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BEFORE THE ARIZONA CORPORATION COMMISSION

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MARC SPITZER, COMMISSIONER
WILLIAM A. MUNDELL, COMMISSIONER
MIKE GLEASON, COMMISSIONER
KRISTEN K. MAYES, COMMISSIONER

IN THE MATTER OF DIVERSIFIED WATER UTILITIES, INC. TO EXPAND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY TO INCLUDE ALL OF SECTION 13, 14, 15, 23 AND THAT PORTION OF SECTION 16 EAST OF RAILROAD TRACKS ALL IN T3S, R83, PINAL COUNTY, ARIZONA.	DOCKET NO.: W-02859A-04-0844
IN THE MATTER OF THE APPLICATION OF JOHNSON UTILITIES COMPANY FOR AN EXTENSION OF ITS EXISTING CERTIFICATE OF CONVENIENCE AND NECESSITY FOR WATER SERVICE.	DOCKET NO. WS-02987A-04-0869 **DIVERSIFIED WATER UTILITIES, INC. RESPONSE TO JOHNSON UTILITIES COMPANY'S MOTION TO CONTINUE AND MOTION TO SEVER**

Diversified Water Utilities, Inc. ("Diversified") hereby responds to the Motion to Continue the Proceedings in the above captioned matters filed by Johnson Utilities Company ("JUC") and moves to sever its applications if the JUC application is not going forward in a timely fashion. If this were a typical application for extension of a Certificate of Convenience and Necessity, ("CC&N"), Diversified would likely have no objection to a reasonable continuance. But this is not a usual case and JUC's attempt to hold Diversified hostage for at least an additional eight-month period without being afforded the opportunity to present its separate case and demonstrate that the public interest will be served by an

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expansion of its CC&N for reasons separate and apart from JUC's case is unconscionable and contrary to the rules and regulations governing CC&N applications.

Diversified does not, however, object to the entry of an order either dismissing or continuing JUC's pending application, if JUC is not ready to proceed, so long as Diversified's application is severed and moves forward in a timely fashion.

Diversified's Application Stands on its Own.

As the Commission knows, this consolidated matter involves two separate applications. Diversified's Application encompasses significantly greater territory than the JUC application. Additionally, Diversified has filed a separate Application to Amend Decision No. 63960, as amended, and Request for Expedited Action in Docket Nos. W-02234A-00-0371, WS-02987A-99-0583, WS-02987A-00-0618, W-02859A-0074 and W-0395A-00-0784. Both of Diversified's applications are founded upon the Commission's prior action in Decision No. 63690, dated September 4, 2001 (as amended by Decision Nos. 64062 and 65840) (the "Prior CC&N Proceeding"). Both of Diversified's applications seek to extend Diversified's certificated area over the area the Utility Staff and the Hearing Division had recommended be certificated to Diversified in the prior matter.

Simply put, Diversified believes that it would already be the certificated water provider for the area encompassed in its application **but for** the manipulation of George Johnson, JUC and Pinal County in forming a defective and void County Domestic Water Improvement District (the Skyline Domestic Water Improvement District) in 2001. The Skyline District encompassed the area Diversified seeks to serve (as well as a significant

portion of Diversified's existing certificated area). Diversified's belief is founded upon the express language contained in Decision No. 64062, which, at page 33, lines 9-12, provides:

> "With respect to Parcel 2, ***because of uncertainty with respect to the Skyline District and potential litigation in state court***, we shall deny all water applications for this parcel ***at this time***, but shall approve JUC's application to provide wastewater service."(*Emphasis added*).

In 2004, at great cost and expense to Diversified, the Pinal County Board of Supervisors (the "County Board") declared the Skyline Domestic Water Improvement District null and void *ab initio* and rescinded the Resolution creating the District. *See*, County Board Resolution No. 033104-DWU attached hereto as Exhibit A. Moreover, after becoming familiar with Diversified, its operations and recognizing Diversified's ability to provide reliable service to its customers, the County Board has declared its support for the certification of the area to Diversified. In particular, the County Board, in Resolution No. 033104-DWU, resolved that:

> Pinal County and the Board of Supervisors therefore, support the reconsideration and amendment of Arizona Corporation Decision No. 65840 (Docket Nos. W-02234A-00-0371, WS-02987A-99-0583, WS-02987A-00-0618, W-02859A-0074 and W-0395A-00-0784, as amended and supplemented) or such other application Diversified may file during the calendar year 2004 so that Diversified's Certificate of Convenience and Necessity is expanded to include the territory described in Exhibit B . . . (i.e., most of the area ACC's Staff and ACC Hearing Division recommended be granted to Diversified, but limited to the area generally falling east or [sic] the railroad tracks and west of the CAP canal) and furthers [sic] recommends and request that Pinal County Staff file letters and testimony in support thereof and withdraw the testimony previously submitted in that docket on behalf of Pinal County Board of Supervisors in support of Johnson Utilities, L.L.C.'s request to obtain a certificate of

> convenience and necessity to provide domestic water service to the area, as may be reasonably requested by Diversified"

Diversified contends that the record created in support of Decision No. 63690, as amended, supplemented by County Board Resolution No. 033104-DWU is sufficient to support the granting of either of Diversified's pending applications and that no material change in circumstances has occurred. Diversified has already indicated that it is willing to participate in an evidentiary hearing to update the record, if Staff believes such action is necessary and prudent. What Diversified desires is an opportunity to make a record and have the Commission render a decision on its applications. Diversified, therefore, vigorously opposes JUC's suggestion that any group of landowners can preclude a public service corporation from seeking to amend a prior decision pursuant to A.R.S. §40-252 or Diversified from going forward with one or both of its applications. Importantly, most of these same landowners made written requests for water and wastewater service prior to 2001. Some of these same landowners testified under oath that there was need for service in 2001, even though they had no immediate development plans for the lands.

<u>The Public Interest, Not the Landowner Is the Controlling Factor.</u>

In *Davis v. Corporation Commission*, 96 Ariz. 215, 393 P.2d 909 (1964), the Arizona Supreme Court quoted the following passage of the Commission's decision under review approvingly:

> "The public interest is always the thing to which this Commission must give first consideration. [Allowing the area] to remain gerrymandered in small non-integrated tracts served by different companies must inevitably injure both the consumer and the companies." 96 Ariz. at 217.

The *Davis* court also affirmed the holding of *Pacific Greyhound Lines v. Sun Valley Bus Lines, Inc.*, 70 Ariz. 65, 72, 216 P.2d 404, 409 (1950) that:

> "Certificates of convenience and necessity can only be acquired from the corporation commission by an affirmative showing that its issuance would best serve the public interest and not by estoppel or laches."

In the case of *James P. Paul Water Co. v. Ariz. Corp. Com'n*, 137 Ariz. 426, 429, 671 P.2d 404 (1983) the Arizona Supreme Court further explained:

> "Under this system [of regulated monopoly], the Commission is statutorily required to investigate all applicants for a certificate of convenience and necessity for a given area, *see* A.R.S. §§ 40-281 to 285, and to issue a certificate only upon a showing that the issuance to a particular applicant would serve the public interest."

In short, it is the public interest, taken as a whole, and not any one factor (e.g., who the landowner prefers or the immediacy of the need) that must be determined by the Commission. The public interest includes, without limitation, consideration of the need for the orderly and logical expansion of an existing service area, reliability and continuity of service, and providing certainty for planning purposes, both for the customers and the utility.

<u>A Landowner's Request and Plans Are Not Determinative.</u>

Importantly, nothing in A.A.C. R 14-2-402 (governing applications for CC&Ns) requires that a request for service accompany the application or that there be a demonstration of immediate need. The fact that Staff questioned the absence of such a

request in its letter of December 7, 2004 to Diversified is not the equivalent to a Commission requirement and no such requirement is present in the rule.[1] While an applicant for a CC&N is required to provide "an estimate of the number of customers to be served for each of the first five years of operation, including documentation to support the estimate," there is no minimum threshold specified by the rule or any order of the Commission to Diversified's knowledge.

Without citation to a single case or rule, JUC effectively contends that the Commission cannot look beyond the avowals of the landowner to determine the public interest. According to JUC, if the landowner retracts its statements as to need, the Commission must immediately halt consideration of a pending application for extension of a CC&N. In fact, JUC has intimated that if the landowner prefers one provider to another, then the landowner's preference controls.

JUC's position is directly contrary to the holding in the *James P. Paul* case which mandates that the Commission undertake an investigation, and upon "an affirmative showing that its issuance would best serve the public interest" grant a CC&N. JUC's position attempts to hand over the Commission's authority to the landowners and subject the Commission to manipulation.

Moreover, if the position asserted by JUC is taken literally, the Commission would not be able to issue a CC&N over a single lot until the landowner requested service. It cannot be seriously suggested there is such a requirement under Arizona law. A

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[1] Staff ultimately found Diversified's Application to be correct and complete without Diversified providing a single request for service from Diversified.

particular landowner's need for service is not determinative of whether there is a need and necessity "for the CC&N." The latter is judged against the public interest, while the former is personal to the landowner.

Additionally, the affidavits of the landowners submitted in this case warrant careful scrutiny and must be tested through discovery and cross-examination. Firstly, most of these same landowners are believed to have presented requests for water and sewer service, albeit to JUC. If discovery is allowed to proceed, this can be substantiated. One or more of the landowners are believed to have testified at the Prior CC&N Proceeding that a CC&N should be granted even though no development was imminent.[2] The subject property has high density zoning already in place. Yet now each landowner uniformly insists that there is no need for water service at this time. Before staying the proceeding based upon these avowals, Diversified should have an opportunity to pursue discovery and investigate the truth of these allegations.

JUC is alleged to have close business ties with Connelly Wolfswinkel. *See,* Paragraphs 76-80 of the Complaint filed in *Lennar Communities Development, Inc. v. Sonoran Utility Services, L.L.C., et al.*, Maricopa County Superior Court Case No. CV2005-002548 attached hereto as Exhibit B. Mr. Wolfswinkel is believed to be related to, or to have an interest in, all or most of the landowners who have filed affidavits supporting JUC's Motion to Continue. The landowners of the Bella Vista Project objected to service by Diversified in the Prior CC&N Proceeding which the Utility Staff and Hearing

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[2] Diversified intends to supplement this pleading with Citations to the record of the Prior CC&N Proceeding where one or more developers made such a request.

Division weighed and found that the public interest outweighed their objections. Certainly Diversified's efforts to secure an extension of its CC&N should not be derailed on the basis of these affidavits or continuing landowner objections.

Moreover, under appropriate circumstances, such as those involved in Diversified's applications, extending a certificate before there is an immediate need for service can advance the public interest. Diversified asserts that the present record already justifies the grant of its Application to Amend Decision No. 63960, as amended, pursuant to A.R.S. § 40-252. Diversified will be prepared to supplement the record of its CC&N Application, as well as its Application to Amend with additional evidence demonstrating that regardless of the development plans of the present landowners, the public interest will be served by extending its CC&N. *See*, Affidavit of Scott Gray attached hereto as Exhibit C.

Diversified is Entitled to a Decision on Its CC&N Application.

A.A.C. R 14-2-411C requires the Commission to approve or reject a CC&N Application within 150 days after an application is deemed administratively complete. Diversified received a Sufficiency Letter dated February 25, 2005. A.R.S. 40-282B requires the Commission to make its determination "after a hearing." While Diversified has already willingly extended the time frame applicable to this case and may request a short continuance once the Commission determines the scope of the proceeding, Diversified has not and does not currently intend to waive its right to present its case on its CC&N Application.

While A.A.C. R 14-2-411C.8 permits the Commission to suspend the time-frame rules on its own motion, the rule is not intended as a substitute method of making substantive determinations. Yet, JUC's Motion to Continue is premised upon a what it asserts is a truism: that a landowner's statement "there is no need for water service at this time" forecloses the possibility of a Commission finding that the public interest will be served by granting a CC&N encompassing the parcel. Granting the Motion would constitute a substantive determination and is neither a proper use of a Motion to Continue or A.A.C. R 14-2-411C.8.

Diversified is entitled to a hearing and an opportunity to present evidence that the public interest will be served by granting its Application. It is entitled to that opportunity within a reasonable time frame. Granting JUC's Motion would effectively deprive Diversified of these rights.

The Commission Has Already Determined a Need Exists.

JUC would like to hold a sewer certificate for an area, while simultaneously claiming there is no need for water service. It cannot have it both ways. As water usage is a prerequisite to a need for sewer service, there cannot be a need for sewer service unless there is a like need for water service. By granting a sewer CC&N to JUC, the Commission has already concluded a need exists for both water and sewer service. Either the determination is entitled to *res judicata* affect and may be relied upon by both Diversified and JUC (both were parties to the action where the determination was made) or the determination is factually incorrect and necessitates the amendment of Decision No. 64062 to delete JUC's sewer CC&N over "Parcel 2" pursuant to A.R.S. § 40-252. *See, Davis v.*

Corporation Commission, 96 Ariz. 215, 393 P.2d909 (1964) (holding a substantial portion of a CC&N could be deleted based upon new evidence, after notice and opportunity to be heard under A.R.S. § 40-252.). The *Davis* case also puts to rest JUC's claim that amending Decision No. 64062 would constitute a collateral attack on that Decision. ("There is no merit in appellant's contention that this case involves a collateral attack on the prior order of the Commission ..." 96 Ariz. at 219).

Relief Requested.

The Motion should be denied. Alternatively, the Motion can be granted as to the JUC application only and Diversified's Application should be severed from the JUC case and allowed to proceed. JUC should be estopped from seeking a CC&N, or claiming a right to serve the area until the landowners have requested service. JUC is now bound by its representations made to the Commission that there is no need or necessity for water service to the area. In any event, discovery should not be stayed. Without discovery, Diversified cannot inquire into the underlying accuracy of the landowners' affidavits and whether the public interest will be served by granting Diversified's application.

DATED this 4th day of May, 2005.

CURTIS, GOODWIN, SULLIVAN,
UDALL & SCHWAB, P.L.C.

By: _____

William P. Sullivan
2712 North 7th Street
Phoenix, Arizona 85006-1090
Attorneys for Diversified Water Utilities, Inc.

PROOF OF AND CERTIFICATE OF MAILING

I hereby certify that on this 4th day of May, 2005, I caused the foregoing document to be served on the Arizona Corporation Commission by delivering the original and thirteen (13) copies of the above to:

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Mary Walker

1620\-3-2 (2004 CC&N App)\Pleadings\Response to Mtn to Cont.doc

EXHIBIT A

RESOLUTION NO. 033104-DWU

A RESOLUTION OF THE BOARD OF SUPERVISORS OF PINAL COUNTY, ARIZONA SETTLING CERTAIN LITIGATION PENDING IN MARICOPA COUNTY SUPERIOR COURT ENTITLED *DIVERSIFIED WATER UTILITIES, INC. v. PINAL COUNTY et al.*; DECLARING VOID *AB INITIO* RESOLUTION NO. 031401-SDWID, THE SKYLINE DOMESTIC WATER IMPROVEMENT DISTRICT AND ALL ACTIONS TAKEN IN FURTHERANCE THEREOF; VOIDING AND/OR TERMINATING THAT CERTAIN AGREEMENT BETWEEN THE SKYLINE DOMESTIC WATER IMPROVEMENT DISTRICT AND SHEA UTILITY SERVICES COMPANY, INC. ("SHEA SERVICES") AND JOHNSON UTILITIES L.L.C., AN ARIZONA PUBLIC SERVICE COMPANY ("JOHNSON UTILITIES"), DATED JULY 11, 2001; DISMISSING THE PETITIONS TO FORM THE SKYLINE DOMESTIC WATER IMPROVEMENT DISTRICT; ADOPTING A POLICY GOVERNING CERTAIN PETITIONS TO FORM DOMESTIC WATER IMPROVEMENT DISTRICTS; FINDING DIVERSIFIED WATER UTILITIES, INC. TO BE A FIT AND PROPER WATER PROVIDER AND SUPPORTING DIVERSIFIED WATER UTILITIES, INC. IN ITS EFFORTS TO HAVE THE ARIZONA CORPORATION COMMISSION EXPAND ITS CERTIFICATED AREA IN PINAL COUNTY, ARIZONA.

WHEREAS, prior to February 28, 2001 petitions were submitted to the Board of Supervisors requesting the formation of the Skyline Domestic Water Improvement District pursuant to Arizona Revised Statutes Sections 48-901 *et seq.*;

WHEREAS, after notice a public hearing was conducted on the petitions and the matter was taken under advisement;

WHEREAS, on or about March 8, 2001 the Board of Supervisors were notified that petitions were being withdrawn and the withdrawal was accepted on March 9, 2001;

WHEREAS, between March 12 and March 13, 2001 new petitions were submitted requesting the Board of Supervisors form the Skyline Domestic Water Improvement District ("Skyline");

WHEREAS, on March 14, 2001 the Board of Supervisors summarily adopted Resolution No. 031401-SDWID purportedly creating Skyline, with the Board of Supervisors to act as the Board of Directors of Skyline;

WHEREAS, Diversified Water Utilities, Inc. ("Diversified"), a public service corporation certificated by the Arizona Corporation Commission ("ACC") to serve much of the territory encompassed by Skyline, filed an action challenging the creation of Skyline which action is pending in Maricopa Superior Court as Cause No. CV2002-003724 (consolidated with Case No. CV2003-006223) and entitled *Diversified Water Utilities, Inc. v. Pinal County, et al.*;

WHEREAS, Pinal County, the Board of Supervisors, Skyline and the individual members of the Board of Supervisors and the Board of Skyline are desirous of resolving and settling the aforementioned litigation and establishing a policy setting forth certain criteria that must be met to demonstrate that the public convenience, necessity or welfare will be promoted by the establishment or extension of a domestic water improvement district where a water provider authorized by law to serve the public already exists in the vicinity of the area sought to be included in a domestic water improvement district;

WHEREAS, the Board of Supervisors has authority, *inter alia*, to prosecute, defend and compromise actions to which the County is a party, pursuant to A.R.S. §11-251(14); to make and enforce necessary rules and regulations for the government of its body, the preservation of order and the transaction of businesses, pursuant to A.R.S. §11-251(21); to do and perform all other acts and things necessary to the full discharge of its duties as the legislative authority of the county government, pursuant to A.R.S. §11-251(30); to make and enforce all local, police, sanitary and other regulations not in conflict with the general law, pursuant to A.R.S. §11-251(31); and, in the conduct of county business, to adopt, amend and repeal all ordinances necessary or proper to carry out the duties, responsibilities and functions of the county which are not otherwise specifically limited by section 11-251 or any other law or in conflict with any rule or law of this state, pursuant to A.R.S. §11-251.05;

NOW WHEREFORE, the Board of Supervisors, in furtherance of such settlement, based upon the entire record developed before the Board of Supervisors and in the litigation:

FINDS, CONCLUDES AND RESOLVES that in the action entitled *Diversified Water Utilities, Inc. v. Pinal County, et al.*, Maricopa County Cause No. CV2002-003724, Judge Kenneth Fields made a determination that the requirements of A.R.S. § 48-906(A) and -902(G) were not or may not have been met at the time Resolution No. 031401-SDWID was adopted on March 14, 2001 purporting to create the Skyline Domestic Water Improvement District;

FURTHER FINDS, CONCLUDES AND RESOLVES that, at the time Resolution No. 03401-SDWID was adopted on March 14, 2001, the proposed Skyline Domestic Water Improvement District was composed of discontiguous areas located within six miles of the boundaries of the City of Mesa and the Town of Queen Creek and that neither municipality had consented to the formation of the Skyline Domestic Water Improvement District;

FURTHER FINDS, CONCLUDES AND RESOLVES that Resolution No. 031401-SDWID, Skyline and all actions taken on behalf of or in furtherance of Skyline, including, without limitation, any agreements entered into with Skyline or the Board on behalf of Skyline, were and are void *ab initio* and of no force or effect and that Resolution No. 031401-SDWID is repealed;

FURTHER FINDS, CONCLUDES AND RESOLVES, in the exercise of its discretion pursuant to A.R.S. §48-906(B), that the territory set forth in the petitions relating to the request to form the Skyline Domestic Water Improvement District that led to the adoption of Resolution No 031401-SDWID should not have been incorporated into an improvement district and all further proceedings on the petitions are hereby dismissed;

FURTHER FINDS, CONCLUDES AND RESOLVES that at this time:

1. The public convenience, necessity or welfare is not promoted by duplication of water providers and water systems in the area described in Exhibit A (attached hereto and incorporated by reference), plus any natural fill area east of the railroad tracks and the area described in Exhibit A;

2. Diversified holds a certificate of convenience and necessity issued by the Arizona Corporation Commission (ACC) to provide domestic water service to much of the area described in Exhibit A;

3. Over the past four years through participation in proceedings before the Arizona Corporation Commission, public hearings before this Board and Maricopa Superior Court Case Nos. CV2002-003724 and CV2003-006223, the County Defendants have become familiar with Diversified, its operations and recognize Diversified's ability to provide reliable water service to its customers and that Diversified is ready, willing and able to provide reliable domestic water service to the area described in Exhibit A, plus any natural fill area east of the railroad tracks and the area described in Exhibit A, in accordance with the rules, regulations and laws that govern its operations;

4. Pinal County and the Board of Supervisors therefore, support the reconsideration and amendment of Arizona Corporation Commission Decision No. 65840 (Docket Nos. W-02234A-00-0371, WS-02987A-99-0583, WS-02987A-00-0618, W-02859A-0774 and W-0395A-00-0784, as amended and supplemented) or such other application Diversified may file during calendar year 2004 so that Diversified's Certificate of Convenience and Necessity is expanded to include the territory described in Exhibit B (attached hereto and incorporated by reference) (i.e., most of the area ACC's Staff and ACC Hearing Division recommended be granted to Diversified, but limited to the area generally falling east or the railroad tracks and west of the CAP canal) and furthers recommends and requests that Pinal County Staff file letters and testimony in support thereof and withdraw the testimony previously submitted in that docket on behalf of Pinal County Board of

Supervisors in support of Johnson Utilities, L.L.C.'s request to obtain a certificate of convenience and necessity to provide domestic water service to the area, as may be reasonably requested by Diversified;

FURTHER FINDS, CONCLUDES AND RESOLVES, in furtherance of exercising its authority to determine whether the public convenience, necessity or welfare will be served by the formation of a domestic water improvement district pursuant to A.R.S. §48-905 and 48-906, petitioners seeking to form or extend a domestic water improvement district over or into any area where an existing entity is authorized by law to provide domestic water service to the public within five (5) miles of the territory to be included within the domestic water improvement district, shall, no less than ten (10) days prior to the hearing required by A.R.S. §48-905(A) or, if hearing is waived pursuant to A.R.S. §48-905(C), no less than ten (10) days prior to action by the Board, to secure and submit to the Board of Supervisors and existing water providers authorized to provide service within five (5) miles of the proposed domestic water improvement district or extension all of the following:

1. A non-binding determination as to whether the public convenience, necessity or welfare will be promoted by the formation or extension of the domestic water improvement district, prepared by an independent third party or entity (i) experienced in evaluating the water needs of similar areas, (ii) not affiliated with or having performed services within the past five years for the petitioners or any water provider rendering water service within ten (10) miles of the area where the domestic water improvement district is sought to be formed or extended and (iii) if the petition involves any portion of the area described in Exhibit A, acceptable to Diversified, provided Diversified, if requested by the petitioners or Pinal County, provides not less than four names of persons or entities that it deems acceptable to perform the determination. The party performing the determination shall be asked to evaluate, without limitation, the following: whether and to the extent existing water service providers are unwilling or unable to render adequate water service to the area sought to be served by the domestic water improvement district; whether and to the extent the domestic water improvement district's facilities will duplicate existing facilities, whether and to the extent an existing water provider or the public it serves in Pinal County will be adversely affected if the District is created or extended.

2. An elementary business plan, such as or similar to the Elementary Business Plan defined in Arizona Administrative Code R18-4-602, including evidence of the domestic water improvement district's ability and plan to timely pay compensation to the existing certificated provider; and

3. Assurance that no later than one year from formation or extension of the domestic water improvement district that a determination will be secured from the Arizona Department of Environmental Quality (ADEQ) as to whether the domestic water improvement district meets the technical, managerial and

financial capacity requirements specified in Arizona Administrative Code R18-4-603, R18-4-604 and R18-4-605, as amended from time to time.

FURTHER FINDS, CONCLUDES AND RESOLVES that it is in the public interest and in furtherance of the settlement of the action and Notice of Claim filed by Diversified for the County to enter into a Settlement Agreement with Diversified in the form attached hereto as Exhibit C and a Tolling Agreement with Diversified in the form attached hereto as Exhibit D and authorizing execution of the Settlement Agreement and the Tolling Agreement.

FURTHER FINDS, CONCLUDES AND RESOLVES that this Resolution shall be effective immediately.

PASSED, APPROVED AND ADOPTED this 31st day of ~~April~~ March, 2004, by the affirmative vote of a majority of a quorum of the Board of Supervisors.

PINAL COUNTY BOARD OF SUPERVISORS

Chairman

ATTEST:

Deputy Clerk

EXHIBIT B

BEUS GILBERT PLLC
ATTORNEYS AT LAW
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Britton M. Worthen/AZ Bar No. 020739
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Attorneys for Plaintiff

$205.00
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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

LENNAR COMMUNITIES DEVELOPMENT, INC., an Arizona corporation, Plaintiff, vs. SONORAN UTILITY SERVICES, L.L.C., an Arizona limited liability company; GEORGE H. JOHNSON and JANE DOE JOHNSON, husband and wife; BOULEVARD CONTRACTING COMPANY, INC., an Arizona corporation; PINAL COUNTY BOARD OF SUPERVISORS, a political subdivision of the State of Arizona; THE 387 WATER IMPROVEMENT DISTRICT, a Pinal County Improvement District and a political subdivision of the State of Arizona; THE 387 WASTEWATER IMPROVEMENT DISTRICT, a Pinal County Improvement District and a political subdivision of the State of Arizona, Defendants.	Case No.: CV2005-002548 **COMPLAINT** (Breach of Contract; Negligent Misrepresentation; Fraud; Anticipatory Breach of Contract; Breach of Fiduciary Duty)

For its complaint against Defendants, Plaintiff alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Lennar Communities Development, Inc. ("Lennar"), is an Arizona corporation licensed and doing business within the State of Arizona. Lennar's principal offices are located within Maricopa County, Arizona.

2. Upon information and belief, Defendant Sonoran Utility Services, L.L.C. ("Sonoran") is an Arizona limited liability company doing business within the State of Arizona. Sonoran's principal offices are located within Maricopa County, Arizona.

3. Upon information and belief, Defendants George M. Johnson and Jane Doe Johnson are husband and wife and live within Maricopa County, Arizona. Upon information and belief, all acts alleged herein were conducted for the benefit of the marital community.

4. George Johnson ("Johnson") is the manager of Sonoran. In committing the acts alleged herein, Johnson was acting on behalf of and as an agent of Sonoran. Sonoran is liable for the acts of Johnson, as alleged herein.

5. Boulevard Contracting Company, Inc. ("Boulevard"), is an Arizona corporation doing business within the state of Arizona. Boulevard's principal offices are located within Maricopa County, Arizona.

6. Upon information and belief, George Johnson is the president of Boulevard Contracting. In committing the acts alleged herein, Johnson was acting on behalf of and as an agent of Boulevard. Boulevard is liable for the acts of Johnson, as alleged herein.

7. The 387 Water Improvement District and the 387 Wastewater Improvement District (hereinafter collectively referred to as the 387 Districts) are improvement districts

organized pursuant to Arizona Revised Statutes §48-901, et seq. At all relevant times, the 387 Districts were acting pursuant to the authority granted to it by Defendant Pinal County and Defendant Pinal County Board of Supervisors.

8. Defendant Pinal County Board of Supervisors is a political subdivision of the State of Arizona. Defendant Pinal County Board of Supervisors is authorized to create improvement districts.

9. At all relevant times, Defendant Pinal County Board of Supervisors served on the Board of Directors of the 387 Districts and directed the actions of the 387 Districts. At all relevant times, the Board of Supervisors control the acts and conduct of the 387 Districts. As a result of this control, the Board of Supervisors is liable for any and all acts and omissions of the 787 Districts.

10. Jurisdiction and venue are proper in this Court.

GENERAL FACTUAL ALLEGATIONS

I. THE NORTHERN PROPERTY

11. On or about 24 January 2002, Lennar, a developer, entered into a Contract for Purchase of Land and Escrow Instructions to purchase unimproved real property owned by HAM Maricopa, LLC located in what is now known as the City of Maricopa, State of Arizona (hereinafter referred to as "the Property").

12. At all relevant times, it was anticipated that the Property would be divided into various lots, for purposes of erecting residential homes once escrow had closed.

13. The Property was located in an area of Maricopa that did not have water and/or wastewater treatment services.

14. In order to secure both water and wastewater services, Lennar and other landowners in the area began to negotiate with two existing utility providers, Palo Verde and Santa Cruz, regarding the provision of water and wastewater services to the subject property and surrounding areas. However, Palo Verde and Santa Cruz were not attractive utility providers because they were owned by a substantial landowner in the subject area that would be serviced by their facilities.

15. Lennar and the other area landowners looked into the formation of an improvement district for the provision of utility services. One of the area landowners, Miller Holdings, facilitated a meeting at Lennar's office with Defendant George Johnson ("Johnson") regarding forming an improvement district for utility services with Johnson's company, Sonoran, as the utility provider.

A. JOHNSON INDUCES THE LANDOWNERS TO FORM THE IMPROVEMENT DISTRICT

16. During this initial contact with Lennar and the other landowners in December, 2002, Johnson represented to Lennar and the other landowners that the Pinal County Manager and Pinal County Board of Supervisors would support him as the utility provider for the improvement district if it were formed.

17. Johnson also represented to Lennar and the other landowners that he had a good rapport with the Pinal County Board of Supervisors and Pinal County Manager.

18. During the initial meeting in December, 2002 with Johnson and the other landowners, Lennar expressed its concerns about entering into a contract with a utility provider that was also a landowner in the service area, such as Palo Verde and Santa Cruz. In response to Lennar's concerns, Johnson represented to the Lennar and the other

landowners that neither he nor his company owned any property in the service area and that he was only there to provide utility services.

19. During this December, 2002 meeting, Johnson intentionally fraudulently omitted to disclose to Lennar and the other landowners that he had a partner in the business. Johnson also fraudulently omitted to disclose that his partner controlled and/or otherwise held an interest in a significant amount of property in the subject service area.

20. In another meeting on or about December 12, 2002, with Lennar and the other area landowners, Johnson made additional promises as set forth below in order to induce the parties into signing petitions to form an improvement district and abandon further negotiations with any existing utility providers.

21. At the December 12, 2002 meeting, Johnson represented to Lennar and the other landowners that he would provide water and wastewater treatment services to the property and surrounding area in about seven (7) months. (See Exhibit "E", 12 December 2002 letter from Philip Polich ("Polich") to Johnson). Upon information and belief, at the time Johnson made this representation, he had no intention of providing water and wastewater treatment services to the subject property area within that time frame.

22. During the December 12, 2002 meeting, Johnson represented to Lennar and the other landowners that he would have the overall sewer and water engineering completed within three (3) months. (See Exhibit "E"). Upon information and belief, at the time Johnson made this representation to Lennar and the other landowners, he had no intention of completing the engineering within that time frame.

23. At the December 12, 2002 meeting, Johnson represented to Lennar and the other landowners that he would have the 208 Permit secured within three (3) months of obtaining all Petition signatures for the formation of the district. (See Exhibit "E"). Upon information and belief, at the time Johnson made these representations to Lennar and the other landowners, he had no intention of securing the Permit within that time frame.

24. During the December 12, 2002 meeting with Lennar and the other landowners, Johnson promised to build the water and wastewater treatment plant with his own money at his own risk. Upon information and belief, at the time Johnson made this representation, he had no intention of building the water and wastewater treatment plant with his own money.

25. During the December 12, 2002 meeting with Lennar and the other landowners, Johnson represented that he would do whatever it takes to secure Lennar and the other landowners' agreement to form the water improvement district. He represented that he would put up bonds as financial assurance to protect Lennar and the other landowners.

26. Johnson provided Lennar and the other landowners with a form petition to be filed with Pinal County requesting the establishment of a domestic water and wastewater improvement district. This petition provided that the "qualified electors of the proposed district" would make up the five-member Board of Directors.

27. In reliance on the representations made by Johnson, Lennar requested that the seller of the property, HAM Maricopa, LLC, sign off on the petition requesting the establishment of a domestic water and wastewater improvement district. HAM Maricopa, LLC signed the petition on January 14, 2003.

28. Shortly thereafter, on February 3, 2003, Johnson advised Lennar and the other landowners that new petitions would need to be signed. The new form petition effectively removed Lennar and the other builders' ability to serve on the Board of Directors of the improvement district. The new petitions provide for the County Board of Supervisors to act as the 387 Districts' Board of Directors.

29. In order to secure Lennar and the other landowners' signatures on the modified petition, Johnson made various assurances and representations to Lennar and the other landowners. For example, on or about February, 2003, Johnson again represented to Lennar and the other landowners that he would provide all offsite water and sewer infrastructure to the Properties. (See Exhibit "D", February 20, 2003 e-mail to Brian Tompsett from Mike Nuessle). Upon information and belief, at the time Johnson made this statement, he had no intention of providing such infrastructure.

30. On or about February, 2003, Johnson also represented to Lennar and the other landowners that he would obtain the APP permit within three to four (3 – 4) months. (See Exhibit "D"). Upon information and belief, at the time Johnson made this statement to Lennar, he had no intention of obtaining the APP permit within that time frame.

31. Johnson represented to Lennar and the other landowners on or about February, 2003, that he would provide all engineering applicable for water and sewer, except the 100-year assurances. (See Exhibit "D"). Upon information and belief, at the time Johnson made this statement, he had no intention of performing or providing these engineering services.

32. On or about February, 2003, Johnson represented to Lennar and the other landowners that he would reimburse Lennar and the other landowners for all on-site

improvements. (See Exhibit "D"). Upon information and belief, at the time Johnson made this statement, he had no intention of paying for on-site improvements.

33. On or about February, 2003, Johnson represented to Lennar and the other landowners that the maximum time it would take for him to complete the water and wastewater treatment facilities and infrastructure was nine (9) months. (See Exhibit "D"). Upon information and belief, at the time Johnson made this statement, he knew he would not be able to complete the necessary facilities within that time frame and had no intention of completing the necessary facilities within that time frame.

34. On or about February, 2003, Johnson represented to Lennar and the other landowners that he would expedite the engineering necessary for developers to pursue design for on-site engineering (well/tank locations). (See Exhibit "D"). Upon information and belief, at the time Johnson made this statement, he knew he would not be able to complete the facilities within that time frame and had no intention of completing the necessary facilities within that time frame.

35. Johnson fraudulently omitted to disclose to Lennar and the other landowners that he had a partner. Johnson also fraudulently omitted to disclose to Lennar and the other landowners that his partner was a substantial landowner and/or controlled significant land holdings in the service area. In fact, at all relevant times, Johnson, through his affirmative conduct and statements, led Lennar and the other landowners to believe that he was the sole owner of Sonoran and that he alone was responsible for the provision of services and water to the properties.

36. As a result of Johnson's representations and fraudulent omissions, Lennar requested that the Seller of the Property, HAM Maricopa, LLC, sign off on the modified Petitions to create the county improvement districts. HAM Maricopa, LLC signed the Petitions on or about 10 March 2003 (water district) and 13 March 2003 (wastewater improvement district). (See Exhibit "F").

B. <u>The Water And Wastewater Improvement Districts Are Formed And Sonoran Enters Contract To Be The Service Provider To The Districts</u>

37. On or about 21 May 2003, the Pinal County Board of Supervisors established the 387 Wastewater Improvement District and the 387 Water Improvement District (hereinafter collectively referred to as the "387 Districts") in order to secure provision of water and wastewater utility services to property located in what is now known as the City of Maricopa, Pinal County, Arizona.

38. The creation of the 387 Districts essentially created a monopoly on behalf of the Districts for the provision of water and wastewater utilities to the subject property areas. With the creation of the 387 Districts, the landowners in the subject area were prohibited from obtaining water and/or wastewater treatment services from any other provider.

39. The Pinal County Board of Supervisors serves as the Board of Directors for the 387 Districts.

40. After the creation of the 387 Districts, the Board of Directors of the 387 Districts (Pinal County Board of Supervisors) advertised in the Florence Reminder in the Blade Tribune on June 5, 2003 and June 12, 2003 for proposals from utility service providers to be the service provider for the 387 Districts. This Notice for proposals provided that any potential service provider must file its statements of interest by noon on June 23, 2003.

41. Sonoran was the only utility provider to submit a Statement of Interest in response to the advertisement. Subsequently Sonoran was selected to be the utility provider for the 387 Districts.

42. Only two days after the deadline for filing Statements of Interest, on 25 June 2003, the 387 Water Improvement District entered into a Water Supply and Management Services Agreement with Sonoran. (See Exhibit "A").

43. Under the Water Supply Agreement, Sonoran was required to provide water delivery services to all residential and commercial properties within the 387 Water Improvement District. The Water Supply Agreement specifically provided that Sonoran would "construct ... wells, pumps, storage, water treatment plant(s), transmission and distribution lines, valves, services and meters ... necessary to supply water within the District ...". (See Exhibit "A", p. 1).

44. Similarly, in order to secure wastewater treatment and collection services, the Pinal County Board of Supervisors, as the Board of Directors for the 387 Wastewater Improvement District ("Wastewater District"), entered into a Wastewater Treatment, Collection and Management Services Agreement with Defendant Sonoran on June 25, 2003. (See Exhibit "B" attached hereto).

45. Under the Wastewater Treatment Agreement, Sonoran was required to provide wastewater services to all property owners within the 387 Wastewater Improvement District. (See Exhibit "B", p. 1).

46. The Wastewater Treatment Agreement provided that Sonoran would construct a "wastewater collection system consisting of all wastewater treatment plant(s), transmission

and collection lines, lift stations, pumps, valves, connections, storage and disposal facilities ... necessary to collect, treat and dispose of all wastewater flows originating within the District ..."). (See Exhibit "B).

47. Sonoran's Water Supply and Wastewater Treatment Agreements with the Districts were 30-year renewable management agreements. Under these agreements, Sonoran was to own, manage and operate certain water and wastewater utility facilities on behalf of the districts within Pinal County. (See Exhibits "A" and "B".)

48. Lennar repeatedly requested to be a party to the contract negotiations between Sonoran and Pinal County Board of Supervisors because Lennar was a direct beneficiary of any contract entered into between the parties. Despite Lennar's repeated requests, Sonoran's contract with the County was negotiated without Lennar and the other district members' concerns being addressed. In fact, neither Lennar nor the other district members were even permitted to see the agreement prior to its execution.

C. Due to Sonoran's Inaction, Lennar Seeks Alternative Utility Services and De-Annexation

49. Despite active negotiations, Lennar had been unable to negotiate a Master Utility Agreement with Johnson.

50. As of July, 2003, there had been no progress on the wastewater treatment facilities.

51. On or about July, 2003, Lennar sought alternative utility services and otherwise sought to de-annex from the 387 Districts as a result of Sonoran's lack of progress on the facilities, its failure to have a Master Utility Agreement negotiated and Lennar's exclusion from negotiations for the provider service agreement with the 387 Districts.

52. On or about July 15, 2003, Clare Abel, on behalf of Lennar, sent a letter to Pinal County Board of Supervisors advising that Lennar had filed petitions to de-annex from the 387 Districts.

53. On or about July 22, 2003, Lennar contacted Stan Griffis, the Pinal County Manager, requesting permission for Lennar to de-annex from the 387 Districts.

54. On July 23, 2003, Claire Abel, on behalf of Lennar, sent a letter to William McLean of the Pinal County Attorneys Office again advising of Lennar's request to de-annex from the 387 Districts.

55. The 387 Districts, Pinal County and Pinal County Board of Supervisors did not formally respond to this request. In fact, the only response received from the 387 Districts and Pinal County Board of Supervisors was through Stan Griffis, the Pinal County Manager, wherein he advised Lennar that Pinal County and the 387 Districts would not allow any de-annexation because Johnson advised the Pinal County and the 387 Districts that it would impair the financial viability of Sonoran.

56. As a result of Lennar's attempts to de-annex and seeking inclusion in a certificate of convenience and necessity filed with the Arizona Corporation Commission, Johnson subsequently sought to ensure Lennar's continued inclusion in the 387 Districts. In fact, on or about September, 2003, Johnson called Lennar and requested that Lennar stay in the District.

57. In order to entice Lennar into remaining in the 387 Districts, dropping any attempt to garner utility services from another provider or otherwise de-annexing from the 387 Districts, Johnson offered Lennar a personal guarantee wherein he would personally

guarantee that Sonoran would perform under any Master Utility Agreement entered into between the parties.

58. Johnson also offered Lennar a nine hundred dollar ($900) reduction per lot if Lennar would agree to stay in the 387 Districts and drop its pursuit of an alternative utility provider or any other pursuit to otherwise de-annex from the District. The terms of Johnson's promises are set forth in a Letter of Understanding attached as Exhibit "G".

59. At no time did Johnson intend on providing Lennar with the lot reduction.

60. Lennar justifiably relied on Johnson's promises and withdrew its attempts to garner an alternative provision of utility services or otherwise de-annex from the 387 Districts.

61. In order to memorialize Johnson's promise of a nine hundred dollar ($900) reduction in the cost per lot, Lennar and Johnson entered into a Consulting Agreement on or about October 27, 2003. This Consulting Agreement provided that Johnson, through his company, Boulevard Contracting Company, Inc., would pay Lennar nine hundred dollars ($900) per lot it owned as a consulting fee providing Lennar perform consulting services on the water and wastewater treatment facilities as requested by Boulevard. (See Exhibit "M").

D. <u>The Parties Enter Into a Master Utility Agreement</u>

62. On or about October 27, 2003, Lennar entered into a Master Utility Agreement for Water and Wastewater Facilities with Defendant Sonoran for provision of water and wastewater treatment services (hereinafter referred to as "Master Utility Agreement"). (A copy of the Agreement is attached hereto as Exhibit "C").

63. The Master Utility Agreement granted Sonoran the right to provide water and wastewater treatment services to the Property. (See Exhibit "C").

64. The Master Utility Agreement provided for a construction schedule as follows:

> The Company [Sonoran] will construct the Backbone Facilities as described on **Attachment B** in accordance with the Construction Schedule in Attachment D. In the event the Company does not meet the schedule set forth on Attachment D, or if, in the opinion of Developer, the Company is not proceeding with due diligence to cause completion of the Backbone Facilities by the scheduled date, the Developer shall give the Company written notice of the delay and the Company shall have fifteen (15) days thereafter to provide a response and demonstrate that the Company is diligently trying to meet the in-service date. Failure by the Company to respond to any such alleged delays within the fifteen (15) day period shall entitle the Developer to provide Notice of Delay under the Performance and Payment Bond referred to below and to exercise its remedies under the performance bond required herein.

See Exhibit "C", pp. 3-4 (emphasis added).

65. The parties defined Backbone Facilities for the water facilities as three separate water plants. Each plant was to consist of a "500,000 gallon storage tank, pressure tank, well and associated equipment". (See Exhibit C and Exhibit B thereto).

66. Backbone Facilities for the wastewater facilities included the construction of a 1.0 MGD mechanical wastewater treatment plant with subsequent phases of the plant to be constructed at a later date in order to bring the maximum treatment capacity of the plants to 6.6 MGD. (See Exhibit B and Exhibit C thereto).

67. The Master Utility Agreement entered into between Sonoran and Lennar provided that "the first phase of the wastewater treatment plant will be operational on or before May 15, 2004." See Exhibit "C", p. 4.

68. The Master Utility Agreement also called for the issuance of a Performance & Payment Bond:

> Within fifteen (15) business days after execution of this Agreement, the Company [Sonoran] will obtain and pay for a Performance and Payment Bond in a form acceptable to the District, County and Developer, to ensure completion of the Backbone Facilities. The bond shall be in favor of the County, the District, and the Developer. The Company shall take no action that would cause the bond to be rendered uncollectible in the event of a failure to perform by the Company. ...

See Exhibit "C", pp. 3-4.

69. In the Master Utility Agreement the parties acknowledged that Lennar:

> [M]ust obtain certain zoning authorizations and approvals for the master plan on a community-wide basis; and ... [f]or the Developer [Lennar] to obtain (1) the required approvals for the Development, (2) commitments from prospective landowners or subdivisions within the Development, and (3) necessary financing for development of and improvements within the Development it is necessary for the Developer to have certain assurances regarding the provision of water and wastewater services and facilities within the entire Development at this time; and ....

(See Exhibit "C", pp. 2-3.)

70. In order to ensure that Lennar received the information and assistance it needed, the Master Utility Agreement provided that:

> The Company [Sonoran] shall take all reasonable actions requested by the Developer [Lennar] to assist [Lennar] with final plat, ADEQ and Arizona Department of Real Estate approvals, and [Lennar] shall take all reasonable actions requested by [Sonoran] to assist [Sonoran] in obtaining all regulatory approvals necessary to serve the development.

See Exhibit "C", ¶ 17.

71. The Master Utility Agreement further provided that:

> The Company shall be responsible for obtaining and maintaining all required permits for the WWTP including the Aqua Protection Permit (the "APP") and assures Developer that all sewage will be fully treated and the effluent from the WWTP shall be fully and properly disposed of in accordance with all pertinent county, state and federal regulations and requirements. The Company will use its best efforts to obtain the APP within four months of the execution of this Agreement [February 27, 2004].

See Exhibit "C", ¶ 7(A).

72. The parties also specifically defined events of default in Master Utility Agreement as follows:

> a. Failure of Sonoran to provide water and sewer service in accordance with the mutually agreed time frame.
>
> b. Failure of Sonoran to provide ADEQ approved quality of water to the Development.
>
> c. Failure of Sonoran to provide adequate water pressure to maintain required fire protection service to the Development in addition to domestic service.
>
> d. Failure of Sonoran to perform its obligation in a timely manner regarding the key dates as set forth in this Agreement.
>
> e. Sonoran causes liens or judgments to be imposed upon the District's property or parcels within the Development.
>
> f. Sonoran becomes insolvent, defined as it's filing of a petition in bankruptcy or the scheduling of trustees or UCC sales.
>
> Failure of Sonoran to provide Developer with an industry standard Line Extension Agreements for the various Development parcels.

(See Exhibit "C", p. 8).

73. Sonoran also made certain assurances to Lennar. Specifically, Sonoran assured Lennar that it:

> [C]urrently has or will have at the time each phase or subdivision connection to the Company's system, adequate water production, treatment as required, and storage facilities to provide adequate water service and a Wastewater Treatment Plant ("WWTP") and collector mains adequately sized to receive and treat all wastewater from that phase or subdivision in accordance with all applicable Arizona Department of Environmental Quality ("ADEQ") and Pinal County requirements. These facilities hereinafter referred to as the Backbone Facilities, are described on Attachment B hereto.

See Exhibit "C", p. 2.

74. Defendant George H. Johnson is the manager of Sonoran. On or about 10 October 2003 Johnson entered into a Personal Guarantee with Lennar, providing that George H. Johnson:

> [H]ereby unconditionally guarantees to Lennar Communities Development, Inc. ("Lennar") the completion of the construction of the Water and Wastewater Facilities described in Attachment A hereto on or before the May 15, 2004 Performance Date in the Agreement, (as that date may be amended by the Parties to the Agreement), which Facilities are the subject of the Master Utility Agreement between Sonoran Utility Services, LLC ... and Lennar ... and which are required for utility service to Phase I of the Development as defined in the Agreement. In the event Sonoran fails to perform as contemplated under the Agreement, Johnson personally guarantees said performance.

See Exhibit "I" attached hereto.

75. On January 15, 2004 Lennar granted Sonoran and Johnson a 90-day extension to complete Phase I construction. Under the extension agreement, Sonoran was required to complete construction and have Phase I operational by August 15, 2004. See Exhibit "J", January 15, 2004 letter from Alan Jones to George Johnson.

E. LONG AFTER INDUCING LENNAR AND THE OTHER LANDOWNERS TO FORM THE 387 DISTRICT AND ENGAGE SONORAN AND/OR JOHNSON AS UTILITY PROVIDER, JOHNSON FINALLY INFORMS LENNAR AND THE OTHER LANDOWNERS THAT HE HAS A PARTNER WHO CONTROLS SIGNIFICANT LANDHOLDINGS IN THE SERVICE AREA

76. At all relevant times, Johnson held himself out as the only owner of Sonoran. At no time prior to March 2004 did Johnson advise Lennar of the fact that he had a partner who was also a substantial landowner and/or controlled substantial landholdings in the 387 Districts.

77. It was not until on or about March of 2004 that Johnson introduced his partner, Connelly Wolfswinkel ("Wolfswinkel") to Lennar and the other landowners in the 387 Districts. At this time, Johnson introduced Mr. Wolfswinkel to Lennar and the other landowners as his "partner." At no time prior to this "introduction" had Johnson or Wolfswinkel advised Lennar of Wolfswinkel's interest in the water and wastewater treatment contracts.

78. On or about the meeting of March 3, 2004, both Johnson and Wolfswinkel represented to Lennar and the other landowners that Wolfswinkel was always a partner in Sonoran and always had an interest in the water and wastewater facilities and the utility agreements with the 387 Districts and the landowners.

79. At all relevant times, Wolfswinkel was a significant landowner or otherwise controlled significant landholdings within the 387 Districts.

80. Had Lennar known that Connelly Wolfswinkel, a fellow property owner within the District, was a partner in Sonoran and/or the water and wastewater contracts, Lennar

never would have agreed to petition into the 387 Districts, enter into a Master Utility Agreement or otherwise become involved with Sonoran and/or Johnson.

F. SONORAN FAILS TO TIMELY COMPLETE CONSTRUCTION, POST BOND, AND COOPERATE WITH LENNAR

81. Despite the specific requirements of the Master Utility Agreement, Sonoran failed to post any bond or financial assurance that could be utilized as set forth in the Master Utility Agreement. As of this date, neither Sonoran nor Johnson have posted a performance bond as required by the Master Utility Agreement.

82. Despite the specific provisions of the parties' agreement, Defendants Sonoran and Johnson failed to obtain the APP by February 27, 2004. In fact, as of November 15, 2004, Sonoran and/or Johnson still had not obtained the APP.

83. Johnson and/or Sonoran failed to meet the construction schedule as set forth in the party's agreement. (See Exhibit L).

84. On or about March 15, 2004, Lennar gave Defendants Johnson and Sonoran a Notice of Default regarding Sonoran's failure to begin construction on the facility, failure to timely post bond and failure to obtain the acquifer protection permit within four months. (See Exhibit "L").

85. The Notice of Default sent to Johnson and Sonoran was simultaneously provided to Jimmy Kerr of the Pinal County Board of Supervisors as well as William McLean of the Pinal County Attorney's Office.

86. Defendants Sonoran and Johnson were also advised that there was a lack of significant progress in the construction of the Backbone Facilities causing serious doubts as to whether or not the extended contractual deadline of August 15, 2004 would be met.

Lennar also advised Defendants Sonoran and Johnson that their numerous defaults had already caused the cancellation of a $3.96 million escrow. *Id.*

87. Johnson and/or Sonoran failed to cure the defaults under the Master Utility Agreement.

G. <u>DESPITE SONORAN AND JOHNSON'S DEFAULTS, DEFENDANTS 387 DISTRICTS AND, PINAL COUNTY BOARD OF SUPERVISORS DO NOTHING TO ENFORCE THE MANAGEMENT SERVICE AGREEMENTS.</u>

88. On or about March 25, 2004, the Pinal County Board of Supervisors; the Pinal County Manager, Stan Griffis; and the Pinal County Attorney, Richard Husk, were notified about the various defaults by Defendants Johnson and Sonoran. (See Letter from Clare Abel ("Abel Letter") dated March 25, 2004, attached as Exhibit H).

89. The Abel Letter further advised THE 387 Districts and Pinal County Board of Supervisors that Defendants Johnson and Sonoran, despite notice of default being given, failed to cure the numerous defaults.

90. On or about March 25, 2004, Defendants the 387 Districts, and the Pinal County Board of Supervisors were also notified that Defendants Sonoran and Johnson were in default on their Management Services Agreements with the 387 Districts. (See Abel Letter, Exhibit H). Defendants the 387 Districts and Pinal County Board of Supervisors were advised that these defaults were "serious and threaten Lennar's current investments and expenditures in Pinal."

91. On or about March 25, 2004, Lennar insisted that the 387 Districts, and Pinal County Board of Supervisors take immediate action to rectify the defaults by Defendants Sonoran and Johnson. (See Exhibit H).

92. On or about March 25, 2004, the 387 Districts, Pinal County and Pinal County Board of Supervisors were advised of the financial ramifications suffered by Lennar, a third party beneficiary of the 387 Districts agreements with Defendants Sonoran and Johnson, as a result of Sonoran and Johnson's defaults. (See Exhibit H).

93. On or about March 25, 2004, the 387 Districts, and Pinal County Board of Supervisors were advised that the Management Services Agreements were transferred to an individual who owned or otherwise controlled significant landholdings in the 387 Districts, thereby creating a conflict. (See Exhibit H).

94. On or about March 25, 2004, Lennar demanded that the 387 Districts and/or its Board of Directors, the Pinal County Board of Supervisors, "take immediate action to remove Sonoran as the manager/operator of the Districts and replace Sonoran with a competent, qualified, adequately funded operator who does not have an interest in any properly located within the District" and "take steps immediately to remedy these defaults." (See Exhibit H).

95. Despite notice of the defaults by Defendants Sonoran and Johnson, Defendants the 387 Districts, and the Pinal County Board of Supervisors did nothing.

96. Once again, on March 30, 2004, Lennar again notified Defendants the 387 Districts, and the Pinal County Board of Supervisors of the continued defaults by Defendants Johnson and Sonoran. (See Exhibit N, March 30, 2004 letter from Clare Abel).

97. On or about March 30, 2004, Lennar demanded that the 387 Districts and the Pinal County Board of Supervisors terminate the Management Services Agreements with

Defendants Johnson and Sonoran as a result of Johnson and Sonoran's defaults under the Management Services Agreements and the Master Utility Agreement. (See Exhibit N).

98. Defendants the 387 Districts, and the Pinal County Board of Supervisors failed to act on Lennar's request and further failed to control the situation and ensure that the defaults were cured.

H. DEFENDANTS JOHNSON AND SONORAN'S DEFAULTS CONTINUE AND THE 387 DISTRICTS, AND PINAL COUNTY BOARD OF SUPERVISORS TURN A BLIND EYE TO THESE DEFAULTS AND DOES ABSOLUTELY NOTHING TO ENSURE THAT JOHNSON AND SONORAN COMPLY WITH BOTH THE MASTER UTILITY AGREEMENT ENTERED INTO WITH ITS CONSTITUENT LENNAR AS WELL AS THE MANAGEMENT SERVICES AGREEMENTS ENTERED INTO WITH THE 387 DISTRICTS AND PINAL COUNTY BOARD OF SUPERVISORS

99. Despite the specific provisions in the Master Utility Agreement, Johnson and/or Sonoran refused to cooperate with Lennar in timely signing the forms for Lennar to obtain the necessary governmental approvals from the ADEQ, the forms to obtain the 100-year Certificate of Assured Water.

100. Additionally, Defendants Johnson and Sonoran refused to provide the necessary information required by the regulatory agencies in order for Lennar to achieve final approval of the water certificate. Because of the withholding of information, Lennar's plats were not timely approved. (See Exhibit "K", 7 April 2004 letter from Clare Abel to Pinal County Attorney's Office.)

101. Defendant Sonoran and/or Johnson failed to complete construction of Phase I of the water and wastewater facilities by August 15, 2004.

102. On or about September 15, 2004, Lennar served the 387 Districts and Pinal County Board of Supervisors with a Notice of Claim. (See Exhibit O).

103. Defendants the 387 Districts, and the Pinal County Board of Supervisors failed to respond to Lennar's Notice of Claim. In fact, these Defendants did absolutely nothing.

I. DEFENDANT JOHNSON DEFAULTS UNDER HIS CONSULTING AGREEMENT WITH LENNAR.

104. As stated above, Johnson, through his company named Boulevard Contracting Company, Inc. entered into a Consulting Agreement with Lennar on or about October 27, 2003.

105. As alleged herein, the Consulting Agreement provided that Boulevard Contracting, Inc. would pay Lennar a consulting fee of nine hundred ($900) per lot served by Sonoran's water and wastewater treatment facilities.

106. In approximately January, 2004, Johnson advised Lennar that neither he nor Boulevard would abide by the Consulting Agreement entered into between the parties. Johnson unequivocally manifested his and Boulevard's intent not to perform as required by the Consulting Agreement.

II. THE SOUTHERN PROPERTY ("AMARILLO CREEK") 208 EXPANSION CONFLICT

107. Lennar petitioned into the 387 Districts for its property located north of the Ak-Chin Reservation ("Northern Property"), which is the property alleged in the aforementioned allegations. In addition, Lennar is currently in escrow to purchase property south of the Ak-Chin Reservation, commonly referred to as Amarillo Creek.

108. Upon information and belief, Johnson and/or Sonoran initially obtained a Section 208 permit from the EPA and/or Arizona Department of Environmental Quality that entitled them to operate a wastewater treatment facility for the property north of the Ak-Chin reservation. All of this northern property was part of the 387 Districts and under a contract with Sonoran and/or Johnson.

109. Nonetheless, Johnson and/or Sonoran attempted to expand its control to include property that was not part of the 387 Districts without the consent of the property owners. More specifically, on or about October, 2003, Johnson and/or Sonoran filed an application for expansion of the 208 permit with the Central Arizona Association of Governments (CAAG), that included property south of the Ak-Chin Reservation, including Lennar's Amarillo Creek property. At this time, Johnson and/or Sonoran had no contractual right nor any other right to provide water and wastewater services to these properties.

110. A public meeting was held at the CAAG office regarding Sonoran and/or Johnson's application for expansion. Lennar and the other property owners south of the Ak-Chin reservation attended the hearing and expressed to CAAG that they did not want to have a Section 208 permit over their property, they did not have any agreement with Johnson and/or Sonoran to provide water or wastewater utility services and that they were not part of the 387 Districts. Brian Tompsett of Sonoran was also present at this meeting.

111. The Southern properties' landowners also advised CAAG that any CAAG 208 over their property would unlawfully preclude them from obtaining wastewater treatment services from any other provider.

112. On or about October 30, 2003, Lennar and numerous other property owners in the southern area again expressly reiterated their concerns, via letters to CAAG, about the 208 expansion because it would adversely effect their property and their choice of utility provider.

113. Despite being advised of Lennar and the other landowners' opposition, CAAG approved Johnson/Sonoran's expansion of its 208 permit. This expansion now attaches Lennar's Amarillo Creek property to Sonoran and/or Johnson as its utility provider even though the Amarillo Creek property is not annexed as part of the 387 Districts. Similarly, this expansion precludes other utility providers from servicing the Amarillo Creek property because of 208 permitting conflicts.

114. On or about October 29, 2004, George Tsiolis, on behalf of Lennar, contacted the Arizona Department of Environmental Quality ("ADEQ") regarding Lennar's objection to the Section 208 amendment. (See Exhibit P).

115. In his letter, Mr. Tsiolis advised ADEQ that the Section 208 amendment included properties that were not part of the 387 Wastewater Improvement District nor had any desire to be included in the District. (See Exhibit P).

116. The ADEQ was also advised that without the properties consent to be included in the 387 Wastewater Improvement District that the 387 is not legally authorized to operate in the area south of Ak-Chin. (See Exhibit P).

117. In fact, the Section 208 amendment approved by CAAG acted as an improper attempt to coerce the southern property owners to join the 387 Wastewater Improvement District.

118. In fact, on or about August 2004, the Pinal County Attorney's Office in conversations with Lennar, acknowledged the impropriety of the CAAG 208 expansion.

119. Specifically, the County Attorneys Office advised that it would consider advising Pinal County to convene a meeting of CAAG to revoke the November 19, 2003 Section 208 amendment.

The bases for revocation provided by the County were as follows:

120. Sonoran Utility Services may have proposed the November 208 expansion to CAAG without the 387 Wastewater Improvement District's affirmative consent;

121. The November 208 expansion was based on a proposal to extend the 387 Wastewater Improvement District to include property south of the Ak-Chin Reservation where the property owners had never and still have not petitioned to be included into the 387 Wastewater Improvement District;

122. There are concerns about whether the 387 Wastewater Improvement District would be expanded to include any other areas such as the property south of the Ak-Chin Reservation;

123. While the November 208 expansion remains in place, it creates a cloud of uncertainty for property owners south of the Ak-Chin Reservation, where faced with the prospect of either: (i) investing substantial time and money developing their properties and reliance on the strict legality of the Wastewater Improvement District's current form of operation, which presumption may subsequently prove wrong; or (ii) delaying for months if not years any development of their properties until the issue of the Wastewater Improvement District's form of operation is resolved.

124. Upon information and belief, when CAAG approved Sonoran's application for expansion of the 208, no members of the Pinal County Board of Supervisors appeared at the vote. However, Stan Griffis was present per the roll call.

125. The aforementioned allegations against the 387 Districts and the Pinal County Board of Supervisors regarding the property located South of Ak-Chin was not subject of the Notice of Claim provided on September 15, 2004. Therefore, the foregoing allegations are made for the purposes of providing a complete picture for the Court. Lennar will be submitting a new Notice of Claim to the 387 Districts, Pinal County Board of Supervisors and Pinal County to cover these claims. Lennar will subsequently seek leave of the Court to amend this Complaint to include these claims after expiration of the Notice of Claim.

CLAIMS FOR RELIEF

COUNT I
(Breach of Contract Against Defendants Sonoran and Johnson)

126. Plaintiff incorporates all of the foregoing paragraphs as if set forth fully herein.

127. As alleged herein, Defendants Sonoran and Johnson, pursuant to the Master Utility Agreement and personal guarantee of Johnson, were required to post a Performance and Payment Bond within fifteen business days from the execution of the Agreement, on October 27, 2003.

128. As of this date, Defendants Sonoran and Johnson have failed to post the required bond.

129. As alleged herein, Defendants Sonoran and Johnson, pursuant to the Master Utility Agreement and personal guarantee of Johnson, were to complete the Phase I improvements on or before August 15, 2004.

130. Defendants Johnson and Sonoran failed to complete the improvements or otherwise complete the facilities by August 15, 2004.

131. As alleged herein, Defendants Sonoran and Johnson, pursuant to the Master Utility Agreement and personal guarantee of Johnson, had a duty to provide information and assistance to Lennar in order for Lennar to obtain necessary approvals.

132. As alleged herein, Defendants Sonoran and Johnson failed to assist Lennar in providing either information or other assistance to obtain the necessary regulatory approvals. In fact, as alleged herein, Defendants failed to provide information and approvals to Lennar and held them "ransom" so that Lennar would remove its objections to the District.

133. As alleged herein, Defendants Sonoran and Johnson, pursuant to the Master Utility Agreement and personal guarantee of Johnson, were required to obtain the APP on or before February 27, 2004.

134. As alleged herein, Defendants Sonoran and Johnson did not obtain the necessary APP, which is required in order to actually operate the facilities, by February 27, 2004. In fact, as of November 1, 2004, Defendants Sonoran and Johnson still had not obtained the necessary APP.

135. As a direct and proximate result of these substantial breaches by Defendants, Lennar has incurred damages in an amount to be proven at trial.

COUNT II
(Breach of Covenant of Good Faith and Fair Dealing Against Defendants Sonoran and Johnson)

136. Plaintiff incorporates the allegations contained in the foregoing paragraphs of this Complaint as if set forth fully herein.

137. Implied in the Master Utility Agreement is a covenant of good faith and fair dealing whereby each of the parties was bound to refrain from any action that would impair the benefits the other party had the right to expect from the Agreement.

138. As alleged herein, Defendants Sonoran and Johnson breached the duty of good faith and fair dealing.

139. As a direct and proximate result of Defendants' breaches of the implied covenant of good faith and fair dealing, Lennar has incurred damages in an amount to be proven at trial.

COUNT III
(Breach of Personal Guarantee Against Defendant Johnson)

140. Plaintiff incorporates the allegations contained in the foregoing paragraphs of this Complaint as if set forth fully herein.

141. As alleged herein, Defendant Johnson entered into a personal guarantee with Lennar wherein Johnson personally guaranteed Sonoran's performance of the Master Utility Agreement.

142. As alleged herein, Sonoran has failed to perform under the Master Utility Agreement.

143. As a direct and proximate result, Lennar has incurred damages in an amount to be proven at trial.

COUNT IV
(Negligent Misrepresentation Against Defendant Johnson)

144. Plaintiff incorporates each of the allegations of this Complaint as if fully set forth herein.

145. As alleged herein, Defendant Johnson made false material misrepresentations and omissions to Lennar in order to induce Lennar into petitioning into the 387 Improvement District.

146. Johnson made these material misleading misrepresentations and omissions expecting and realizing that Lennar would rely upon them and for the purposes of inducing Lennar to rely upon them.

147. As alleged herein, each of the misrepresentations and omissions made by Johnson was false and misleading. Johnson failed to exercise reasonable care and competence in making these statements to Lennar.

148. As alleged herein, Lennar justifiably relied upon Johnson's material misrepresentations and omissions.

149. As alleged herein, Lennar was unaware of the falsity of Johnson's careless and negligent false and misleading material misrepresentation and/or omissions.

150. As a direct and proximate result of these false and misleading material misrepresentations and/or omissions, Lennar has sustained damages in an amount to be proven at trial.

COUNT V
(Fraud Against Defendant Johnson)

151. Plaintiff incorporates all of the foregoing paragraphs as if set forth fully herein.

152. As alleged herein, Defendant Johnson fraudulently omitted to advise Lennar that he had a "partner" involved with the provision of water and wastewater services to the 387 Districts.

153. As alleged herein, Johnson made a false material representation to Lennar that neither he nor his company were property owners in the service area and that he was only a utility provider.

154. As alleged herein, Johnson fraudulently omitted to tell Lennar that his "partner" in the endeavor was a major property owner in the 387 Districts.

155. As alleged herein, Johnson knew that the statements and omissions he was making to Lennar were false.

156. As alleged herein, Johnson intended that Lennar would act upon his statements and fraudulent omissions in agreeing to petition into the 387 Districts and enter a Master Utility Agreement with Sonoran.

157. As alleged herein, Lennar did not know that Johnson was fraudulently omitting relevant information of his partnership.

158. Lennar was justifiably unaware that Johnson had a partner that was a major property owner or otherwise controlled significant landholdings in the 387 District.

159. As alleged herein, Lennar relied on the truthfulness of the statements Defendant Johnson was giving in petitioning into the 387 Districts and entering into the Master Utility Agreement.

160. As alleged herein, Lennar had a right to rely on Johnson's statements and fraudulent omissions.

161. As a direct and proximate result of Johnson's false and misleading misrepresentations and omissions, Lennar has sustained damages in an amount to be proven at trial.

COUNT VI
(Anticipatory Breach of Contract Against Defendant Boulevard)

162. Plaintiff incorporates all of the foregoing allegations of this Complaint as if set forth fully herein.

163. As alleged herein, Defendant Boulevard entered into a Consulting Agreement with Lennar on or about October 27, 2003.

164. As alleged herein, Defendant Boulevard unequivocally manifested its intent not to perform under the terms of the Consulting Agreement.

165. As alleged herein, as a direct and proximate result of Defendant's breach of the consulting agreement, Lennar has sustained damages in an amount to be proven at trial.

COUNT VII
(Breach of Fiduciary Duty Against Defendants Pinal County Board of Supervisors and the 387 Districts)

166. Plaintiff incorporates all of the foregoing allegations of this Complaint as if set forth fully herein.

167. The 387 Districts and the Pinal County Board of Supervisors, as the board of directors of the 387 Districts, owed fiduciary duties to the Plaintiff and to other landowners in the districts to manage the districts for the benefit of the Plaintiff and other landowners, and to accomplish the purposes for which the districts were created.

168. The 387 Districts and the Pinal County Board of Supervisors, through neglect, malfeasance, misfeasance, or otherwise, breached their fiduciary duties of care and loyalty to the Plaintiff and to the other landowners in the districts, by failing to comply or to require compliance with laws and contracts intended for the benefit and protection of the Plaintiff and other landowners, and by otherwise failing to manage the districts for the benefit of the

Plaintiff and other landowners, and to accomplish the purposes for which the districts were created.

169. As a direct and proximate result of the 387 Districts' and the Pinal County Board of Supervisors' breaches of fiduciary duties, the Plaintiff has been damaged in an amount to be proved at trial.

COUNT VIII
(Breach of Statutory Duties Against Defendants Pinal County Board of Supervisors and the 387 Districts)

170. Plaintiff incorporates all of the foregoing allegations of this Complaint as if set forth fully herein.

171. The 387 Districts and the Pinal County Board of Supervisors, as the board of directors of the 387 Districts, were required by law, including without limitation Arizona Revised Statutes § 48-909, and therefore owed duties to the Plaintiff and to other landowners in the districts, to operate and manage the districts for the purposes for which the districts were created, and according to the provisions of law pursuant to which the districts were created.

172. The 387 Districts and the Pinal County Board of Supervisors, as the board of directors of the 387 Districts, were required by law, including without limitation Arizona Revised Statutes § 48-925, and therefore owed duties to the Plaintiff and to other landowners in the districts, to require that Sonoran file such bond or bonds as were required by law and by their agreements with Sonoran.

173. The 387 Districts and the Pinal County Board of Supervisors, through neglect, malfeasance, misfeasance, or otherwise, breached their statutory and other duties to the

Plaintiff and to the other landowners in the districts, by failing to comply or to require compliance with laws intended for the benefit and protection of the Plaintiff and other landowners, including the laws requiring that Sonoran file such bond or bonds as were required by law and by their agreements with Sonoran, and by otherwise failing to manage the districts according to law and to accomplish the purposes for which the districts were created.

174. As a direct and proximate result of the 387 Districts' and the Pinal County Board of Supervisors' breaches of statutory and other duties, the Plaintiff has been damaged in an amount to be proved at trial.

175. As a direct and proximate result of the 387 Districts' and the Pinal County Board of Supervisors' breaches of statutory and other duties, the 387 districts have not been operated in compliance with the law, and continue to operate in violation of the law.

COUNT IX
(Third Party Beneficiary Claim for Breach of Contracts Between Sonoran and the 387 Districts, Against Sonoran)

176. Plaintiff incorporates all of the foregoing allegations of this Complaint as if set forth fully herein.

177. The contracts between Sonoran and the 387 Districts to provide water and wastewater service within the boundaries of the districts were made for the express purpose of providing such services to the Plaintiff and to the other landowners in the districts, and were intended to benefit the Plaintiff and the other landowners in the districts in the ownership, use, and enjoyment of their property within the districts.

178. Sonoran has materially breached its contracts with the 387 Districts as alleged in this Complaint.

179. As a direct and proximate result of Sonoran's breaches of the contracts with the 387 Districts, as alleged in this Complaint, the Plaintiff has been damaged in an amount to be proved at trial.

COUNT X

(Third Party Beneficiary Claim for Breach of Covenant of Good Faith and Fair Dealing in Contracts Between Sonoran and the 387 Districts, Against Sonoran)

180. Plaintiff incorporates all of the foregoing allegations of this Complaint as if set forth fully herein.

181. The contracts between Sonoran and the 387 Districts included an implied covenant of good faith and fair dealing, by which Sonoran promised to conduct itself with respect to the subject matter of the contracts, so that the 387 Districts and the landowners in the districts, including the Plaintiff, would not be denied the benefits reasonably expected to be provided by Sonoran pursuant to the contracts.

182. Sonoran has breached the covenant of good faith and fair dealing in the contracts with the 387 Districts, and has so conducted itself with respect to the subject matter of the contracts and its promises that the 387 Districts, the Plaintiff, and other landowners in the districts have been denied the benefits promised and reasonably expected to be provided by Sonoran pursuant to the contracts.

183. As a direct and proximate result of Sonoran's breaches of the covenant of good faith and fair dealing in the contracts with the 387 Districts, as alleged in this Complaint, the Plaintiff has been damaged in an amount to be proved at trial.

COUNT XI

(Declaratory Relief Against Sonoran, the 387 Districts, and the Pinal County Board of Supervisors)

184. Plaintiff incorporates all of the foregoing allegations of this Complaint as if set forth fully herein.

185. The Plaintiff has a direct and substantial interest in the lawful operation and management of the 387 Districts and in the timely and lawful performance of the contracts alleged in this Complaint.

186. As a result of the Defendants' failure to comply with the law, breaches of contracts, and other breaches of duty, as alleged in this Complaint, the Plaintiff's interests have been damaged and are still threatened by the Defendants' failure and refusal to comply with their contractual, fiduciary, statutory, and other obligations.

187. There exists an actual and justiciable controversy between the Plaintiff and the Defendants with respect to the lawful operation and management of the 387 Districts, with respect to the timely and lawful performance of the contracts alleged in this Complaint, and with respect to the Defendants' repeated and continuing breaches of contract and refusal to comply with their contractual, fiduciary, statutory, and other obligations.

188. The Plaintiff is entitled to a judgment declaring the rights and obligations of the parties with respect to the lawful operation and management of the 387 Districts, with respect to the performance of the contracts alleged in this Complaint, and with respect to the Defendants' repeated and continuing breaches of contract and refusal to comply with their contractual, fiduciary, statutory, and other obligations.

189. Plaintiff is also entitled to supplemental relief, including such additional orders as may be required to give effect to the Court's declarations with respect to the rights and obligations of the parties with respect to the lawful operation and management of the 387 Districts, with respect to the performance of the contracts alleged in this Complaint, and with respect to the Defendants' repeated and continuing breaches of contract and refusal to comply with their contractual, fiduciary, statutory, and other obligations

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

A. For damages in an amount to be proved at trial;

B. For such orders as may be required to declare and give effect to the rights and obligations of the parties with respect to the lawful operation and management of the 387 Districts, with respect to the performance of the contracts alleged in this Complaint, and with respect to the Defendants' repeated and continuing breaches of contract and refusal to comply with their contractual, fiduciary, statutory, and other obligations;

C. For Plaintiff's reasonable attorney's fees and costs;

D. For pre-judgment and post-judgment interest as allowed pursuant to statute and common law; and

E. For such other and further relief as this Court deems just and proper under the circumstances.

DATED this 14th day of February, 2005.

BEUS GILBERT PLLC

By _____

Leo R. Beus
Britton M. Worthen
Linnette R. Flanigan
4800 North Scottsdale Road
Suite 6000
Scottsdale, AZ 85251
Attorneys for Plaintiff

EXHIBIT C

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, CHAIRMAN
MARC SPITZER
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTEN K. MAYES

IN THE MATTER OF DIVERSIFIED WATER UTILITIES, INC. TO EXPAND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY TO INCLUDE ALL OF SECTION 13, 14, 15, 23 AND THAT PORTION OF SECTION 16 EAST OF RAILROAD TRACKS ALL IN T3S, R83, PINAL COUNTY, ARIZONA.	DOCKET NO.: W-02859A-04-0844
IN THE MATTER OF THE APPLICATION OF JOHNSON UTILITIES COMPANY FOR AN EXTENSION OF ITS EXISTING CERTIFICATE OF CONVENIENCE AND NECESSITY FOR WATER SERVICE.	DOCKET NO. WS-02987A-04-0869 **AFFIDAVIT OF SCOTT GRAY**

STATE OF ARIZONA)
) ss.
County of Maricopa)

I, Scott W. Gray, having first been duly sworn, deposes and says:

1. Affiant is the President of Diversified Water Utilities, Inc., an Arizona Corporation holding a certificate of convenience and necessity from the Arizona Corporation Commission to provide domestic water service in a portion of Pinal County, Arizona.

2. Affiant has been actively involved with development and developers both as owner of Diversified and in his practice as an attorney in Phoenix, Arizona.

3. Affiant has first hand knowledge of the enormous growth that is occurring in the vicinity of Diversified's current certificated area and in the vicinity of the area over which it seeks to extend its certificate of convenience and necessity.

4. By the time of hearing, Affiant will be prepared to present evidence as to the nature and extent of the development that is occurring within the vicinity of the area where Diversified requests to extend its certificate of convenience and necessity.

5. By the time of hearing, Affiant will be prepared to present evidence that the public interest will be served by extending Diversified's CC&N to encompass the areas sought by its applications, including, without limitation, by ensuring integrating water service throughout Bella Vista Farms, a master planned community that has already been approved by Pinal County; by enhancing the viability and reliability of Diversified; by providing certainty for landowners with regard to both water and sewer service; and by eliminating ongoing costs associated with the territorial battles between Diversified and JUC all of which will benefit the landowners, Diversified and the customers Diversified currently serves.

6. Certainty regarding who will serve the territory over which Diversified seeks to extend its certificate of convenience and necessity will enable Diversified to more efficiently

design its water utility plant and create a more reliable and efficient water system for the customers Diversified serves.

7. Affiant is unaware of any discussions between Diversified and James A. Gillespie or Kathleen Holderbach or any request by either landowner for information regarding Diversified's technical, managerial or financial capacity to be a water service provider to their properties.

8. The Arizona Corporation Commission has approved a hook-up fee for Diversified to provide Diversified financial capital to build backbone plant. The hook-up fee, together with other sources of capital available to Diversified, including, without limitation revenues generated from water sales, advances in aid of construction and Commission approved loans, will allow Diversified to design, construct and install a water system that will provide reliable water service to all the areas to which Diversified seeks to certificate.

FURTHER AFFIANT SAYETH NOT.

Scott W. Gray

SUBSCRIBED AND SWORN TO BEFORE ME this 4th day of May, 2005 by Scott W. Gray.

Dee Steadman
Notary Public

My Commission Expires:

1/14/08

OFFICIAL SEAL
DEE STEADMAN
NOTARY PUBLIC - STATE OF ARIZONA
MARICOPA COUNTY
My Commission Expires Jan. 14, 2008