

ORIGINAL

JOHNSON UTILITIES COMPANY



0000021970

5230 East Shea Boulevard * Scottsdale, Arizona

PH: (480) 998-3300; FAX: (480) 483-7908

Ms. Colleen Ryan
Docket Control
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

June 30, 2005

Arizona Corporation Commission
DOCKETED

JUN 30 2005

RE: Johnson Utilities Company:
Docket No. WS-02987A-05-0088

DOCKETED BY	<i>Ka</i>
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Dear Ms. Ryan:

In response to the staff report filed June 6, 2005 regarding the above mentioned docket, Johnson Utilities Company submits the Master Utility Agreement between Standard Pacific of Arizona, Inc. for the Quail Run subdivision attached hereto as Attachment No. 1.

Once the CC&N has been granted, copies of the agreements will be submitted to the Utilities Division in accordance with the rules. Should you have any questions or concerns, please do not hesitate to contact me. Thank you for your time and consideration in this matter.

Sincerely,

Daniel Hodges
Johnson Utilities, LLC

Enclosure

Cc: Brian Tompsett, Johnson Utilities (w/out enc.)
Earnest Johnson, Director Utilities Division (w/enc.)
Steve Olea, Assistant Director (w/enc.)
Brian Bozzo, Compliance Manager (w/enc.)
Christopher Kempley, Chief Counsel (w/enc.)
Judge Nodes, Hearing Division (w/enc.)
Ms. Lyn Farmer, Hearing Division (w/enc.)
Richard Sallquist, Sallquist & Drummond (w/enc.)
Docket Control (w/enc.)

AZ CORP COMMISSION
DOCUMENT CONTROL

2005 JUN 30 P 2:42

RECEIVED

ATTACHMENT 1

COPY

**MASTER UTILITY AGREEMENT
FOR
WATER AND WASTEWATER FACILITIES**

BETWEEN

**JOHNSON UTILITIES, L.L.C.
dba JOHNSON UTILITIES COMPANY**

AND

STANDARD PACIFIC OF ARIZONA, INC.

FOR

**QUAIL RUN
PINAL COUNTY, ARIZONA**

April 21, 2005

MASTER UTILITY AGREEMENT

THIS MASTER UTILITY AGREEMENT, entered into this 21st day of April, 2005, by and between JOHNSON UTILITIES, L.L.C., an Arizona limited liability company and a public service corporation duly approved as such by the Arizona Corporation Commission dba JOHNSON UTILITIES COMPANY, or its successors and assigns (hereinafter referred to as the "Company") and STANDARD PACIFIC OF ARIZONA, INC., a Delaware corporation, or its successors or assigns, (hereinafter referred to as "Developer"), regarding the provision of water and wastewater utility services to QUAIL RUN, a master planned community in Pinal County, Arizona (hereinafter referred to as the "Development").

RECITALS:

WHEREAS, the Company owns and operates a public service corporation and holds a Certificate of Convenience and Necessity ("CC&N") authorizing it to provide the public with water and wastewater utility services; and

WHEREAS, Developer is the owner of an approximately 100-acre Development, is building residential improvements within the Development, and desires the Company to provide water and wastewater service to the Development, which is more fully described on Attachment A hereto; and

WHEREAS, the Development is not currently located within the water or wastewater CC&N of the Company; and

WHEREAS, Company has filed an application with the Arizona Corporation Commission ("Commission") requesting authorization to extend its water and wastewater CC&N to include the Development, and is willing to extend service upon approval of such application; and

WHEREAS, Developer will construct a total of approximately 351 residential units within the Development; and

WHEREAS, the Developer has obtained certain zoning authorizations and approvals for the master plan on a community wide basis; and

WHEREAS, for the Developer to obtain: (1) the required approvals for the Development, and (2) 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

WHEREAS, in connection with it providing utility services, the Company is authorized and required to assess Off-Site Facilities Hook-Up Fees ("HUFs") for water and wastewater service pursuant to Commission approved Tariffs authorized for the Company; and

WHEREAS, in areas such as the Development, in which the Company does not presently own and operate a water system or wastewater collection system, the Commission's Rules and Regulations contemplate the Company and the Developer entering into a Line Extension

Agreement(s), attached hereto as **Attachments B and C**, as more particularly described below; and

WHEREAS, the Company requires certain onsite facilities which will enable the Company to provide water and wastewater service to the Development; and

WHEREAS, in consideration of the Company's extending water and wastewater service to the Development as contemplated herein and in Line Extension Agreements concerning the Development, Developer is willing to convey fee simple title to the onsite facilities.

NOW, THEREFORE, it is mutually covenanted and agreed by and between the parties hereto as follows:

1. **Advance Payment of HUFs.** To permit the Company to provide water service, and wastewater treatment plant capacity, lift-stations, transmission mains, an effluent delivery and disposal systems, and sludge disposal facilities, as well as the water wells, treatment if necessary, storage, pressure and the transmission facilities, necessary to meet the Company's and applicable regulatory agencies' requirements to serve the Development, Developer agrees to advance HUF payments for all the residential units within the Development in accordance with the Commission approved Tariffs for the Company. For this Development, the total advances shall be **\$315,900.00** for water facilities, based on \$900.00 per 4" water lateral for each residential lot, and **\$351,000.00** for wastewater facilities, based on \$1,000.00 per 4" sewer lateral for each residential lot. These charges are based on the Schedule of Hook-Up Fees, attached hereto as **Attachment D**. Developer also agrees to pay Company's upfront engineering costs directly to Company's designated engineers for service, the amount of which shall be credited against any payments due by Developer under this Agreement. In the event that the Commission issues a final order denying Company's application for an extension of its water and wastewater CC&N to serve to the Development, all upfront engineering costs paid directly to the Company's designated engineers shall be refunded to Developer. Payment of the advance for said HUFs under this paragraph shall be made upon: 1) final plat approval for the Development; and 2) a final order of the Commission approving Company's water and wastewater CC&N extension application. Any applicable Gross-Up Tax associated with the HUFs shall be assessed and refunded under the Line Extension Agreement(s) described below. All funds collected by the Company as HUFs shall be deposited into a separate interest bearing trust account and used for the purpose of paying for the costs of off-site facilities for the benefit of the Development, including repayment of loans obtained for the installation of off-site facilities. The HUFs shall be utilized in accordance with the Company's tariff which will directly benefit the Company's system, of which the Development will be a part. Notwithstanding any provision of this Agreement, nor by the payment of any HUF hereunder, shall the Developer obtain any right, title or interest in, or claim to service from, any specific plant of the Company.

2. **Development Schedule.** Commencing September 1 of the year first following the Company's service to the first customer within the Development, Developer shall provide the Company with a schedule indicating, to the best of Developer's knowledge, the projected development schedule for the Development, including the numbers and types of residential units expected to be constructed, any commercial and industrial development, the phasing of the projects within the Development, and the estimated number of units constructed annually until

build-out is reached. Developer shall thereafter provide the Company updated projections on or before September 1 of each succeeding calendar year through build-out.

3. **Notice to the Company.** The Company will supply water and wastewater service to the Development as provided for in this Agreement as and when requested, provided that Developer has paid the HUFs in accordance with this Agreement and further provided Developer has given no less than six (6) months written notice of that required service to the Company. Upon payment of the HUFs by Developer, the Company shall undertake such advance planning, process and obtain all government approvals and permits, and undertake construction so as to timely serve potential customers as and when service to such customers is requested and needed.

4. **Developer Provided Information and Data.** Upon execution of this Agreement, Developer shall provide to the Company in a digital format (i.e., AutoCad, MicroStation or .dxf format or as otherwise specified by the Company), all available data for the Development, including ALTA surveys, topographical, aerials, tentative plats, engineering plans, and final plats. Updated data will be provided to the Company on a timely basis.

5. **Permanent Wastewater Treatment Facility.** Wastewater service shall be subject to the Provisions of Service regulations set forth in AAC R14-2-607(C) & (D), the applicable ADEQ Regulations, or the terms and conditions of this Agreement, whichever is more strict. Lift station site(s) that are required, *if applicable*, to serve the Development will be conveyed to the Company, and must include appropriate maintenance, ingress and egress easements. Said facilities will be operated and maintained in accordance with good utility practice, including but not limited to the use of qualified operators and engineers. The Company is solely responsible for the disposal of the treated effluent from a permanent wastewater treatment plant, and represents that said disposal will meet all pertinent County, State and Federal regulations and requirements.

6. **Water Utility Services.** Water service shall be provided contemporaneously with wastewater service. The Company hereby agrees to provide Developer water utility services for the Development under the terms and conditions specifically set forth in this Agreement and the On-Site Line Extension Agreement for water service. Water utility service shall be provided to the Development in accordance with industry standards and all applicable laws, orders, decisions, and regulations. The Company represents and warrants that the provision of water utility service by the Company to the Development will, at all times, meet the requirements of ADEQ and the Department of Real Estate for approval of the residential subdivisions within the Development.

7. **Allocation of Assured Water Supply.** Upon payment of the Advance Payment of HUFs by Developer, the Company will allocate units of its Designation of Assured Water Supply to the Development equal to the service requirements associated with the Development, which shall include 351 units.

8. **Line Extension Agreements.** Company and Developer shall enter into separate Line Extension Agreements for water and wastewater service in accordance with the Commission's Rules and Regulations, and the Company's Tariff. The Line Extension Agreement(s) may be a universal agreement with supplemental addenda for each separate parcel

of subdivision, if applicable. Under the terms of the agreement, Developer shall construct, or cause to be constructed, all on-site facilities consistent with the Company's engineering requirements and specifications, and thereafter, convey all right, title and interest in and under those facilities, and any easements if necessary, to the Company. The Company shall annually refund to Developer five percent (5%) of the total gross annual revenue from water and wastewater sales to each bona fide customer whose service is connected to main lines covered by the line extension agreement, less all applicable sales, transaction and privilege taxes and regulatory assessments and surcharges, until such time as the entire advance has been fully refunded.

9. **Assignment.** Developer may assign its rights under this Agreement to any third party, or partially assign its rights under this Agreement with respect to any part of the Development sold by Developer to a third party. A copy of the written Assignment and Assumption shall be delivered to the Company as provided in Paragraph 10. Upon full or partial assignment of this Agreement to a third party and the Company's approval of that assignment, which approval shall not be unreasonably withheld, the Developer shall be relieved of all liabilities under this Agreement.

10. **Notice.** Except as otherwise required by law, any notice required or permitted under this Agreement must be in writing and must be given by either: (i) personal delivery; (ii) United States certified mail, return receipt requested, with all postage prepaid and properly addressed; (iii) any reputable, private overnight delivery service with delivery charges prepaid and proof of receipt; or (iv) by facsimile machine or telecopier. Notice sent by any of the foregoing methods must be addressed or sent to the party to whom notice is to be given, as the case may be, at the addresses or telecopy numbers set forth below:

Developer: STANDARD PACIFIC OF ARIZONA, INC.
6710 North Scottsdale Road, Suite #150
Scottsdale, AZ 85253
Attn: Carol Grumley
Tel: (480) 627-7500
Fax (480) 627-7615

Company: JOHNSON UTILITIES, LLC
5230 East Shea Boulevard
Scottsdale, Arizona 85254
Attn: George H. Johnson / Brian Tompsett
Tel: (480) 998-3300

Any party may change its address or telecopy number for purposes of delivery and receipt of notices by advising the other parties in writing of the change. Notice provided by the methods described above will be deemed to be received: (i) on the day of delivery, if personally delivered; (ii) on the date which is three (3) days after deposit in the United States mail, if given by certified mail; (iii) on the next regular business day after deposit with an express delivery service for overnight, "same day", or "next day" delivery service; or (iv) on the date of transmittal, if given on a regular business day and during regular business hours by facsimile

machine or telecopy. No notice will be effective unless provided by one of the methods described above.

11. **Severability.** In the event that any provision of this Agreement or portion thereof is held by the Commission, or an arbitrator(s) or court of competent jurisdiction to be unenforceable or invalid, the validity and enforceability of the enforceable portion of any such provision and of the remaining provisions shall not be adversely affected.

12. **Alternative Dispute Resolution.** The parties hereto agree that each will use good faith efforts to resolve, through negotiation, disputes arising hereunder without resorting to mediation, arbitration or litigation. However, to the extent that a dispute arises which cannot be resolve through negotiation, and the dispute does not fall within the jurisdiction of the Commission, the parties agree to the following dispute resolution mechanisms:

a. **Mediation.** The parties shall first attempt, in good faith, to resolve the dispute through mediation administered by the American Arbitration Association under its Commercial Mediation Rules.

b. **Arbitration.** If a dispute cannot be resolved as set forth above, the matter shall be submitted to binding arbitration in accordance with the rules of commercial arbitration ("Rules") then followed by the American Arbitration Association ("AAA"), Phoenix, Arizona. If the claim in dispute does not exceed \$20,000, then there shall be a single arbitrator selected by mutual agreement of the parties, and in the absence of agreement, appointed according to the Rules. If the claim in dispute exceeds \$20,000, the arbitration panel shall consist of three (3) members, one of who shall be selected by Developer, one of who shall be selected by Company, and the third, who shall serve as chairman, whom shall be selected by the AAA. The arbitrator or arbitrators must be knowledgeable in the subject matter of the dispute. The costs and fees of the arbitrator(s) shall be divided equally between the parties. Any decision of the arbitrator(s) shall be supported by written findings of fact and conclusions of law, and shall be based upon sound engineering practice. The decision of the arbitrator(s) shall be final, subject to the exceptions outlined in the Arizona Uniform Arbitration Act, A.R.S. Section 12-1502, et seq., and judgment may be entered upon the same; provided, however, that any decision of the arbitrator(s) may be appealed to the Superior Court of Maricopa County if it is based on an erroneous interpretation, application or disregard of the law applicable to the dispute. The arbitrator(s) shall control discovery in the proceedings and shall award the prevailing party its reasonable attorneys' fees and costs.

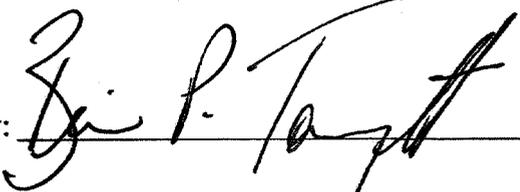
13. **Parties Cooperation.** The Company shall take all reasonable actions requested by Developer to assist Developer with Final Plat, ADEQ and Arizona Department of Real Estate approvals, and Developer shall take all reasonable actions requested by the Company to assist the Company in obtaining all regulatory approvals necessary to serve the Development. Each party shall reimburse the other for all reasonable costs it incurs in providing such assistance.

14. **Time.** Time is of the essence of this Agreement.

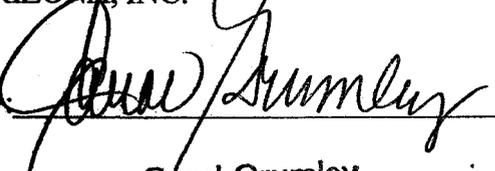
15. **Headings.** Headings in this Agreement are included for the convenience of the parties and shall not be construed as substantive provisions of the Agreement or as an indication of the intent of the parties with respect to any part hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

JOHNSON UTILITIES COMPANY

By: 
Its: EXECUTIVE VICE PRESIDENT
"Company"

STANDARD PACIFIC OF ARIZONA, INC.

By: 
Its: Carol Grumley
Vice President
"Developer"

By: 
Its: Bruce Schroeder
Vice President

ATTACHMENTS

- A. Legal Description of Development
- B. Water Line Extension Agreement
- C. Wastewater Line Extension Agreement
- D. Hook-up Fee Schedule

1620718.1/51239.011

EXHIBIT "A"

A PARCEL OF LAND BEING SITUATE IN THE WEST HALF OF THE WEST HALF OF SECTION 24, TOWNSHIP 3 SOUTH, RANGE 8 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA, HAVING A BOUNDARY MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FOR A TIE AT THE ARIZONA HIGHWAY DEPARTMENT BRASS CAP MARKING THE NORTHWEST CORNER OF SAID SECTION 24, FROM WHICH THE ARIZONA HIGHWAY DEPARTMENT BRASS CAP MARKING THE WEST QUARTER SECTION CORNER OF SAID SECTION 24 BEARS SOUTH 0 DEGREES 18 MINUTES 56 SECONDS EAST, 2652.01 FEET DISTANT;

THENCE NORTH 89 DEGREES 58 MINUTES 50 SECONDS EAST, 1351.43 FEET TO THE WEST 1/16 CORNER OF SAID SECTION 24;

THENCE SOUTH 0 DEGREES 16 MINUTES 45 SECONDS EAST, 40.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 0 DEGREES 16 MINUTES 45 SECONDS EAST, 2611.66 FEET TO A POINT ON THE EAST-WEST MID-SECTION LINE OF SECTION 24;

THENCE SOUTH 0 DEGREES 26 MINUTES 44 SECONDS EAST, 713.09 FEET TO THE SOUTHEAST CORNER OF SUBJECT PARCEL;

THENCE SOUTH 89 DEGREES 57 MINUTES 58 SECONDS WEST, 1307.23 FEET TO THE SOUTHWEST CORNER OF SUBJECT PARCEL, SAID POINT BEING ON THE EASTERLY RIGHT-OF-WAY LINE OF QUAIL RUN ROAD;

THENCE NORTH 0 DEGREES 38 MINUTES 54 SECONDS WEST, 713.11 FEET TO A POINT ON THE EAST-WEST MID-SECTION LINE, SECTION 24 AND FROM WHICH POINT THE WEST QUARTER SECTION CORNER OF SECTION 24 BEARS SOUTH 89 DEGREES 57 MINUTES 58 SECONDS WEST, 40.00 FEET;

THENCE NORTH 0 DEGREES 18 MINUTES 56 SECONDS WEST, ALONG THE EASTERLY RIGHT-OF-WAY LINE OF QUAIL RUN ROAD 2612.00 FEET;

THENCE NORTH 89 DEGREES 58 MINUTES 50 SECONDS EAST, 1311.40 FEET TO THE TRUE POINT OF BEGINNING.

EXHIBIT B

WATER LINE EXTENSION AGREEMENT

[to come]

EXHIBIT C

WASTEWATER LINE EXTENSION AGREEMENT

[to come]

EXHIBIT D

OFF-SITE WASTEWATER FACILITIES HOOK-UP FEES

<u>Service Lateral Size</u>	<u>Fee</u>	<u>Number</u>	<u>Extended</u>
4"	\$1,000.00	351	
6"	\$2,000.00		
8 or greater	\$4,000.00		
Total Hook-up Fees			\$351,000.00

OFF-SITE WATER FACILITIES HOOK-UP FEES

<u>Meter Size</u>	<u>Fee</u>	<u>Number</u>	<u>Extended</u>
5/8" x 3/4"	\$750.00		
3/4" Meter	\$900.00	351	
1" Meter	\$1,500.00		
1-1/2" Meter	\$3,000.00		
2" Meter	\$4,800.00		
3" Meter	\$9,000.00		
4" Meter	\$15,000.00		
6" Meter or greater	\$30,000.00		
Total Hook-up Fees			\$315,900.00