$36,109** **\$300,000** **\$185,808.99** **\$135,000** **\$255,000** **\$100,000** **\$100,000** **\$100,000**

Cost Center Purpose: **To pay for studies to plan for facilities and services for the development and operation of Tusayan**

- Housing Needs Assessment
To pay for contract services to review housing needs and development options for private ownership and rental of property within Tusayan
- General Plan Update
To pay for a contract to develop a General Plan for Tusayan as required by state law
- Municipal Water
To pay for a contract to determine value and costs of establishing a municipal water service to replace the two current private providers and the Tusayan Water Development Authority
- General Engineering Projects
To pay for general engineering costs not associated with an application for zoning or building
- Rewrite Code and Permits
To pay for contract services to amend and develop building and zoning codes for Tusayan from the Coconino County standards
- Contract Planning Services
To pay for general planning services and costs not directly tied to an application for zoning or building

**Budget Detail
Development & Permits**

	2010-11	2011-12	2011-12	2011-12	2012-13	2013-14	2014-15	2015-16
	<u>Actual</u>	<u>Adopted</u>	<u>YTD 05/31/12</u>	<u>Revised</u>	<u>Projected</u>	<u>Projected</u>	<u>Projected</u>	<u>Projected</u>
Wildan Permit Services		\$50,000		\$50,000	\$50,000	\$50,000	\$50,000	\$50,000
Zoning & Permits Services				\$25,000	\$25,000	\$25,000	\$25,000	\$25,000
Advertising				\$10,000	\$10,000	\$10,000	\$10,000	\$10,000
Supplies/Printing		\$10,000		\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
Fiber Optic Implementation		\$125,000		\$250,000	\$150,000	\$150,000	\$150,000	\$150,000

Total Expenses \$ - **\$185,000** **\$0.00** **\$55,000** **\$340,000** **\$240,000** **\$240,000** **\$240,000**

Cost Center Purpose: **To account for direct costs for processing applications for planning, zoning and building permits and any other project directly tied to development**

- Wildan Permit Services To pay for costs incurred by Wildan Engineering to process building permits
- Zoning & Permits To pay for contract costs incurred to process zoning and planning permit applications
- Advertising To pay for costs directly related to public notice advertising for planning and zoning applications
- Supplies and Printing To pay for costs to support planning, zoning and permit activities in Tusayan
- Fiber Optic Implementation To pay for costs of studies and implementation of improved internet and communication services within Tusayan using fiber optic technology

**Budget Detail
Public Safety**

	2010-11	2011-12	2011-12	2011-12	2012-13	2013-14	2014-15	2015-16
	<u>Actual</u>	<u>Adopted</u>	<u>YTD 05/31/12</u>	<u>Revised</u>	<u>Projected</u>	<u>Projected</u>	<u>Projected</u>	<u>Projected</u>
Police								
Sheriff		\$360,000	\$312,532.00	\$351,000	\$360,000	\$360,000	\$360,000	\$360,000
Allow Spec Events/Serv		\$10,000	\$0.00	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000
Rent			\$2,400	\$2,500				
law enforcement Needs Assessment					\$15,000	\$10,000		

Totals \$ 262,908 \$370,000 \$314,932.00 \$363,500 \$385,000 \$380,000 \$370,000 \$370,000

Cost Center Purpose: **To account for the costs incurred to enforce laws within Tusayan**

- Sheriff To account for contract costs with Coconino County Sheriff for law enforcement within Tusayan
- Allowance Special Events To account for additional costs incurred to support costs of special events requiring additional traffic control or law enforcement presence to support the activities
- Rent A charge was incurred, but reviewing to see why rent is being paid from the cost center
- Law Enforcement Needs Assessment To pay for a contract to investigate the feasibility and most appropriate long term law enforcement option (contract, in house, etc.) to serve Tusayan

**Budget Detail
Facilities & Grounds**

	2010-11	2011-12	2011-12	2011-12	2012-13	2013-14	2014-15	2015-16
	<u>Actual</u>	<u>Adopted</u>	<u>YTD 05/31/12</u>	<u>Revised</u>	<u>Projected</u>	<u>Projected</u>	<u>Projected</u>	<u>Projected</u>
Office Bldg		\$0	\$206,849.45	\$300,000	\$0	\$0	\$0	\$0
ADOT Ground Rental	\$4,800	\$4,800	\$2,800.00	\$4,800	\$30,000	\$30,000	\$30,000	\$30,900
Utilities	\$20,000	\$20,000	\$3,605.23	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000
Engineering	\$0	\$0	\$3,447.12	\$10,000	\$0	\$0	\$0	\$0
Furn, Fixtures & Equip	\$55,000	\$55,000	\$24,203.26	\$55,000	\$30,000	\$0	\$0	\$0
Custodial & Supply	\$15,000	\$15,000	\$1,008.04	\$10,000	\$15,000	\$15,000	\$15,000	\$15,000
Prop & Cas Ins	\$2,000	\$2,000		\$2,000	\$6,000	\$6,000	\$6,000	\$6,000
Parking Improvements	\$100,000	\$100,000		\$0	\$50,000	\$0	\$0	\$0
Staff Housing Project	0	\$0	\$0.00	\$10,000	\$250,000	\$0	\$0	\$0
			\$487.50					

Totals \$ 251,862 \$196,800 \$242,400.60 \$411,800 \$401,000 \$71,000 \$71,000 \$71,900

Cost Center Purpose: To account for the direct costs of Town owned facilities including Town Hall and Housing

- Office Building To account for the costs of purchasing the Town Hall buildings
- ADOT Ground Rental To account for the rental agreement costs with ADOT for Town Hall and Housing ground rental agreements
- Utilities To account for all utility costs associated with Town Hall and Housing facilities
- Engineering To account for design services for Town Hall, Housing and related parking/utilities
- Furniture Fixtures To account for furniture, fixtures and equipment purchased to be used in the Town Hall, Housing and other facilities
- Custodial Services To pay for cleaning and custodial services for all Town Facilities
- Property & Casualty To pay for all insurance costs specific to Town Hall and Housing facilities
- Parking Improvements To pay for improved parking for Town Hall
- Staff Housing Project To pay for acquisition of housing units to be purchased and placed on rental sites at the airport

Budget Detail
Parks & Recreation

	2010-11	2011-12	2011-12	2011-12	2011-12	2012-13	2013-14	2014-15	2015-16
	<u>Actual</u>	<u>Adopted</u>	<u>YTD 05/31/12</u>	<u>Revised</u>	<u>Projected</u>	<u>Projected</u>	<u>Projected</u>	<u>Projected</u>	<u>Projected</u>
Vehicle		\$25,000		\$0	\$25,000		\$0	\$0	\$0
Vehicle Operation		\$10,000		\$0	\$10,000		\$10,000	\$10,000	\$10,000
Projects Planning		\$100,000		\$0	\$0		\$50,000	\$50,000	\$50,000
Maintenance		\$15,000		\$0	\$20,000		\$20,000	\$25,000	\$25,000
Park Development			\$18,522.46	\$25,000	\$275,000		\$150,000	\$150,000	\$150,000

Total Parks & Rec \$0 \$150,000 \$18,522.46 \$25,000 \$330,000 \$230,000 \$235,000 \$235,000

Cost Center Purpose: To account for the costs of planning, developing, constructing, operating and maintaining parks, open space and recreation facilities for Tusayan

- Vehicle To purchase a multipurpose vehicle for maintaining town parks and property
- Vehicle Operation To pay for ongoing maintenance, operations, fuel and insurance on a town vehicle
- Projects Planning To pay for studies to determine costs, locations and needs for parks and recreation facilities
- Maintenance To pay for maintenance and operating costs of all Town park and recreation programs and facilities
- Park Development To pay for Town share of the costs of developing the identified parks, open space and recreation facilities

TOWN OF TUSAYAN, ARIZONA

RESOLUTION NO. 2012-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF TUSAYAN, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE TOWN CLERK ENTITLED "SECTION 3-2-1 OF THE TOWN CODE."

THAT certain document entitled "SECTION 3-2-1 OF THE TOWN CODE" attached hereto, three copies of which are on file in the office of the Town Clerk, is hereby declared to be a public record, and said copies are ordered to remain on file with the Town Clerk.

PASSED AND ADOPTED by the Mayor and Town Council of the Town of Tusayan, Arizona this _____ day of August, 2012.

Greg Bryan, Mayor

ATTEST:

APPROVED AS TO FORM:

Town Clerk

Town Attorney

TOWN OF TUSAYAN, ARIZONA
ORDINANCE NO. 2012-_____

**AN ORDINANCE OF THE TOWN OF TUSAYAN, COCONINO COUNTY,
ARIZONA, ADOPTING BY REFERENCE SECTION 3-2-1 OF THE
TOWN CODE.**

Section 1. Adoption by Reference. Pursuant to A.R.S. § 9-802 (as amended) the Town hereby adopts Section 3-2-1 of the Town Code that is declared a public record pursuant to Resolution No. 2012-_____ and is attached hereto.

Section 2. Effective Date. This Ordinance is to be effective when publication and posting pursuant to A.R.S. § 9-812 is accomplished.

Section 3. Copies of Section 3-2-1. At least three (3) copies of Section 3-2-1, and any future amendments or revisions, shall be kept on file in the office of the Town Clerk and on the Town website for public access. Additional copies may be purchased by the public. Copies placed for public access shall be readily available for public inspection during normal working hours.

Section 4. Severability. All ordinances, or parts of ordinances, adopted by the Town of Tusayan in conflict with provisions of this ordinance or any part of the Town Code adopted herein by reference, are hereby repealed, effective as of the day this ordinance is effective.

PASSED AND ADOPTED by a majority vote of the Mayor and Council of the Town of Tusayan, August __, 2012, to be effective when publication and posting, pursuant to A.R.S. § 9-812, is completed.

Greg Bryan, Mayor

ATTEST:

APPROVED AS TO FORM:

Clerk

Town Attorney

SECTION 3-2-1 TOWN MANAGER

- A. Office Established. The office of Town Manager is hereby established.
- B. Appointment of Town Manager. The Town Manager shall be appointed by majority vote of the Council on the basis of executive and administrative ability and shall hold office at the pleasure of the Council.
- C. Eligibility. No member of the Council, their spouse or relatives to the first degree shall be eligible for appointment as Town Manager until one year has elapsed after such Council member shall have ceased to be a member of the Council.
- D. Powers and Duties of Town Manager. The Town Manager is the administrative head of the government of the Town under the direction and control of the Council, except as otherwise provided in this article. He shall be responsible for the efficient administration of all the affairs of the Town that are under his control. In addition to his general powers as administrative head and not as a limitation thereon, it shall be his duty and he shall have the following powers:
 1. Law Enforcement. To see that all laws and ordinances of the Town and all franchises, contracts, permits, and privileges granted by the Council are faithfully observed and to report any failure in that regard to the Council. The Council shall then give such instruction and direction as it may desire for remedial, corrective or terminating action by the Manager.
 2. Authority Over Employees. To control, order and give direction to all heads of departments (other than Council-appointed officers) and to subordinate officers and employees of the Town under his jurisdiction through their department heads.
 3. Power of Appointment and Removal. To appoint, remove, promote, and demote any and all officers and employees of the Town, except the Town Attorney, who shall be appointed by the Council. All such actions of the Manager shall be subject to all applicable personnel ordinances, rules and regulations, and state statutes.
 4. Administrative Reorganization of Offices. To conduct studies and effect such administrative reorganization of offices, positions, or units under his direction as may be indicated in the interest of efficient, effective, and economical conduct of the town's business.
 5. Ordinances. To recommend to the Council for adoption such measures and ordinances as he deems necessary.
 6. Attendance at Council Meetings. To attend all meetings of the Council unless the Mayor excuses him individually or unless the Council excuses him, except when his removal is under consideration, in which case the Town Manager's attendance at a meeting shall be governed by the Arizona Open Meeting Act (A.R.S. § 38-431 *et seq.*, as may be amended). He may present recommendations relative to each item on the agenda for approval, rejection, or modification by the Council, and prepare the agenda as provided in Section 2-3-6.A.
 7. Financial Reports. To keep the Council at all times fully advised as to the financial condition and needs of the Town.
 8. Budget. To prepare and submit a proposed annual budget to the Council.
 9. Investigations and Complaints. To make investigations into the affairs of the Town and performance of any obligations of the Town and to report all findings to the Council. Further, it shall be the duty of the manager to investigate all complaints in relation to matters concerning the administration of the Town government. If the investigation involves the conduct of a person reporting directly to the Council (the Town Manager or Town Attorney) the Mayor and Vice-Mayor shall designate a person to conduct the investigation. If the Mayor and Vice Mayor cannot agree on such designation, the matter shall be referred to the Council.
 10. Public Buildings. To exercise general supervision over all public buildings, parks, and other public property under the control and jurisdiction of the Council.

ESCROW AGREEMENT

This Escrow Agreement (the “**Agreement**”) is made as of _____, 2012 by and between the Town of Tusayan, an Arizona municipal corporation (the “**Town**”), and Stilo Development Group USA Limited Partnership, an Arizona limited partnership (“**Stilo**”).

RECITALS

A. The Town and Stilo are party to that certain Pre-Annexation and Development Agreement, Agreement No. 2011-11-02, dated July 1, 2011 and recorded November 9, 2011 as instrument number 3610450, Records of Coconino County, Arizona (the “**Development Agreement**”) and the associated Memorandum of Development Agreement Exhibits dated November 17, 2011 and recorded November 23, 2011 as instrument number 3611694, Records of Coconino County, Arizona.

B. Among the parcels of real property subject to the Development Agreement are the following Coconino County tax parcels:

502-16-006 (the “**Kotzin Property**”) as depicted on Exhibit A; and

502-14-001 (the “**TenX Property**”) as depicted on Exhibit B.

C. Stilo owns the Kotzin Parcel and the TenX Parcel.

D. Pursuant to Sections 7(a) and 7(b) of the Development Agreement, Stilo is obligated to transfer title to 20 acres of the Kotzin Property (the “**Current Kotzin Parcel**”) and 20 acres of the TenX Property (the “**Current TenX Parcel**”) to the Town for no monetary consideration. Stilo believes that the property to be conveyed to the Town is presently worth \$10,000,000.

E. The precise legal description of the Current Kotzin Parcel is unknown but is generally depicted as outlined on Exhibit C.

F. The precise legal description of the Current TenX Parcel is unknown but is generally depicted as outlined on Exhibit D.

G. Pursuant to Sections 7(h) and 10(f) of the Development Agreement, should certain circumstances (as described therein) occur, the Town may elect to either:

1. Re-convey the Current Kotzin Parcel to Stilo in which case Stilo must convey an additional 20 acres of the TenX Property (the “**Future TenX Parcel**”) to the Town;
or
2. Re-convey the Current TenX Parcel to Stilo in which case Stilo must convey an additional 20 acres of the Kotzin Property (the “**Future Kotzin Parcel**”) to the Town.

H. The precise legal description of the Future Kotzin Parcel is unknown but is generally depicted as outlined and cross-hatched on Exhibit C.

I. The precise legal description of the Future TenX Parcel is unknown but is generally depicted as outlined and cross-hatched on Exhibit D.

J. Escrow number 11450318 (the “**First Escrow**”) has been opened at Stewart Title of Arizona, 150 N. Verde Street, Suite 102, Flagstaff, AZ 86001-5257 (Bobbie Acklin, escrow officer) (“**Stewart Title**”) to facilitate the closing of the transfer of title of the Current Kotzin Parcel and the Current TenX Parcel from Stilo to the Town.

K. Escrow number 11450319 (the “**Second Escrow**”) has been opened at Stewart Title to hold the deeds evidencing, and to facilitate the closing of the transfer of title of, the Future Kotzin Parcel and/or the Future TenX Parcel from Stilo to the Town.

L. The Development Agreement was determined to be a legislative act pursuant to stipulation in the matter of *Stilo Development Group USA, LP, et al. v. Town of Tusayan, et al.*, Case No. CV2012-00080, Coconino County Superior Court.

M. This Agreement implements the Development Agreement and is designed to govern both the First Escrow and the Second Escrow.

AGREEMENTS

1. *Recitals as Agreements.* The foregoing Recitals are true and correct and are incorporated herein as agreements.

2. *Deeds for Transfer of the Current Kotzin Parcel and the Current TenX Parcel.* Transfer of fee simple title to the Current Kotzin Parcel and the Current TenX Parcel shall be pursuant to deeds in the forms attached as Exhibit E and Exhibit F respectively, fully signed originals of which shall be deposited with Stewart Title contemporaneously with the delivery of a fully signed copy of this Agreement. The legal descriptions to be attached to each will be the respective legal descriptions shown on the Survey (defined below).

3. *Conditions Precedent to the Transfers of the Current Kotzin Parcel and the Current TenX Parcel.*

a. *Title Commitment.* Within ten (10) days after the delivery of a fully signed original of this Agreement to Stewart Title, Stilo shall cause Stewart Title to deliver an Arizona form title commitment for an extended owner’s policy of title insurance (“**First Closing Title Policy**”) in an amount to be agreed upon by the parties not later than fifteen (15) days prior to the date of the First Closing (as that date is determined pursuant to Section 8 hereof) with regard to the First Escrow (the “**First Escrow Title Commitment**”) to each of Stilo and the Town together with copies of all documents and other items referred to in the First Escrow Title Commitment as exceptions. Since precise legal descriptions of the Current Kotzin Parcel and the Current TenX Parcel are

not available as of the date hereof, the First Escrow Title Commitment will be based on the whole of the Kotzin Property and the TenX Property.

The Town shall have sixty (60) days to examine the Amended Title Commitment and to specify to Stilo in writing those items reflected therein that the Town will accept the Current Kotzin Parcel and the Current TenX Parcel subject to (the “**Permitted Encumbrances**”) and those matters reflected in the First Escrow Title Commitment that the Town finds objectionable. The Town need not object to any monetary encumbrances, which Stilo agrees to remove at or prior to the First Closing. If the Town makes any such written objection, Stilo shall have until closing of the First Escrow to use its good faith efforts to cure such objections and have the First Escrow Title Commitment updated to reflect such cure; provided, however, that Stilo shall have no obligation to spend more than \$3,500 (the “**Maximum Cure Amount**”) to effect such cure. If Stilo anticipates that the Maximum Cure Amount will be exceeded, Stilo shall notify the Town and within thirty (30) days thereafter the Town and Stilo shall mutually agree upon a substitute twenty (20) acre parcel to replace the parcel that is the subject of the objection for which the Maximum Cure Amount will be exceeded. The Town and Stilo shall continue this process until a replacement parcel can be identified. If a replacement parcel cannot be identified for which a Town objection can be cured at cost less than the Maximum Cure Amount, Stilo must cure the Town’s objection for the replacement parcel for which the lowest amount must be expended to cure the Town’s objection. If the Town fails to give written notice to Stilo of any objections during the sixty (60) day review period, it shall be deemed that all exceptions shown in the First Escrow Title Commitment are acceptable, and all such exceptions shall be Permitted Encumbrances

b. Survey. Stilo agrees to, as quickly as possible but in no event later than thirty days after the delivery of a fully signed original of this Agreement to Stewart Title, obtain a survey certified to Stilo, the Town and Stewart Title from an Arizona-licensed surveyor depicting, and providing legal descriptions for, the Current Kotzin Parcel, the Current TenX Parcel, the Future Kotzin Parcel and the Future TenX Parcel. At Stilo’s sole option, the survey may include depictions of and legal descriptions for additional portions of the Kotzin Property and the TenX Property. Within three (3) Business Days (defined below) of its receipt of the survey, Stilo shall provide a copy thereof to the Town and, upon such receipt, the Town shall have sixty (60) days to examine the survey with regard to Current Kotzin Parcel, the Current TenX Parcel, the Future Kotzin Parcel and the Future TenX Parcel and to specify to Stilo in writing those items reflected thereon that the Town finds objectionable. If the Town makes any such written objection, Stilo and the Town shall jointly work in good faith with the surveyor to resolve the Town’s objections but Stilo shall not be required to spend more than the Maximum Cure Amount to resolve any of the Town’s objections to the survey and to the condition of title, taken jointly, subject to Stilo’s obligation to identify a replacement parcel that is acceptable to the Town in accordance with Section 3.b above. Should the parties be unable to resolve any of the Town’s objections, the dispute will be resolved in the manner set forth in the Development Agreement. Upon the passage of the Town’s sixty (60) day examination and objection period without Stilo’s receipt of any written objections, or upon the

resolution of such objections, the survey, as revised if necessary (the “**Survey**”), shall be delivered to Stewart Title.

c. Amendment to First Escrow Title Commitment. Within 10 days after Stewart Title’s receipt of the Survey, Stewart Title shall amend the First Escrow Title Commitment (“**Amended Title Commitment**”) to cover only the Current Kotzin Parcel and the Current TenX Parcel as legally described on the Survey and shall deliver such amendment to the parties. Upon receipt of the Amended Title Commitment, the Town shall have the right to review and approve the Amended Title Commitment pursuant to a process consistent with the review and approval process set forth in Section 3.a above.

d. Environmental Reports. If Stilo has in its possession a Phase I environmental assessment report pertaining to the Current Kotzin Parcel and/or the Current TenX Parcel, Stilo shall, without representation or warranty, deliver such report/s to the Town within ten (10) days after the date hereof. If Stilo does not have such reports in its possession, it shall have no obligation to obtain one. The Town may also (at its expense) order a Phase I environmental report and additional environmental reports if necessary. If the Town objects to any parcel based on information provided in an environmental report, the Town must provide that objection to Stilo within forty-five (45) days after the delivery of a fully signed original environmental report. Thereafter, the parties shall work in good faith to resolve the Town’s objections, but Stilo shall have no financial obligation concerning the Town’s objections. If the Town’s objections cannot be resolved, the dispute shall be resolved in the manner set forth in the Development Agreement.

4. Inspection of the Current Kotzin Parcel and the Current TenX Parcel. At any time prior to the closing of the First Escrow, the Town shall have the right but not the obligation, at its sole cost, expense and risk, to enter upon and to examine and inspect the Current Kotzin Parcel and the Current TenX Parcel and to conduct any feasibility studies thereon that it may desire. Stilo shall be entitled to copies of all test results, inspection reports or feasibility reports generated as a result of any such study, including (without limitation) any environmental reports obtained by the Town pursuant to Section 3.d above; provided, however, that the Town does not warrant or represent the accuracy of any such items. Should the Town avail itself of the rights set forth in this Section, the Town shall indemnify and hold Stilo harmless from and against any and all costs, liabilities, claims, liens, encumbrances or causes of action (including, without limitation, reasonable attorneys’ fees) arising out of the Town’s actions taken in conjunction with exercising its rights under this Section, and such indemnification obligation shall survive the First Closing (defined below).

5. Representations and Warranties of Stilo.

a. Except as expressly set forth herein and in the deeds applicable to a conveyed parcel, Stilo makes no representations or warranties of any kind to the Town including, without limitation, the physical condition of the Current Kotzin Parcel, the Current TenX Parcel, the Future Kotzin Parcel and the Future TenX Parcel or their suitability for any particular purpose.

b. Stilo hereby warrants and represents that it has full authority to enter into and perform its obligations under this Agreement.

c. Stilo hereby warrants and represents that no real estate commission is due to be paid as a result of its involvement in the First Closing and hereby agrees to defend, indemnify and hold the Town harmless from and against any claim by third parties arising by, through or under it for brokerage, commission, finder's or any fees relative to this Agreement or the transfer of the Current Kotzin Parcel the Current TenX Parcel, the Future Kotzin Parcel or the Future TenX Parcel.

d. Neither the execution of this Agreement or any of the deeds described herein nor the consummation of the transactions contemplated hereby will constitute a default or an event which, with notice or the passage of time or both, would constitute a default under, or violation or breach of, any agreement, court order or other arrangement to which Stilo is a party or by which Stilo may be bound.

e. To Stilo's actual knowledge, there is no investigation, litigation or proceeding pending or threatened, which adversely affects any of the property described herein, Stilo's interest therein, or Stilo's ability to perform hereunder. Stilo has not received notice of and does not have any knowledge of, any pending or threatened investigation, litigation or proceeding in eminent domain, special assessment, zoning, or otherwise, which would adversely affect the property described herein.

f. To Stilo's actual knowledge, the property described herein is in compliance with all federal and state environmental laws, codes, orders, decrees, rules, regulations and ordinances and no "Environmental Pollutant" (defined below) has been stored or exists in, on, under or around the property described herein. No environmental legal action exists nor, to Stilo's actual knowledge, is there a basis for such an action with respect to the property. Without limiting the foregoing, for purposes of this Agreement, "**Environmental Pollutant**" shall mean any substances, wastes, pollutants, chemicals, compounds, mixtures or contaminants now or hereafter included within those respective terms under any now existing or hereafter or amended federal, state or local statute, ordinance, code or regulation which, due to its characteristics or interaction with one or more other substances, wastes, chemicals, compounds, mixtures or contaminants, damages or threatens to damage health, safety, or the environment and is required to be remediated by any law applicable to the property described herein, including (without limitation): The Resource Conservation and Recovery Act (RCRA, 42 U.S.C. §6901 et seq.), the Comprehensive Environmental Response Compensation and Liability Act (CERCLA, 42 U.S.C. §9601 et seq.) as amended, the Toxic Substance Control Act (TSCA, 15 U.S.C. §2601 et seq.), the Emergency Planning and Community Right to Know Act of 1986 (EPCRTKA, 42 U.S.C. §11001 et seq.), the Arizona Water Quality Control Program (A.R.S. Title 49, Chapter 2), the Arizona Hazardous Waste Disposal Act (A.R.S. Title 49 Chapter 5), the Arizona Underground Storage Tank Regulation Act (A.R.S. Title 49, Chapter 6) and/or any regulations promulgated pursuant to the foregoing. If any new information concerning any of the foregoing is discovered by Stilo

or if Stilo receives notice of any violation or claimed violation of any law, ordinance, rule or regulation relating to an Environmental Pollutant, Stilo shall give prompt written notice thereof to the Town prior to the close of escrow for the property for which new information is discovered or for which Stilo has received notice.

g. The provisions of this Section 5 shall survive for one year after the First Closing and Second Closing (as applicable).

As used in this Agreement, the phrase "to Stilo's actual knowledge" or words of similar import shall mean the actual (and not constructive or imputed) knowledge, without independent investigation or inquiry or duty to investigate or inquire, of Tom DePaolo. Tom DePaolo shall have no personal liability arising out of this Agreement.

6. *Pre-Closing Covenants of Stilo.* From the date hereof until the date of the First Closing:

a. Stilo shall maintain the Current Kotzin Parcel, the Current TenX Parcel, the Future Kotzin Parcel and the Future TenX Parcel in substantially the same manner as they are presently such that (i) at the First Closing, the Current Kotzin Parcel and the Current TenX Parcel shall be in substantially the same physical condition as they are as of the date hereof, and (ii) at the Second Closing (if the Second Closing occurs), the Future Kotzin Parcel and the Future Ten X Parcel (as the case may be) shall be in substantially the same physical condition as they are as of the date hereof; and

b. Stilo shall continue in effect any insurance coverage relative to the Current Kotzin Parcel, the Current TenX Parcel, the Future Kotzin Parcel and the Future TenX Parcel.

7. *Representations and Warranties of the Town.* The Town hereby warrants and represents that it has full authority to enter into and perform its obligations under this Agreement. The Town hereby further warrants and represents that no real estate commission is due to be paid as a result of its involvement in the First Closing and hereby agrees to defend, indemnify and hold Stilo harmless from and against any claim by third parties arising by, through or under it for brokerage, commission, finder's or any fees relative to this Agreement or the transfer of the Current Kotzin Parcel, the Current TenX Parcel, the Future Kotzin Parcel or the Future TenX Parcel. This Section 7 shall survive the First Closing and the Second Closing (as applicable).

8. *Closing of the First Escrow.* Upon satisfaction of the last of the conditions precedent set forth above for the transfer of the Current Kotzin Parcel and the Current TenX Parcel, the parties and Stewart Title will schedule a closing of the First Escrow (the "**First Closing**") which shall be on a Business Day in Coconino County, Arizona not more than 30 days after the satisfaction of the last of the conditions precedent. At the First Closing, the original deeds in the form of Exhibit E and Exhibit F will be recorded and, in addition, all of the following shall occur, it being understood that the performance or tender of performance of all matters set forth in this Section are mutually concurrent conditions:

a. The Town, at its sole cost and expense, shall deliver or cause to be delivered to Stewart Title such documents as may be reasonably necessary or appropriate to issue the First Closing Title Policy.

b. Stilo, at its sole cost and expense, shall deliver or cause to be delivered to Stewart Title the following:

i. A certificate informing the Town that Stilo is not a “foreign person” within the meaning of Section 1445(f)(3) of the Internal Revenue Code, as amended (the “Code”), and Regulations issued thereunder, such that withholding of tax is not required at the Closing.

ii. A standard Owner’s Policy of Title Insurance in the amount set forth in Section 3(a) above insuring that the Town is the owner of indefeasible fee simple title to the Current Kotzin Parcel and the Current TenX Parcel subject only to the Permitted Encumbrances, and the standard printed exceptions included in an Arizona standard form of Owner’s Policy of Title Insurance.

iii. Such other documents as may be reasonably necessary or appropriate to issue the First Closing Title Policy.

c. All normal and customarily proratable items including, without limitation, real property taxes, shall be prorated as of the First Closing, Stilo being charged for all relating to the period up to the First Closing and the Town being charged for all relating to the period on and after the First Closing. If the actual amounts to be prorated are not known as of the First Closing, the prorations shall be made on the basis of the best evidence then available and, thereafter, when actual figures are received, a cash settlement will be made between Stilo and the Town. No proration will be made in relation to insurance premiums, and any existing insurance policies will not be assigned to the Town. The provisions of this Section shall survive the First Closing.

d. In addition to the other costs and expenses specifically provided for herein, the costs and expenses of the First Closing shall be borne as follows:

i. Stilo shall be obligated for and shall pay:

A. The escrow fee, if any, charged by Stewart Title;

B. The cost of recording the deeds;

C. The premium for the standard Owner’s Policy of Title Insurance without endorsements (but not the additional premium for an extended owner’s policy);

D. The cost of the Survey; and

- E. Stilo's attorneys' fees;
- ii. The Town shall be obligated for and shall pay:
 - A. The additional premium for an extended owner's policy of title insurance, if desired, and for endorsements;
 - B. The Town's attorneys' fees;
- e. Upon completion of the First Closing, Stilo shall deliver possession of the Current Kotzin Parcel and the Current TenX Parcel to the Town.

9. *Deeds for Transfer of the Future Kotzin Parcel and the Future TenX Parcel.* Transfer of fee simple title to the Future Kotzin Parcel or the Future TenX Parcel, as the case might be, shall be subject to the Second Escrow and shall be pursuant to deeds in the forms attached as Exhibit G and Exhibit H respectively, fully signed originals of which shall be deposited with Stewart Title contemporaneously with the delivery of a fully signed copy of this Agreement. The legal descriptions to be attached to each will be the respective legal descriptions shown on the Survey.

10. *Conditions Precedent to the Transfer of the Future Kotzin Parcel or the Future TenX Parcel.*

a. *No Future Transfer.* The parties acknowledge that it is possible under the Development Agreement that neither the Future Kotzin Parcel nor the Future TenX Parcel will ever be transferred to the Town. Should either party ever conclude that such is the case, it will so notify the other party and Stewart Title in writing with reference to this Section and to the Second Escrow (the "**Notification**"). Should the other party disagree with such conclusion, it shall so notify both the first party and Stewart Title, in writing and within 30 days of receipt of the Notification (the "**Disagreement Notice**"), upon which the parties will attempt in good faith to resolve the disagreement and, should they be unable to do so, the disagreement will be resolved pursuant to the terms of the Development Agreement. However, should the other party fail to timely provide a Disagreement Notice, Stewart Title is hereby directed to destroy the deeds concerning the Future Kotzin Parcel and the Future TenX Parcel, to terminate the Second Escrow and to so notify each party.

b. *Future Transfer.* If either party advises Stewart Title and the other party in writing (the "**Second Closing Notice**") that, pursuant to the Development Agreement, one or the other of the deeds subject to the Second Escrow is to be recorded, the other party shall have the rights and remedies available to it under the Development Agreement to contest any assertion made in the Second Closing Notice. Upon resolution of such contest, or if both parties agree that, pursuant to the Development Agreement, one or the other of the deeds subject to the Second Escrow is to be recorded, the parties shall so notify Stewart Title and, thereafter, the conditions described in Section 3(a) and Section 3(d) of this Agreement shall apply, with reasonable and necessary reference to the Future Kotzin Parcel, the Future TenX Parcel and a Second Escrow Title

Commitment (which shall be with regard to only the Future Kotzin Parcel and the Future TenX Parcel).

The parties acknowledge and agree that in no circumstance will both deeds subject to the Second Closing ever be recorded.

11. *Incorporation of Other Provisions with regard to the Second Closing.* Should it ever be anticipated that one or the other of the deeds subject to the Second Closing is to be recorded, the provisions of Section 4, Section 5, Section 6, Section 7 and Section 8 hereof shall apply, with reasonable and necessary reference to the Future Kotzin Parcel, the Future TenX Parcel, the Second Escrow Title Commitment and a Second Closing and corresponding revisions to each such section. Within thirty (30) days following the Second Closing Notice, the parties shall deliver to Stewart Title amended and restated escrow instructions, amended to reflect such changes. If the parties are not able to agree upon such amended escrow instructions, the dispute shall be subject to the terms of the Development Agreement.

12. *Additional Provisions with regard to the Second Closing.* In addition to any other documents to be delivered at the Second Closing, the Town shall deliver a Special Warranty Deed in favor of Stilo, or Stilo's designee, transferring to title to either the Current Kotzin Parcel or the Current TenX Parcel, as the case might be, it being understood and agreed that, if the Town is to take title to the Future Kotzin Parcel, the Town will contemporaneously transfer title to either the Current Kotzin Parcel or the Current TenX Parcel to Stilo or Stilo's designee^[WJS1]. The title transferred to Stilo or its designee shall be free and clear of any encumbrances not of record at the time of the First Closing and in a form reasonably acceptable to Stilo, and the Town shall provide a standard owner's policy of title insurance on such property to Stilo or its designee in the amount set forth in Section 3(a) hereof.

13. *Notices.* Any notice provided or permitted to be given under this Agreement shall be in writing and shall be served by at least one of the following methods: (a) depositing same in the United States mail or with an overnight courier service, addressed to the party to be notified, postage prepaid and certified with return receipt requested if mailed; (b) by delivering the same in person to such party; or (c) by facsimile provided the sender obtains a confirmation of successful transmission. Notice given in accordance with this Section shall be effective upon the earlier of: actual receipt (or refusal of receipt), however given or received; or 72 hours after deposit in the mails; or one (1) Business Day after deposit with an overnight courier service, in the manner set forth above; and notice given in any other manner shall be effective only upon actual receipt (or refusal of receipt) at the address of the addressee. Notwithstanding the foregoing, notices actually received by any party, however given or received, always shall be effective and shall be deemed effective upon the earlier of: actual receipt, or the end of the time period for effectiveness specified in this Section for the method of delivery actually utilized. For purposes of notice, the addresses and facsimile numbers of the parties are as follows (or such other addresses or facsimile numbers as either party may from time to time furnish in writing to the other party):

If to Stilo, to: Stilo Development Group USA. LP
c/o Tom DePaolo
7610 East McDonald
Scottsdale, Arizona 85250
Facsimile: () [WJS2]

With a copy to: Grady Gammage
Gammage & Burnham, PLC
Two North Central Avenue, 15th Floor
Phoenix, Arizona 85004-4470
Facsimile: (602) 256-4475

If to the Town, to: Town Manager
Town of Tusayan
P.O. Box 709
Tusayan, Arizona 86023
Facsimile: (928) 638-9910

With a copy to: Town Attorney
Town of Tusayan
P.O. Box 709
Tusayan, Arizona 86023
Facsimile: (928) 638-9910

14. Assignment. Neither party may assign their rights or obligations under this Agreement without, in each case, the prior written permission and consent of the other party, which permission and consent may be granted or denied in such other party's sole discretion.

15. Binding Effect; No Third Party Benefit. This Agreement shall inure to the benefit of and be binding on the parties hereto. This Agreement is for the sole benefit of Stilo and the Town, and no third party (including, without limitation, any real estate broker or any subsequent owners of any of the real property effected hereby) is intended to be a beneficiary of or have the right to enforce this Agreement.

16. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Arizona. Any claim or dispute arising out of or related to this Agreement or the enforcement or interpretation hereof shall be brought in a court of competent jurisdiction sitting within Coconino County, Arizona.

17. Default, Termination and Remedies. If either party fails to perform any of its obligations or agreements hereunder, the other party shall have the rights and remedies set forth in the Development Agreement.

18. Entire Agreement; Exhibits; No Oral Modification. The Development Agreement and this Agreement (including the Exhibits hereto) form the entire agreement between Stilo and the Town concerning the sales of the real property described herein and no modification hereof or

subsequent agreement relative to the subject matter hereof shall be binding on either party unless reduced to writing and signed by the party to be bound.

19. Miscellaneous. Whenever herein the singular number is used, the same shall include the plural, and the plural shall include the singular where appropriate, and words of any gender shall include the other gender where appropriate. The headings of the Sections contained in this Agreement are for convenience only and shall not be taken into account in determining the meaning of any provision of this Agreement. The words “**hereof**” and “**herein**” refer to this entire Agreement and not merely the Section in which such words appear unless the clear meaning is otherwise. As used herein, the term “**Business Day**” shall mean each day Monday through Friday except days on which Stewart Title is closed or national banks located in Flagstaff, Arizona are authorized or required by law or other governmental actions to close.

20. Multiple Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this instrument to produce or account for more than a single counterpart containing the respective signature of, or on behalf of, each of the parties hereto. A signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

21. Construction. This Agreement and any documents delivered pursuant hereto shall be construed without regard to the identity of the person who drafted the various provisions thereof. Moreover, each and every provision of this Agreement and such other documents shall be construed as though both parties hereto had participated equally in the drafting thereof. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

22. Recordation. Neither this Agreement nor any memorandum thereof shall be recorded in the office of the county clerk or recorder of the county in which the subject real property is located.

23. Attorneys' Fees. In the event of litigation between the parties in connection with this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. The obligation in the immediately preceding sentence shall survive both the First Closing and the Second Closing.

24. IRS Real Estate Sales Reporting. Stilo and the Town hereby appoint Stewart Title as, and Stewart Title agrees to act as “the person responsible for closing” the transactions which are the subject of this Agreement, pursuant to Code Section 6045(e). Stewart Title shall prepare and file the informational return (IRS Form 1099-B) and any other necessary reports, returns and statements if and as required by, and otherwise shall comply with the terms of, Code Section 6045(e). Stewart Title further agrees to indemnify and hold Stilo, the Town and their respective attorneys harmless for, from and against all claims, costs, liabilities, penalties and expenses

resulting from Stewart Title's failure to file the appropriate reports and otherwise comply with the terms of the Code pursuant to this Section.

25. *Time is of the Essence; No Waiver.* Time is of the essence of this Agreement and every term, covenant and condition hereof. No waiver or omission by any party to enforce any rights or remedies under this Agreement shall constitute a waiver of such rights or remedies or to require the other party's strict compliance with the terms hereof. Any waiver by any party, including a waiver of default, in any one instance shall not constitute a continuing waiver or a waiver of any other default or in any other instance.

THE TOWN:

THE TOWN OF TUSAYAN, an Arizona municipal corporation

ATTEST:

Town Clerk

By: _____
Greg Bryan, Mayor

STILO:

STILO DEVELOPMENT GROUP USA LIMITED PARTNERSHIP an Arizona limited partnership

By: _____
Printed Name: _____
Its: _____

ACKNOWLEDGMENT OF STEWART TITLE

The undersigned hereby acknowledges receipt of this Agreement executed by Stilo and the Town on _____, 201__ and agrees to act as Escrow Agent in accordance with the terms hereof.

STEWART TITLE OF ARIZONA

Address for Notices to Stewart Title:

Stewart Title of Arizona
150 N. Verde Street, Suite 102
Flagstaff, Arizona 86001-5257
Attn: Bobbie Acklin
Facsimile: 928-779-3277

By: _____

Print Name: _____

Title: _____

Date: _____

LIST OF EXHIBITS

- | | | |
|-----------|---|---|
| Exhibit A | — | Depiction of the Kotzin Property |
| Exhibit B | — | Depiction of the TenX Property |
| Exhibit C | — | Depiction of the Current Kotzin Parcel and the Future Kotzin Parcel |
| Exhibit D | — | Depiction of the Current TenX Parcel and the Future TenX Parcel |
| Exhibit E | — | Deed for the Current Kotzin Parcel |
| Exhibit F | — | Deed for the Current TenX Parcel |
| Exhibit G | — | Deed for the Future Kotzin Parcel |
| Exhibit H | — | Deed for the Future TenX Parcel |