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**AGREEMENT FOR PURCHASE  
OF CERTAIN ASSETS  
OF**

**49ER WATER COMPANY, INC.**

**BY**

**THE CITY OF TUCSON**

**February 10, 2003**

EX A TO RESOLUTION NO. 19505  
CITY OF TUCSON CONTRACT NO. 0443-03

**AGREEMENT FOR PURCHASE  
OF CERTAIN ASSETS OF 49ER WATER COMPANY, INC.**

THIS AGREEMENT FOR PURCHASE OF CERTAIN ASSETS (the "**Agreement**") is entered into on February 10, 2003 by 49ER WATER COMPANY, INC., an Arizona public service corporation (the "**Water Company**") and THE CITY OF TUCSON, a municipal corporation ("**COT**").

**BACKGROUND**

The Water Company is the current owner of the Assets, as hereinafter defined, situated in eastern Pima County, Arizona. The Water Company is also the owner and holder of the Water Company Permits, as hereinafter defined, which franchise and authorize the Water Company to engage as a public service corporation in the sale of water for commercial and domestic uses in its Certificated Area, as hereinafter defined.

COT desires to purchase the Transferred Assets, as hereinafter defined, and to integrate the Non-Golf Course Distribution System, as hereinafter defined, into COT's water utility system. COT and Water Company also desire to supply the Golf Course with water from COT's Reclaimed System.

THEREFORE, in consideration of the foregoing, the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Water Company and COT agree that, subject to the terms and conditions of this Agreement, COT shall purchase the Transferred Assets of the Water Company in the manner described herein.

**TERMS AND CONDITIONS**

**ARTICLE I  
DEFINITIONS**

**1.1. Definitions.** Unless the context clearly indicates the contrary, the following words used in this Agreement shall have the following meanings:

**1.1.1.** "**ACC**" shall mean the Arizona Corporation Commission.

**1.1.2.** "**Actual Knowledge**" shall mean the knowledge of Jeffrey M. Silverstein, President and Debbie Pedersen, Vice President of Operations, IRI Golf Management, L.P.

**1.1.3.** "**Agreement**" shall mean this Agreement for Purchase of Certain Assets of the 49er Water Company, Inc.

1.1.4. **"Assets"** shall mean collectively, the Retained Assets and the Transferred Assets.

1.1.5. **"Assumed Liabilities"** shall mean and refer to, as of any given date:

- (a) the meter refund obligations,
- (b) the line extension commitments, and
- (c) all other liabilities of the Water Company which will relate to or affect the Transferred Assets from and after the Closing Date.

1.1.6. **"Assumed Liabilities List"** shall mean the list of Assumed Liabilities which is attached hereto as **Exhibit "A"**, and made a part hereof for all purposes, which shall be updated at Closing, reflecting changes in the ordinary course of business between the Effective Date and the Closing Date.

1.1.7. **"Bill of Sale"** shall mean that certain Blanket Bill of Sale, Conveyance, Assignment and Assumption Agreement, to be in the form and contain the content as the Bill of Sale attached hereto as **Exhibit "B"** and made a part hereof for all purposes, to be executed and delivered by the Water Company transferring, conveying and assigning to COT its interests in and to the Transferred Assets other than the Real Property Interests.

1.1.8. **"Business"** shall mean the business of the sale and delivery of water for commercial and domestic uses in the Certificated Area conducted by the Water Company pursuant to the Water Company Permits and other related services in connection therewith.

1.1.9. **"Business Day"** shall mean a day that is not a Saturday, a Sunday, a legal holiday or a day on which banks are required or permitted by law or other governmental action to close in City of Tucson.

1.1.10. **"Certificate"** shall mean that certain Certificate of Convenience and Necessity, issued by the ACC on June 29, 1961 (Decision Nos. 33214 and 333217) authorizing the Water Company to engage as a public service corporation in the sale of water for commercial and domestic uses in its Certificated Area, as amended on August 5, 1992.

1.1.11. **"Certificated Area"** shall mean the area lying within Pima County, Arizona and listed on **Exhibit "C"** and made a part hereof for all purposes.

1.1.12.

**"City Production Wells"** shall mean:

(a) those certain wells with Arizona Department of Water Resources Registration Numbers 558500, 617300 and 617301, which are currently owned by the Water Company and which are to be transferred and conveyed at Closing by the Water Company to COT, together with

(b) assorted pipelines connected thereto that the COT may need to connect the foregoing wells to the Golf Course Distribution System.

1.1.13.

**"City Production Wells Equipment"** shall mean collectively, all pump stations, parts, piping, monitoring equipment, equipment, fixtures and equipment, and other items of similar property owned by the Water Company, whether required for or incidental to, or held in reserve storage for, the present or future use, which are located on the Water Company Land and which are used by the Water Company in connection with the operation of the City Production Wells.

1.1.14.

**"Closing"** shall mean the consummation of the transaction contemplated hereby.

1.1.15.

**"Closing Date"** shall mean the date that is five (5) Business Days following the date on which the last of the Closing Conditions has been satisfied.

1.1.16.

**"Closing Conditions"** shall mean the conditions to closing set forth in Article III hereof.

1.1.17.

**"Code"** shall mean the United States Internal Revenue Code of 1986, as amended.

1.1.18.

**"COT"** shall mean The City of Tucson, a municipal corporation.

1.1.19.

**"COT Distribution System"** shall mean those physical facilities owned by COT constructed for, or utilized for, the express purpose of transporting, delivering, or measuring the delivery of water to COT's customers.

1.1.20.

**"COT's Reclaimed System"** shall mean COT's reclaimed water distribution system.

1.1.21.

**"Contract Rights"** shall mean all rights inuring to the benefit of the Water Company arising under any contracts, agreements or other written instruments between the Water Company and any Person.

1.1.22.

**"Deed"** shall mean that certain Special Warranty Deed, to be in the form and contain the content as the Deed attached hereto as Exhibit "D" and made a

part hereof for all purposes, to be executed and delivered by the Water Company transferring, conveying and assigning to COT the Real Property Interests subject only to the Permitted Encumbrances.

**1.1.23.**                “Department” shall mean the Arizona Department of Water Resources.

**1.1.24.**                “Distribution System” shall mean those physical facilities owned by the Water Company constructed for, or utilized for, the express purpose of transporting, delivering, or measuring the delivery of water from the Water Wells to points of delivery at the Golf Course or at the residences or business location of the Residential and Commercial Customers.

**1.1.25.**                “Effective Date” shall mean the date on which this Agreement has been executed by both the Water Company and COT.

**1.1.26.**                “Franchise” shall mean that certain franchise issued by the Pima County Board of Supervisors franchising the Water Company to engage as a public service corporation in the sale of water for commercial and domestic uses in its Certificated Area.

**1.1.27.**                “Golf Course” shall mean an eighteen (18) hole golf course and related amenities, including, a clubhouse, maintenance facilities, cart storage facilities, a swimming pool, irrigation systems, a parking lot, cart paths, tees, landscaping, greens, holding ponds, a driving range, irrigation lines, drainage facilities and enhanced signage located on and all other improvements, structures, and fixtures placed, constructed or installed on the Golf Course Land.

**1.1.28.**                “Golf Course Distribution System” shall mean that portion of the Distribution System lying within the boundaries of the Golf Course Land, except the Potable Water Distribution System.

**1.1.29.**                “Golf Course Easement Agreement” shall mean an easement agreement to be executed and delivered at Closing by the Golf Course Owner and the Water Company to COT and to be in the form and to contain the content which shall be reasonably acceptable to COT, the Golf Course Owner and the Water Company, creating an easement over the Golf Course Land and the Water Company Land for the following purposes:

(a)                    enabling COT to serve certain areas within of the Golf Course with potable water with the Potable Water Distribution System;

(b)                    providing ingress and egress to and from public roads, adjacent to the Golf Course Land and/or the Water Company Land, to the City

Production Wells, and permitting COT to use and operate the City Production Wells on the Water Company Land; and

(c) enabling COT to maintain existing piping contained in the Golf Course Distribution System to and from the City Production Wells and existing ponds or lakes located on the Golf Course Land.

1.1.30. **"Golf Course Land"** shall mean those certain tracts of land lying and being situated in Pima County, Arizona, being more particularly described on **Exhibit "E"** and made a part hereof for all purposes.

1.1.31. **"Golf Course Owner"** shall mean **49er COUNTRY CLUB, LLC, d/b/a IRI ARIZONA I LLC**, a Delaware limited liability company.

1.1.32. **"Golf Course Receivables"** shall mean any right for the payment to the Water Company for services or goods provided or rendered to the Golf Course or the Golf Course Owner, whether or not evidenced by an instrument or chattel paper, arising out of or in any way related to the Business prior to Closing.

1.1.33. **"Governmental Authorities"** shall mean the United States of America, the state, the county or municipality in which the Assets are located, all regulatory agencies having jurisdiction over the Assets or the Water Company, any district, department or other political division thereof, or any political subdivision of any of the foregoing, and any court or political subdivision, agency, or instrumentality having or exercising jurisdiction over the Assets or the Water Company.

1.1.34. **"Governmental Authority Consents"** shall mean the consent and ratification by the ACC that the Transferred Assets may be transferred by the Water Company to COT.

1.1.35. **"Inventory"** shall mean all engineering, maintenance and other supplies, including fuel, tools, stationery and other printed materials; and other supplies of all kinds, whether used, unused, or held in reserve storage for future use in connection with the Business.

1.1.36. **"Meter Deposits"** shall mean the deposits heretofore deposited with the Water Company by Residential or Commercial Customers as security for the performance of their obligations to the Water Company, a current list of which is attached hereto as **Exhibit "F"** and made a part hereof for all purposes.

1.1.37. **"Non-Golf Course Contract Rights"** shall mean all Contract Rights existing on the Closing Date relating to or affecting the Residential or Commercial Customers, a list of which is attached hereto as **Exhibit "G"** and made a part hereof for all purposes.

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1.1.38. **“Non-Golf Course Distribution System”** shall mean:

- (a) the portion of the Distribution System owned by the Water Company which lies outside of the boundaries of the Golf Course Land and the Water Company Land, and
- (b) that portion of the Distribution System which constitutes the Potable Water Distribution System,

all of which shall be set forth in the Non-Golf Course Distribution System Map or other appropriate documentation.

1.1.39. **“Non-Golf Course Distribution System Map”** shall mean a map of the Certificated Area showing the Non-Golf Course Distribution System, which map is attached hereto as **Exhibit “H”** and made a part hereof for all purposes, which shall be updated at Closing, reflecting changes in the ordinary course of business between the Effective Date and the Closing Date.

1.1.40. **“Non-Golf Course Records”** shall mean that portion of the Records consisting of:

- (a) all of the Water Company's customer data base information (including master file information, billing histories, complaints),
- (b) service lists with service addresses,
- (c) meter reading information,
- (d) lists of meter numbers and sizes,
- (e) customer applications and correspondence, and
- (f) all other related documents or information in any way relating to the Business as it applies to the Residential and Commercial Customers, other than the Golf Course Owner.

1.1.41. **“Outside Date”** shall mean September 30, 2003.

1.1.42. **“Party”** shall mean either the Water Company or COT, as the context requires.

1.1.43. **“Permitted Encumbrances”** shall mean those matters of record affecting title to the Real Property Interests which shall:

- (a) be set forth as an Exhibit to the Deed,
- (b) be included in the Preliminary Title Report to be secured by COT,
- (c) be approved by COT prior to the Closing Date, and
- (d) include the Right of Way Easements, to the extent that such instruments or rights affect or pertain to the Transferred Assets.

**1.1.44.** "Person" shall mean an individual, joint venture, corporation, limited liability company, joint stock company, trust (including a business trust), unincorporated association or other entity, or a government or any political subdivision or agency thereof.

**1.1.45.** "Potable Water Distribution System" shall mean that portion of the Distribution System which lies within the boundaries of the Golf Course Land and which serves improvements lying within the boundaries of the Golf Course Land with potable water, which portion of the Distribution System is to be included within and be a part of the Non-Golf Course Distribution System.

**1.1.46.** "Purchase Price" shall mean the sum of \$325,000.00.

**1.1.47.** "Real Property Interests" shall mean all easements, licenses, and/or other real property interests lying within the Certificated Areas, which are related to providing services to the Residential and Commercial Customers and potable water to the Golf Course Owner, including the following:

- (a) any rights and appurtenances pertaining to the Transferred Assets, including rights and privileges to construct, install, maintain and operate a water distribution system in the public right-of-way necessary to supply water services in and adjacent to the applicable areas for domestic, commercial, industrial and municipal uses;
- (b) rights of the Water Company under the Right of Way Easements;
- (c) the Service Area Rights;
- (d) rights of the Water Company in respect to any portion of the Non-Golf Course Distribution system lying outside of but adjacent to the public rights-of-way located in the Certificated Area in which most, if not all, of the Non-Golf Course Distribution System lies;

- (e) rights of the Water Company to the City Production Wells;
- (f) rights of the Water Company acquired by adverse possession or prescription across real property located in the Certificated Area (other than the Water Company Land and the Golf Course Land) which is owned by Residential and Commercial Customers (other than the Golf Course Owner); and
- (g) such additional rights owned or held by the Water Company and relating to the Transferred Assets which are included within this definition, which may arise between the Effective Date and the Closing Date, as a result of changes occurring in the ordinary course of business.

**1.1.48.** **"Receivables"** shall mean collectively, the Golf Course Receivables and the Residential and Commercial Receivables.

**1.1.49.** **"Reclaimed Water Distribution System"** shall mean the reclaimed water pipelines, automated controls, valves, service lines, and other distribution system facilities to be built by the COT after the Closing Date which will connect the Golf Course Distribution System to the City's Reclaimed System.

**1.1.50.** **"Records"** shall mean all of the Water Company's service agreements and records, repair records, water treatment records, ACC and Department filings and correspondence, customer data base information (including master file information, billing histories, complaints), meter reading information, and other related documents in any way relating to the Business.

**1.1.51.** **"Residential and Commercial Receivables"** shall mean any right for the payment to the Water Company for services or goods provided or rendered to the Residential and Commercial Customers, whether or not evidenced by an instrument or chattel paper, arising out of or in any way related to the Business prior to Closing.

**1.1.52.** **"Residential and Commercial Customers"** shall mean any Person, or Company who is a customer of the Water Company at the time of this Agreement or as of the Closing Date, or, who, if not a customer of the Water Company, may be served by the Water Company in accordance with the Water Company Permits.

**1.1.53.** **"Retained Assets"** shall mean the following assets, which are currently owned and used by the Water Company in connection with the Business:

- (a) the Retained Water Wells,
- (b) the Retained Equipment,

- (c) the Inventory,
- (d) the Golf Course Contract Rights,
- (e) the Receivables,
- (f) the Golf Course Records,
- (g) the Water Company Land, and
- (h) the Golf Course Distribution System.

**1.1.54.** "Retained Equipment" shall mean collectively, all pump stations, parts, piping, monitoring equipment, equipment, office furniture, fixtures and equipment, computer equipment and software, telephone systems, and other items of similar property owned by the Water Company, whether required for or incidental to, or held in reserve storage for, the present or future use and operation of the Business, which are located on the Golf Course Land or the Water Company Land and which are used by the Water Company to provide water services to the Golf Course and the Residential and Commercial Customers, other than the Distribution System and the City Production Wells Equipment.

**1.1.55.** "Retained Records" shall mean all of the Water Company's Records other than the Non-Golf Course Records.

**1.1.56.** "Retained Water Wells" shall mean those wells with ADWR Registration Numbers 503963, 617302 and 581364.

**1.1.57.** "Right of Way Easements" shall mean:

(a) that certain Right of Way Easement, dated February 22, 1995, executed and delivered by Magna Investment & Development, Ltd., a Utah limited partnership, for the benefit of the Water Company, duly recorded at Docket 9990, Page 1470 of the Real Property Records of Pima County, Arizona,

(b) that certain Correction Right of Way Easement, dated July 24, 1995, executed and delivered by Magna Investment & Development, Ltd., a Utah limited partnership, for the benefit of the Water Company, duly recorded at Docket 10091, Page 1776 of the Real Property Records of Pima County, Arizona, and

(c) that certain Access Easement, dated February 22, 1995, executed and delivered by Magna Investment & Development, Ltd., a Utah

limited partnership, for the benefit of the Water Company, duly recorded at Docket 9990, Page 1473 of the Real Property Records of Pima County, Arizona.

**1.1.58.**            **"Service Area Rights"** shall mean the Water Company's service area rights which have been granted or created under and pursuant to the Certificate, which permit and franchise the Water Company to engage as a public service corporation in the sale of water for commercial and domestic uses in its Certificated Area (other than the Golf Course Land), including the right to construct, install, maintain and operate a water distribution system in the public right-of-way to supply water services in and adjacent to that area for domestic, commercial, industrial and municipal uses.

**1.1.59.**            **"Title Company"** shall mean Title Security Agency of Arizona, Tucson, Arizona.

**1.1.60.**            **"Transfer Instruments"** shall mean those documents customarily required for the transfer of the Transferred Assets, including, but not limited to:

- (a)                    Deed to the Real Property Interests;
- (b)                    Affidavit of Value;
- (c)                    Foreign Investment of Real Property Tax Act Affidavit;
- (d)                    Golf Course Easement Agreement; and
- (e)                    Bill of Sale.

**1.1.61.**            **"Transferred Assets"** shall mean:

- (a)                    the Non-Golf Course Distribution System,
- (b)                    the Real Property Interests,
- (c)                    the Non-Golf Course Contract Rights,
- (d)                    the Non-Golf Course Records,
- (e)                    the City Production Wells,
- (f)                    the City Production Wells Equipment, and
- (g)                    the Water Taps.

1.1.62. **“Water Company Land”** shall mean those certain tracts of land lying and being situated in Pima County, Arizona, being more particularly described on **Exhibit “I”** and made a part hereof for all purposes.

1.1.63. **“Water Company Permits”** shall mean collectively:

- (a) the Certificate,
- (b) the Franchise, and
- (c) a designation of assured water supply, issued by the Governmental Authorities.

1.1.64. **“Water Taps”** shall mean the rights granted to the Water Company under the Water Company Permits to sell to and deliver water to the Residential and Commercial Customers.

1.1.65. **“Water Wells”** shall mean collectively, the Retained Wells and the City Production Wells.

**ARTICLE II  
AGREEMENT TO PURCHASE AND SELL;  
PURCHASE PRICE; RETAINED ASSETS**

2.1. **Agreement to Purchase and Sell the Transferred Assets.**

2.1.1. **Agreement to Purchase and Sell the Transferred Assets.**

(a) In consideration of the agreement by COT to pay to the Water Company the Purchase Price, the Water Company hereby agrees to sell to COT, and COT hereby agrees to purchase from the Water Company, upon the terms and conditions set forth herein, the Transferred Assets.

(b) The Transferred Assets will be sold, assigned, conveyed, transferred and delivered to COT free and clear of all liens and encumbrances other than the Permitted Encumbrances.

2.1.2. **City Production Wells.** The Water Company shall, as part of the Transferred Assets, convey and transfer its interests in the City Production Wells. COT intends to draw water from the City Production Wells and deliver same to the Golf Course Owner as such times as COT water is not available. At such time as the Reclaimed Water Distribution System is completed and operating, COT shall within a reasonable period of time thereafter, abandon the City Production Wells (and the

associated easements relating thereto as contemplated by the Golf Course Easement Agreement) and remove the City Production Equipment from the Water Company Land, all at COT's sole cost and expense.

**2.2. Retained Assets.** Notwithstanding the generality of **Section 2.1**, the Retained Assets are not a part of the sale and purchase contemplated by this Agreement and are expressly excluded from the definition of the term "**Transferred Assets.**"

**2.3. Purchase Price.** At Closing COT shall pay the Purchase Price in immediately available United States funds by release and delivery of such funds by the Title Company at Closing on the Closing Date.

**2.4. Escrow Closing.**

**2.4.1.** Notwithstanding anything herein to the contrary, the Parties agree that the Closing shall be accomplished by delivery, into escrow with the Title Company, of all documents and instruments required to be delivered at Closing. In such event, the Purchase Price shall be delivered by COT to the Title Company and delivered by the Title Company to the Water Company in accordance with the terms hereof on the Closing Date.

**2.4.2.** The Parties shall execute and deliver such written escrow instructions as COT and the Water Company may agree upon consistent with the terms hereof.

**2.4.3.** COT and the Water Company agree to execute on or before the Closing sufficient copies of all closing documents for each Party to have two (2) sets of original Transfer Documents.

**2.5. Reporting Person.** Each of the Water Company and COT hereby designate the Title Company as the "**Reporting Person**" as such term is utilized in Section 6045 of the Code and regulations thereunder. COT and the Water Company agree to provide the Title Company with such information as may be required for the Water Company to file a Form 1099 or other required form relative to the Closing with the Internal Revenue Service. A copy of the filed Form 1099 or other filed form shall be provided to COT simultaneously with its being provided to the Internal Revenue Service.

**ARTICLE III  
CONDITIONS PRECEDENT**

**3.1. Conditions Precedent to the Sale.**

**3.1.1. Changes in or outside of the Ordinary Course of Business.**

**(a)** On or before the Closing Date, the Water Company shall deliver to COT for its review and information an updated:

- (i)** Assumed Liabilities List,
- (ii)** Real Property Interest Schedule, and
- (iii)** Non-Golf Course Distribution System Map,

to the extent that the information contained herein has changed between the Effective Date and the Closing Date.

**(b)** COT shall review each of such items promptly upon receipt for the purpose of reviewing the changes reflected therein.

**(c)** To the extent that changes have occurred which are outside of the ordinary course of business and which are unacceptable to COT, COT shall have the right to terminate this Agreement by the delivery of written notice to the Water Company, which notice shall be delivered promptly following the delivery of such updated items, in which event the obligations of the parties hereto shall thereafter be of no further force and effect.

**(d)** To the extent that changes reflect transactions in the ordinary course of business, COT shall not have the right to terminate this Agreement as aforesaid.

**3.1.2. Closing Conditions.** The performance of COT and the Water Company under this Agreement is contingent upon satisfaction of the following Closing Conditions, on or before the Outside Date:

**(a)** The Mayor and Council of COT shall have authorized the execution of this Agreement and the consummation of the transaction contemplated hereby by appropriate resolution;

**(b)** A Preliminary Title Report shall have been issued by the Title Company, which shall confirm that title to the Real Property Interests will not be encumbered with any matter which will materially and adversely affect COT's use

of the Real Property Interests from and after the Closing Date, other than those exceptions to be released by the Water Company on or prior to the Closing Date;

(c) The Water Company and COT shall have obtained the Governmental Authority Consents; and

(d) COT shall have acquired any real property interests from such Persons as may be necessary to connect the Non-Golf Course Distribution System with the COT Distribution System.

**3.1.3. Right of Termination.** If the ACC has not issued its consent to the transaction contemplated hereby on or before the Outside Date, then in such event either party may cancel this Agreement without liability of any kind to the other party, and this Agreement shall thereafter be of no further force or effect.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES**

**4.1. The Water Company's Representations.** Except as otherwise set forth in this Agreement, the Water Company hereby represents and warrants to COT as of Closing that:

**4.1.1. Ownership.** The Water Company is the owner of and has good title to the Transferred Assets to be conveyed hereunder free and clear of all matters other than the Permitted Encumbrances and those matters which shall be released on or prior to the Closing Date.

**4.1.2. Liabilities and Liens.**

(a) The Water Company has no Actual Knowledge of any judgments, liens, actions, or proceedings pending against the Water Company or the Transferred Assets which would adversely affect the transaction contemplated hereby or COT's ownership of the Transferred Assets from and after the Closing Date.

(b) COT will receive, if such liens or actions are discovered prior to the Closing Date, title to the Transferred Assets free and clear of all encumbrances other than the Permitted Encumbrances.

(c) To the extent that any liabilities or liens currently encumber the Transferred Assets, on or prior to the Closing Date the Water Company shall secure releases in recordable form of all such liabilities or liens.

**4.1.3. Labor and Materials.** All bills and invoices for labor and

materials furnished to or on behalf of the Water Company relating to the Transferred Assets prior to the time of conveyance to COT, if any, will be paid or provided for by the Water Company on or prior to the Closing Date.

**4.1.4. Authority.** The Water Company is a duly formed and currently valid Arizona corporation and has the right and authority to enter into this Agreement, subject to securing the Governmental Authority Consents, to consummate the sale contemplated herein, and to observe and perform all of its covenants and obligations hereunder. The person executing this Agreement and any other document required hereby has full authority to act on behalf of and to bind the Water Company to the obligations imposed on it by this Agreement.

**4.1.5. Environmental Regulations.** Although the Water Company has no Actual Knowledge of any environmental hazards or the violation of any environmental regulations concerning the Transferred Assets, the Transferred Assets shall be conveyed without any warranty as to environmental hazards.

#### **4.2. Transferred Assets.**

##### **4.2.1. Disclaimer of Warranties.**

(a) The Transferred Assets are to be purchased "AS IS" with no warranty, either expressed or implied, as to working condition or fitness for any particular purpose.

(b) Furthermore, the purchase of the Transferred Assets shall not constitute a purchase of the Water Company by COT, nor render COT a successor in interest to the Water Company.

(c) This transaction contemplated by this Agreement is limited to the purchase and sale of Transferred Assets only, and COT is not assuming any liabilities of the Water Company with respect to the Transferred Assets that may exist at any time prior to their transfer hereunder other than the Assumed Liabilities.

**4.3. COT's Prior Inspection.** COT shall, on or before the Closing Date, have the right, from time to time, to inspect the condition of the Transferred Assets as it deems reasonably necessary. The Water Company shall maintain the condition of the Transferred Assets in their then current condition, ordinary wear excepted, through the Closing Date, and COT shall accept the Transferred Assets in such condition on the Closing Date.

**4.4. COT's Representations.** COT hereby represents to the Water Company that COT is a duly formed and currently valid municipal corporation under

the laws of the State of Arizona, and the entering into of this Agreement and the performance of COT's obligations hereunder have been duly authorized by all proper and necessary actions, and do not violate any applicable governmental statute, rule, regulation, ordinance, contract or other restriction. The person executing this Agreement and any other documents required hereby has full authority to act on behalf of and to bind COT in and to the obligations imposed on it by this Agreement.

## **ARTICLE V CLOSING AND ESCROW.**

**5.1. Closing; Conveyance of the Transferred Assets.** Subject to the satisfaction of those Closing Conditions stated in Article III of this Agreement, as well as any other provisions of this Agreement which are stated to be conditions precedent to closing, the Transferred Assets shall be conveyed to COT on the Closing Date. The Transferred Assets shall be conveyed in the following manner:

**5.1.1. Transferred Assets other than the Real Property Interests.** The Transferred Assets, other than the Real Property Interests, shall be conveyed at Closing by the execution and delivery by the Water Company of a Bill of Sale, which shall include a list identifying such Assets. The Bill of Sale shall specifically provide for the assumption by COT of the Assumed Liabilities.

**5.1.2. Customer Lists and Other Information.** Notwithstanding the actual conveyance of these assets at Closing, the Water Company agrees to furnish to COT, prior to or on and after the Closing Date, with such information from its Records as may be necessary for the COT to develop a customer service and Geographical Information Systems (GIS) data base that will enable COT to immediately assume customer service and billing functions, and Governmental Authorities reporting requirements, at the time of Closing.

**5.1.3. Reclaimed Water Distribution System Reimbursements.** At Closing or not later than the commencement of construction of the Reclaimed Water Distribution System, COT and the Golf Course Owner shall execute and deliver an agreement in writing which shall provide for appropriate sharing of costs which are reimbursed from any additional users of Reclaimed Water Distribution System in accordance with Sections 27(37) and 27(38) of the City of Tucson Code. The sharing of costs for the Golf Course Owner shall be based upon the ratio of the amount of the costs paid or payable by the Golf Course Owner as contemplated hereby over the total costs for the Reclaimed Water Distribution System paid by COT before any such sums are reimbursed by the Golf Course Owner. As of the date hereof it is estimates that the sharing will be twenty percent (20%) to the Golf Course Owner and eighty percent (80%) to COT.

**5.1.4. Meter Reading.** The Water Company and COT also agree to coordinate a simultaneous meter reading at the time of Closing. COT shall, to the extent that it desires to inspect the Records prior to the Closing Date, use reasonable efforts to hold information derived from such inspection in confidence to honor and respect any confidentiality obligations that the Water Company may have to the Residential and Commercial Customers.

**5.1.5. Consent to Transfer of Contract Rights.** To the extent that any Person shall be required to consent to the transfer of Non-Golf Course Contract Rights, then the Water Company shall deliver those consents in writing to COT at Closing.

**5.1.6. Real Property Interests.** The Real Property Interests shall be conveyed by the Deed, subject only to the Permitted Exceptions.

**5.2. Closing Agent.** The Title Company shall serve as the Closing agent for this transaction. The Title Company agrees to do all things reasonably required by the terms of this Agreement to close this transaction.

**5.3. Delivery of Transfer Instruments.** The Transfer Instruments and any other documents required by this Agreement or applicable laws shall be placed by the parties into escrow with the Title Company and shall be delivered to the appropriate party upon Closing. At Closing the Water Company shall cause the Golf Course Owner to execute and deliver the Golf Course Easement Agreement.

**5.4. Closing Costs.** Costs of Closing and/or expenses connected with the sale and transfer of the Transferred Assets shall be paid through escrow in the following manner:

**5.4.1. Escrow Fees.** The escrow fee and all filing and recording fees shall be divided equally between COT and the Water Company, to the extent that such recording fees or filing fees relate to the Transfer Instruments. If any recording fees or filing fees are necessary as a result of recordings required to clear title, such fees shall be paid by the Water Company.

**5.4.2. Title Insurance.** The premium for the standard title insurance policies required to be provided by this Agreement, including preliminary title report, shall be divided equally between the parties. COT shall pay the difference between the standard premium and an extended premium, if any.

**5.4.3. Attorney's Fees.** Each party shall pay its own attorneys' fees and costs.

**5.5. Prorations.** All of the following shall be prorated as of the date of Closing:

**5.5.1. Taxes.** All current real estate and personal property taxes against the Transferred Assets, if any, for the current calendar year shall be pro-rated between the Water Company and COT.

**5.5.2. Assessments.** All current assessments, both principal and interest, against the Transferred Assets or Real Property Interests, if any, and any delinquent amounts shall be paid by the Water Company on or before Closing.

**5.6. Meter Deposits or other Non-Golf Course Liabilities.** COT shall have no liability for Meter Deposits or other liabilities related to Transferred Assets, other than the Assumed Liabilities. All Meter Deposits previously delivered to the Water Company by the Residential and Commercial Customers to secure payment of their water bills or for any other reason shall be refunded to those customers by the Water Company as soon after the Closing as may be reasonably practical, unless the Water Company is legally entitled to retain same.

## ARTICLE VI POST CLOSING OBLIGATIONS

**6.1. Receivables.**

**6.1.1. Retention of Receivables by the Water Company.**

(a) All of the Water Company's Receivables, which accrued in connection with the operation of the Business prior to the Closing Date, whether received before, on, or after the Closing Date, shall remain the property of the Water Company.

(b) At the Closing, the Water Company shall prepare a list of its outstanding Receivables as of midnight on the date prior to the Closing, specifying the name of each account and the amount due to the Water Company.

**6.1.2. Receivables Collection.** The Water Company may, in its sole discretion exercise any and all efforts to collect delinquent the Water Company's Receivables, including resort to legal action. All such efforts by the Water Company shall be at its sole cost and expense.

**6.1.3. COT Lack of Responsibility.** COT shall have no obligation or rights with respect to any Receivable, nor shall COT be required to take any legal proceeding or action to effect collection on behalf of the Water Company.

**6.2. Separation of the Distribution System; Capping of Retained Wells.**

**6.2.1. Severance.** The Water Company and COT, jointly, shall take such action as may be reasonably necessary to fully and finally separate the Golf Course Distribution System and the Non-Golf Course Distribution System.

**6.2.2. Responsibility for Costs.**

(a) The costs incurred in regard to connecting the Non-Golf Course Distribution System to the COT Distribution System shall be borne by COT.

(b) The cost to sever the Non-Golf Course Distribution System from the Golf Course Distribution System shall be the borne by the Water Company up to the sum of \$5,000.00. The Water Company shall pay such costs within fifteen (15) days following receipt of a bill therefore.

(c) COT shall conduct the actual severance work and the Water Company shall reimburse COT for such costs, which are estimated to be \$1,100.00 per connection, up to an amount of \$5,000.00. Any severance costs in excess of such amount shall be borne by COT.

**6.2.3. Connection of Systems.** COT will take such action as may be reasonably necessary to fully and finally connect the Non-Golf Course Distribution System to the COT Distribution System, all at the cost and expense of the COT.

**6.2.4. Timing of Work.** All work in such regard shall be completed within thirty (30) days following the Closing Date or as soon thereafter as reasonably practical.

**ARTICLE VII  
RECLAIMED WATER DISTRIBUTION SYSTEM**

**7.1. Construction of the Reclaimed Water Distribution System.** Following the Closing Date, COT will design, bid, and cause to be constructed the Reclaimed Water Distribution System to connect the Golf Course to the COT Reclaimed System, and to permit COT to automatically control the deliveries to Golf Course. COT will design the Reclaimed Water Distribution System to distribute a peak day demand of 1,000,000 gallons per day of reclaimed water to the Golf Course.

**7.2. Payment for Costs of Reclaimed Water Distribution System -- Golf Course Owner's Contribution.** The Golf Course Owner shall be responsible and shall pay the following sums in connection with the cost of the construction of the Reclaimed Water Distribution System:

**(a)** The Golf Course Owner shall contribute \$1,000,000.00, plus connection costs of \$41,300 toward the construction cost of the Reclaimed Water Distribution System according to the following schedule:

**(i)** The Golf Course Owner will pay \$520,650.00 in cash due on the date construction begins on the water pipeline constituting a portion of the Reclaimed Water Distribution System (COT currently estimates that the construction date will be May 1, 2004);

**(ii)** The Golf Course Owner will repay the balance of \$520,650.00 at an annual interest rate of three percent (3%) per annum, on the following schedule:

**(A)** The Golf Course Owner will make a second cash payment of \$113,686.00 on the first weekday that falls no less twelve (12) months from the date construction begins on the Reclaimed Water Distribution System (COT currently estimates this second payment will be due on May 1, 2005), and

**(B)** Thereafter, the Golf Course Owner will make monthly payments of \$9,473.83, commencing on the first day of the month immediately following the date the Reclaimed Water Distribution System is (1) fully operational and (2) servicing the Golf Course, in accordance with the amortization schedule attached as Exhibit "J" and made a part hereof for all purposes.

**7.3. Water Costs for COT Service to the Golf Course.**

**7.3.1. Cost of Water Prior to the Date of Completion of the Reclaimed Water Distribution System.**

**(a)** During that period of time between the Effective Date and the completion of the Reclaimed Water Distribution System, COT will charge the Golf Course Owner for all water used at the Golf Course a rate charge equal to:

**(i)** the "Water and Replenishment" component of the Central Arizona Groundwater Replenishment District Rate, currently \$198.00 per acre-foot, plus

(ii) Tucson Water's cost to pump groundwater, currently \$96.00 per acre-foot,

for a current estimated total price of \$294.00 per acre-foot, subject to annual changes in those rates and costs.

(b) The Golf Course Owner shall also be responsible for any monthly meter charges in accordance with Section 27-33(1) of the Tucson City Code, for the 4" meter installed at Tanque Verde Road and Forty Niner Drive, currently \$45.84 per month.

(c) The City of Tucson may use the City Production Wells to produce water for the Golf Course during the interim period before the Reclaimed Water Production System is complete.

#### 7.3.2. Cost of Reclaimed Water.

(a) Following the completion of the Reclaimed Water Distribution System, COT will furnish the Golf Course exclusively with reclaimed water for the Golf Course needs.

(b) The Golf Course Owner will pay the COT's Standard Rate for Reclaimed Water, established in Section 27-32.1(2) of the Tucson City Code, for all water used at the Golf Course, and shall also be responsible for any monthly meter charges in accordance with Section 37-32.1(1) of the Tucson City Code.

7.3.3. Reclaimed Water User's Agreement. Following Completion of the Reclaimed Water Distribution System, COT and the Golf Course Owner will enter into a current Reclaimed Water User's Agreement. The current form of such an Agreement is attached hereto as Exhibit "K" and made a part hereof for all purposes. The Golf Course Owner shall have the right to assign this Agreement to any subsequent purchaser of the Golf Course.

### ARTICLE VIII RISK OF LOSS

8.1. Prior to Closing. The risk of loss for damage by fire or other casualty, or the taking by eminent domain, until Closing, shall be assumed by and shall be the responsibility of the Water Company. Upon the happening of any material loss, the parties shall remain obligated to consummate the transaction contemplated hereby and any applicable insurance proceeds and/or condemnation award in connection with the loss shall be given to COT.

**8.2. After Closing.** The risk of loss or damage by fire or other casualty, or the taking by eminent domain, shall be assumed by COT after the Closing.

## **ARTICLE IX DEFAULT; REMEDIES**

**9.1. Default.** Except as otherwise expressly provided herein, either Party shall be in default of this Agreement if such Party (a) fails to comply with the terms and conditions set forth herein in any material respect for any reason, except either Party's failure to consummate the Closing on the Closing Date pursuant to a right to terminate expressly set forth in this Agreement, and (b) said default continues for a period of five (5) business days after receipt of written notice from the non-defaulting Party specifying the default, except with respect to either Party's failure to deliver any or all of the documents which such Party is required to deliver at the Closing or otherwise perform its obligations at Closing, as set forth in Article V, for which no notice or cure period shall apply (a "**Default**").

**9.2. Remedies.** Upon a Default by either Party, the non-defaulting Party's remedy shall be to pursue one of the following:

- (a) terminate this Agreement; or
- (b) pursue specific performance of defaulting Party's covenants and obligations, and in connection with such action, recover reasonable attorneys' fees; or
- (c) pursue whatever other remedy may be available in law or in equity, including, but not limited to damages and reasonable attorney's fees and costs arising from or due to the Party's Default.

## **ARTICLE X MISCELLANEOUS PROVISIONS**

**10.1. Execution of Additional Instruments.** Each party hereby agrees to execute such other and further documents and other instruments necessary to comply with any laws, rules or regulations and to carry out the intent of this Agreement.

**10.2. Notices.** All notices and communications required by this Agreement shall be in writing and shall be given by personal delivery or mailed first class, registered or certified mail, postage prepaid, and shall be deemed received upon the earlier of actual delivery or one hundred twenty (120) hours after deposit in the United States Mail. In addition, a copy of the notice shall be mailed or delivered to the Title Company with a copy sent to the Water Company or COT.

# ***Error***

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An error occurred while processing this page. See the system log for more details.

If to Title Company:

Title Security Agency of Arizona  
5390 East Tanque Verde Road  
Tucson, AZ 85715  
Attention: Ms. Patricia A. Eaton  
Facsimile: 520-885-2309

**10.3. Application of Arizona Law.** This Agreement and its application and interpretation shall be governed exclusively by its terms and by the laws of the State of Arizona. All the parties agree to abide by all the laws of the United States and the State of Arizona. Any dispute that arises hereunder shall be resolved exclusively in the courts of the State of Arizona and the parties submit themselves to the jurisdiction of those courts for such purposes. In the event litigation is necessary to enforce, interpret, or determine the validity of any provision of this Agreement, COT waives any claim to sovereign immunity.

**10.4. Severability.** If any provision of this Agreement or the application thereof to any person or circumstance shall be held by a court to be unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

**10.5. Headings.** The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.

**10.6. Exhibits and Schedules.** All Exhibits to this Agreement constitute integral parts of this Agreement.

**10.7. No Waivers.** The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a party from seeking redress for a subsequent violation or insisting on the strict performance of a subsequent act.

**10.8. Rights and Remedies Cumulative.** The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

**10.9. Creditors.** None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the parties.

**10.10. No Assignment.** The rights of either party under this Agreement are not assignable without the prior written consent of the other party, which may be withheld with or without cause, with the exception of the provisions regarding the Reclaimed Water Distribution System in Article VII, which shall be applied to any successor assign to the interests of the Golf Course Owner. However, to the extent that any assignment is allowed or permitted, each and all of the covenants, terms, and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors, and assigns.

**10.11. No Other Agreements.** The Water Company shall not enter into any contracts, leases, agreements, or amendments to existing agreements or encumbrances affecting the Transferred Assets while this Agreement remains in force, or subsequent to Closing of this transaction, without the express written consent of COT, other than to remove a matter which the Title Company requires to be removed to close.

**10.12. No Agency.** It is expressly agreed and understood by the parties hereto that neither party is the agent, partner, or joint venture partner of the other. It is also expressly agreed and understood that neither the Water Company nor COT has any obligations nor duties to the other except as specifically provided for in this Agreement.

**10.13. Attorneys Fees.** Except as may be otherwise provided herein, if any party willfully defaults hereunder, the willfully defaulting party shall pay the other party's reasonable attorneys' fees, expert witness fees, travel and accommodation expenses, deposition and trial transcript costs, costs of court and other similar costs or fees paid or incurred by the non-defaulting party by reason of or in connection with the default (whether or not legal or other proceedings are instituted). In the event any party hereto finds it necessary to bring an action at law or other proceeding against the other party by reason of any willful breach hereunder, the party prevailing in any such action or proceedings shall be paid all costs and reasonable attorneys' fees by the defaulting party, and in the event any judgment is secured by such prevailing party, all such costs and attorneys' fees shall be included in any such judgment, with attorneys' fees to be set by the court and not by the jury. In the event the parties elect to arbitrate a dispute, then this section shall also apply to arbitration, except that the provisions referring to a court shall refer to the arbitrator.

**10.14. Time.** Time is of the essence in this Agreement. However, if any action is required to be taken on a Saturday, Sunday or legal holiday, the action shall be deemed timely taken if it is taken on the next regular business day.

**10.15. Counterparts.** This Agreement may be executed in counterparts, and the signature of any person required by this Agreement shall be effective if signed on any and/or all counterparts. All counterparts together shall be considered one and the same Agreement.

10.16. **Foreign Investment.** The Water Company shall fully comply with all applicable state and federal laws governing foreign investment, including the Foreign Investment in Real Property Tax Act and section 1445 of the Code, and shall hold COT harmless from any claim or action arising therefrom.

10.17. **Modifications and Amendments.** This Agreement may not be modified nor amended except by the unanimous written agreement of all of the parties.

10.18. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the matters covered by it and supersedes any prior understanding or agreements, oral or written, with respect thereto. The parties shall not be bound by any understanding, agreement, promise, or representation, whether expressed or implied, which is not specified in this Agreement.

THE PARTIES HAVE ENTERED into this Agreement as of the date set forth above.

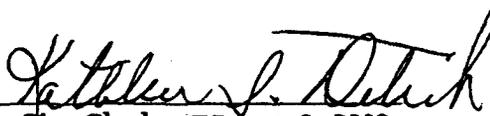
COT

CITY OF TUCSON,  
a municipal corporation



Mayor FEB 10 2003

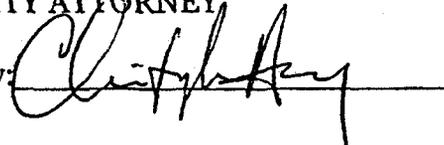
Attested To:



City Clerk FEB 10 2003

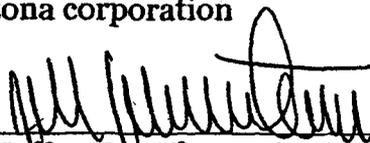
APPROVED AS TO FORM:

CITY ATTORNEY

By: 

**THE WATER COMPANY:**

**49er Water Company, Inc.,**  
an Arizona corporation

By:   
Jeffrey M. Silverstein, President

**ASSUMED LIABILITIES LIST**

As of the Closing Date:

- (a) all the meter refund obligations,
- (b) all the line extension commitments,
- (c) all other liabilities of the Water Company which will relate to or affect the Transferred Assets from and after the Closing Date; and
- (d) any liabilities which may accrue from and after the Closing Date relating to the performance of or the furnishing of services to Residential and Commercial Customers in the ordinary course of business.

EXHIBIT A TO  
EX A TO RESOLUTION NO. 19505

CITY OF TUCSON CONTRACT NO. 0443-03

BILL OF SALE

BLANKET CONVEYANCE, BILL OF SALE, ASSIGNMENT AND  
ASSUMPTION AGREEMENT

STATE OF ARIZONA §

§ KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF PIMA §

Concurrently with the execution and delivery of this Blanket Conveyance, Bill of Sale, Assignment and Assumption Agreement (the "Assignment"), as of the \_\_\_ day of \_\_\_\_\_, 2003 (the "Effective Date") 49ER WATER COMPANY, INC., an Arizona public service corporation ("Assignor"), is conveying to THE CITY OF TUCSON, a municipal corporation ("Assignee"), by Special Warranty Deed (the "Deed"), certain Real Property Interests lying and being situated in Pima County, Arizona, pursuant to the terms of that certain Agreement of Purchase and Sale of Certain Assets (the "Contract") dated as of the \_\_\_ day of February, 2003, by and between Assignor and Assignee.

It is the desire of Assignor to hereby assign, transfer, and convey to Assignee the Assigned Properties, as hereinafter defined.

NOW, THEREFORE, in consideration of the receipt of Ten Dollars (\$10.00) and other good and valuable consideration in hand paid by Assignee to Assignor, the receipt and sufficiency of which are hereby acknowledged and confessed by Assignor, Assignor does hereby ASSIGN, TRANSFER, SET OVER, and DELIVER to Assignee, its successors and assigns, subject to the Permitted Exceptions (as set forth in the Deed), all of the Assigned Properties.

TO HAVE AND TO HOLD the Assigned Properties unto Assignee, its successors, and assigns, forever, and Assignor does hereby bind itself, its successors, and assigns, to WARRANT and FOREVER DEFEND, all and singular, title to the Assigned Properties unto Assignee, its successors, and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof, by, through or under Assignor, but not otherwise.

EXHIBIT B TO .

EX A TO RESOLUTION NO. 19505

CITY OF TUCSON CONTRACT NO. 0443-03

### **Certain Definitions.**

For all purposes of this Assignment, except as otherwise expressly provided or unless the context otherwise requires, the terms defined below shall have the following meanings and shall include the plural as well as the singular:

**"ACC"** shall mean the Arizona Corporation Commission.

**"Assigned Properties"** shall mean, collectively, the Contract Rights, the Distribution System, the Records, the City Production Wells, the City Production Wells Equipment, the Service Area Rights and the Water Taps.

**"Assumed Liabilities"** shall mean and refer to the liabilities listed on **Attachment "A"** attached hereto and made a part hereof for all purposes.

**"Certificate"** shall mean that certain Certificate of Convenience and Necessity, issued by the ACC on June 29, 1961 (Decision Nos. 33214 and 333217) authorizing Assignor to engage as a public service corporation in the sale of water for commercial and domestic uses in its Certificated Area, as amended on August 5, 1992.

**"Certificated Area"** shall mean the area lying within Pima County, Arizona and designated in the Certificate.

**"Contract Rights"** shall mean all rights inuring to the benefit of the Assignor arising under any contracts, agreements or other written instruments between the Assignor and any Person existing on the Effective Date, a list of which is attached hereto as **Attachment "B"** and made a part hereof for all purposes.

**"City Production Wells"** shall mean those wells with Arizona Department of Water Resources Registration Numbers 617300, 558500 and 617301.

**"Distribution System"** shall mean those physical facilities owned by the Assignor constructed for, or utilized for, the express purpose of transporting, delivering, or measuring the delivery of, water, from the source of the water, to points of delivery at the Golf Course or at the residences or business location of the Residential and Commercial Customers, as described on the Non-Golf Course Distribution System Map.

**"Franchise"** shall mean that certain franchise issued by the Pima County Board of Supervisors franchising the Assignor to engage as a public service corporation in the sale of water for commercial and domestic uses in its Certificated Area.

**"Golf Course"** shall mean an eighteen (18) hole golf course and related amenities, including, a clubhouse, maintenance facilities, cart storage facilities, a swimming pool, irrigation systems, a parking lot, cart paths, tees, landscaping, greens,

holding ponds, a driving range, irrigation lines, drainage facilities and enhanced signage located on and all other improvements, structures, and fixtures placed, constructed or installed on the Golf Course Land.

**"Golf Course Land"** shall mean those certain tracts of land lying and being situated in Pima County, Arizona, being more particularly described on **Attachment "C"** and made a part hereof for all purposes.

**"Governmental Authorities"** shall mean the United States of America, the state, the county or municipality in which the Assigned Properties are located, all regulatory agencies having jurisdiction over the Assigned Properties or Assignor, any district, department or other political division thereof, or any political subdivision of any of the foregoing, and any court or political subdivision, agency, or instrumentality having or exercising jurisdiction over the Assigned Properties or Assignor.

**"Non-Golf Course Distribution System Map"** shall mean a map of the Certificated Area showing the Non-Golf Course Distribution System, which map is attached hereto as **Attachment "D"** and made a part hereof for all purposes.

**"Person"** shall mean an individual, joint venture, corporation, limited liability company, joint stock company, trust (including a business trust), unincorporated association or other entity, or a government or any political subdivision or agency thereof.

**"Records"** shall mean all of the Assignor's:

- (a) customer data base information (including master file information, billing histories, complaints),
- (b) service lists with service addresses,
- (c) meter reading information,
- (d) lists of meter numbers and sizes,
- (e) customer applications and correspondence, and
- (f) other related documents or information,

in any way relating to the Residential and Commercial Customers.

**"Residential and Commercial Customers"** shall mean any Person, or company who is a customer of the Assignor as of the Effective Date, or, who, if not a customer of the Assignor, may be served by the Assignor in accordance with the Water

## Company Permits.

**"Service Area Rights"** shall mean Assignor's service area rights which have been granted or created under and pursuant to the Certificate, which permit and franchise Assignor to engage as a public service corporation in the sale of water for commercial and domestic uses in its Certificated Area (other than the Golf Course Land), including the right to construct, install, maintain and operate a water distribution system in the public right-of-way to supply water services in and adjacent to that area for domestic, commercial, industrial and municipal uses.

**"Water Company Permits"** shall mean collectively, (a) the Certificate, (b) the Franchise, and (c) a designation of assured water supply, issued by the Governmental Authorities.

**"Water Taps"** shall mean the rights granted to the Assignor under the Water Company Permits to sell to and deliver water to the Residential and Commercial Customers.

## Agreements.

Assignor and Assignee hereby agree as follows:

**1.1.** Assignor shall not be responsible for the discharge and performance of any duties or obligations to be performed and/or discharged in connection with the Assigned Properties after the date hereof.

**1.2.** Assignee shall not be responsible for the discharge and performance of any duties or obligations required to be performed and/or discharged in connection with the Assigned Properties prior to the date hereof.

**1.3.** Assignee hereby assumes or agrees to perform the terms, covenants, and conditions of the Assumed Liabilities and all other liabilities to any Person in connection with the Assigned Properties arising from and after the Effective Date.

**1.4.** Assignee hereby agrees to indemnify and hold Assignor harmless from and against any and all liabilities arising under the Assumed Liabilities or relating to or arising under the Assigned Properties from and after the Effective Date.

Assignor hereby agrees to perform, execute, and/or deliver or cause to be performed, executed, and/or delivered any and all such further acts and assurances as Assignee may reasonably require to perfect Assignee's interest in the Assigned Properties.

IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment to

be executed effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2003.

**ASSIGNOR:**

**49er Water Company, Inc.,  
an Arizona corporation**

By: \_\_\_\_\_  
Jeffrey M. Silverstein, President

**ASSIGNEE:**

**CITY OF TUCSON,**  
a municipal corporation

\_\_\_\_\_  
Mayor

Attested To:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

CITY ATTORNEY

By: \_\_\_\_\_

**Attachment "A"**  
**To Bill of Sale**  
**LIST OF ASSUMED LIABILITIES**

As of the date hereof:

- (a) all the meter refund obligations,
- (b) all the line extension commitments,
- (c) all other liabilities of the Water Company which will relate to or affect the Transferred Assets from and after the date hereof; and
- (d) any liabilities which may accrue from and after the date hereof relating to the performance of or the furnishing of services to Residential and Commercial Customers in the ordinary course of business.

**Attachment "B"**  
**To Bill of Sale**  
**LIST OF CONTRACTS**

1. Oral or written agreements with Residential and Commercial Customers.

**Attachment "C"**  
**To Bill of Sale**

**DESCRIPTION OF GOLF COURSE LAND**

See Exhibit "E" to this Agreement.

**Attachment "D"**  
**To Bill of Sale**

**MAP OF THE NON-GOLF COURSE DISTRIBUTION SYSTEM**

See Exhibit "H" to this Agreement.

**CERTIFICATED AREA**

EXHIBIT C TO  
EX A TO RESOLUTION NO. 19505

CITY OF TUCSON CONTRACT NO. 0443-03

**LEGAL DESCRIPTION  
OF SERVICE AREA  
TO BE TRANSFERRED TO CITY OF TUCSON WATER**

ALL RESIDENTIAL LOTS IN THE FOLLOWING LISTED SUBDIVISIONS:

Forty Niner Country Club Estates, Lots 1-326 & Blocks 1-21  
EXCEPT BLOCKS 1 through 19, but including the water service to the  
Clubhouse, Offices and Restaurant located in the western 488.55 feet of  
Block 1 as recorded in Book 15 at Page 39, Maps & Plats

Forty Niners Guest Ranch Estates, Lots 1 through 8, 31 through 33, 35 through 43  
as recorded in Book 30 at Page 38, Maps & Plats

Forty Niners Guest Ranch Estates, Lots 9 through 30, 34, and Common Areas "A" - "G",  
as recorded in Book 30 at Page 95, Maps & Plats

Forty Niners Country Club Estates II, Lots 1-17 as recorded in Book 49 at Page 66,  
Maps & Plats

**SPECIAL WARRANTY DEED**

**SPECIAL WARRANTY DEED**

**THE STATE OF ARIZONA     §  
  §     **KNOW ALL MEN BY THESE PRESENTS:**  
COUNTY OF PIMA           §**

That **49ER WATER COMPANY, INC.**, an Arizona public service corporation ("**Grantor**"), for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration paid by **THE CITY OF TUCSON**, a municipal corporation ("**Grantee**"), the receipt and sufficiency of which are hereby acknowledged and confessed, and upon and subject to the exceptions, liens, encumbrances, terms, and provisions hereinafter set forth and described, has GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does hereby GRANT, BARGAIN, SELL and CONVEY unto Grantee all of those real property interests located in Pima County, Arizona, and being more particularly described on **Annex "I"** attached hereto and made a part hereof for all purposes, together with all and singular the rights, benefits, privileges, easements, tenements, hereditaments, and appurtenances thereon or in anywise appertaining thereto (said rights, benefits, privileges, easements, tenements, hereditaments, appurtenances and interests related thereto, being hereinafter referred to as the "**Real Property Interests**").

This conveyance is made expressly subject to any and all matters listed on **Annex "II"** attached hereto, but only to the extent they affect or relate to the Real Property Interests (the "**Permitted Exceptions**").

TO HAVE AND TO HOLD the Real Property Interests, subject as aforesaid to the Permitted Exceptions, unto Grantee, its successors and assigns forever, and Grantor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND all and singular the Real Property Interests unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof, by, through or under Grantor, but not otherwise.

EXHIBIT   D   TO  
EX   A   TO RESOLUTION NO. 19505

CITY OF TUCSON CONTRACT NO. 0443-03

IN WITNESS WHEREOF, this Special Warranty Deed has been executed on the \_\_\_\_\_ day of \_\_\_\_\_, 2003.

**THE WATER COMPANY:**

**49er Water Company, Inc.,**  
an Arizona corporation

By: \_\_\_\_\_  
Jeffrey M. Silverstein, President

THE STATE OF CALIFORNIA   §  
  §  
COUNTY OF SAN DIEGO   §

The foregoing instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2003, by Jeffrey M. Silverstein, President of **49er Water Company, Inc.**, an Arizona corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Arizona

GRANTEE'S MAILING ADDRESS:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ANNEX "I"**

**To Special Warranty Deed**

**DESCRIPTION OF THE REAL PROPERTY INTERESTS**

1. Rights of Grantor under the following easements, as such rights relate to or affect the Residential and Commercial Customers:
  - (a) Right of Way Easement, dated February 22, 1995, executed and delivered by Magna Investment & Development, Ltd., a Utah limited partnership, for the benefit of Grantor, duly recorded at Docket 9990, Page 1470 of the Real Property Records of Pima County, Arizona,
  - (b) Correction Right of Way Easement, dated July 24, 1995, executed and delivered by Magna Investment & Development, Ltd., a Utah limited partnership, for the benefit of Grantor, duly recorded at Docket 10091, Page 1776 of the Real Property Records of Pima County, Arizona,
  - (c) Access Easement, dated February 22, 1995, executed and delivered by Magna Investment & Development, Ltd., a Utah limited partnership, for the benefit of Grantor, duly recorded at Docket 9990, Page 1473 of the Real Property Records of Pima County, Arizona.
2. Rights of Grantor under that certain franchise issued by the Pima County Board of Supervisors franchising Grantor to engage as a public service corporation in the sale of water for commercial and domestic uses in its Certificated Area (other than the Golf Course Land), including the right to construct, install, maintain and operate a water distribution system in the public right-of-way to supply water services in and adjacent to that area for domestic, commercial, industrial and municipal uses.
3. Rights of Grantor in respect to any portion of the Non-Golf Course Distribution system lying outside of but adjacent to the public rights-of-way located in the Certificated Area in which most, if not all, of the Non-Golf Course Distribution System lies.
4. Rights of Grantor acquired by adverse possession or prescription across real property located in the Certificated Area (other than the Water Company Land and the Golf Course Land) which is owned by Residential and Commercial Customers (other than the Golf Course Owner).

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5. For the purpose of this ANNEX "I" the following terms shall have the following definitions:

(a) "Certificate" shall mean that certain Certificate of Convenience and Necessity, issued by the ACC on June 29, 1961 (Decision Nos. 33214 and 333217) authorizing the Water Company to engage as a public service corporation in the sale of water for commercial and domestic uses in its Certificated Area, as amended on August 5, 1992.

(b) "Certificated Area" shall mean the area lying within Pima County, Arizona and described in the Certificate.

(c) "Distribution System" shall mean those physical facilities owned by Grantor on the date hereof constructed for, or utilized for, the express purpose of transporting, delivering, or measuring the delivery of, water from the water source to points of delivery at the residences or business location of the Residential and Commercial Customers.

(d) "Golf Course Easement Agreement" shall mean an easement agreement, dated of even date herewith, executed and delivered by **49er COUNTRY CLUB, LLC, d/b/a IRI ARIZONA I LLC**, a Delaware limited liability company, to and for the benefit of Grantee creating an easement over the Golf Course Land for the purposes of enabling Grantee to serve certain areas within of the Golf Course Land with potable water.

(e) "Golf Course Land" shall mean those certain tracts of land lying and being situated in Pima County, Arizona, being more particularly described on ANNEX "II" and made a part hereof for all purposes.

(f) "Non-Golf Course Distribution System" shall mean (1) the portion of the Distribution System owned by Grantor which lies outside of the Golf Course Area and the Water Company Land, and which is described on the Non-Golf Course Distribution System Map, and (2) that portion of the Distribution System lying within the Golf Course Land covered by the Golf Course Easement Agreement.

(g) "Non-Golf Course Distribution System Map" shall mean a map of the Certificated Area showing the Non-Golf Course Distribution System, which map is attached hereto as ANNEX "III" and made a part hereof for all purposes.

(h) "Residential and Commercial Customers" shall mean any Person, who is a customer of Grantor at the time of this Deed, or, who, if not a customer of Grantor, may be served by Grantor in accordance with the Water Company Permits.

(i) "Water Company Land" shall mean those certain tracts of land lying and being situated in Pima County, Arizona, being more particularly described on ANNEX "IV" and made a part hereof for all purposes.

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**ANNEX "II"**  
**To Special Warranty Deed**

**LIST OF PERMITTED EXCEPTIONS**

**1.1.** Any and all exceptions, rights, encumbrances, defects and other matters affecting title to the Real Property Interests which are of record in Pima County, Arizona on the date hereof.

**ANNEX "III"**  
**To Special Warranty Deed**

**DESCRIPTION OF GOLF COURSE LAND**

See Exhibit "E" to this Agreement.

**ANNEX "IV"**  
**To Special Warranty Deed**

**NON-GOLF COURSE DISTRIBUTION SYSTEM MAP**

To be finalized and provided at Closing.

**ANNEX "V"**  
**To Special Warranty Deed**

**DESCRIPTION OF THE WATER COMPANY LAND**

See Exhibit "I" to this Agreement.

GOLF COURSE LAND

EXHIBIT E TO  
EX A TO RESOLUTION NO. 19505

CITY OF TUCSON CONTRACT NO. 0443-03

PARCEL 1 :

All of BLOCKS 1 through 19 of FORTY NINER COUNTRY CLUB ESTATES, a subdivision of Pima County, Arizona, according to the plat of record in the office of the Pima County Recorder in Book 15 of Maps, page 39.

EXCLUDING any portion deeded to the 49'ers Water Company, an Arizona corporation more particularly described in Parcels A through J below :

Parcel A:

That portion of Block 6 of FORTY NINER COUNTRY CLUB ESTATES, according to the plat recorded in Book 15 of Maps and Plats at Page 39, Records of Pima County, Arizona, described as follows:

COMMENCING at the Northerly common corner of Lot 282 and Lot 281 of said FORTY NINER COUNTRY CLUB ESTATES;

Thence South 30 degrees, 25 minutes, 52 seconds East along the line common to said Lots 282 and 281, a distance of 184.10 feet to the common Southerly corner of said Lots 282 and 281 said corner also being the Northwest corner of the drainageway between said Block 6 and 5 as shown on said plat of FORTY NINER COUNTRY CLUB ESTATES ;

Thence continue South 30 degrees, 25 minutes, 52 seconds East along the West line of said drainageway a distance of 92.89 feet to the Southwest corner of said drainageway;

Thence North 73 degrees, 53 minutes, 28 seconds East along the South line of said drainageway a distance of 105.74 feet;

Thence South 16 degrees, 06 minutes, 32 seconds East 76.33 feet to the Point of Beginning;

Thence South 65 degrees, 49 minutes, 55 seconds East, 17.25 feet ;

Thence South 10 degrees, 01 minutes, 08 seconds East, 16.31 feet ;

Thence South 23 degrees, 38 minutes, 11 seconds West, 9.70 feet ;

Thence North 65 degrees, 15 minutes, 13 seconds West, 24.91 feet ;

Thence North 20 degrees, 10 minutes, 42 seconds East, 23.00 feet to the Point of Beginning.

Parcel B:

That portion of Block 6 of FORTY NINER COUNTRY CLUB ESTATES, according to the plat recorded in Book 15 Maps and Plats at Page 39, Records of Pima County, Arizona, described as follows:

COMMENCING at the Northerly common corner of Lot 282 and Lot 281 of said FORTY NINER COUNTRY CLUB ESTATES ;

Thence South 30 degrees, 25 minutes, 52 seconds East along the line common to said Lots 282 and 281, a distance 184.10 feet to the common Southerly corner of said Lots 282 and 281 said corner also being the Northwest corner of the drainageway between said Block 6 and 5 as shown on said plat of FORTY NINER COUNTRY CLUB ESTATES ;

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Thence continue South 30 degrees, 25 minutes, 52 seconds East, along the West line of said drainageway a distance of 92.89 feet to the Southwest corner of said drainageway ;

Thence North 73 degrees, 53 minutes, 28 seconds East, along the South line of said drainageway a distance of 130.64 feet ;

Thence South 16 degrees, 06 minutes, 32 seconds East, 293.77 feet to the Point of Beginning ;

Thence South 76 degrees, 25 minutes, 16 seconds East, 13.92 feet ;

Thence South 10 degrees, 05 minutes, 50 seconds West, 19.66 feet ;

Thence North 78 degrees, 41 minutes, 53 seconds West, 14.51 feet ;

Thence North 11 degrees, 50 minutes, 03 seconds East, 20.21 feet to the Point of Beginning .

Parcel C:

DELETED

Parcel D:

That portion of Block 6 of FORTY NINER COUNTRY CLUB ESTATES, according to the plat recorded in Book 15 of Maps and Plats at Page 39, Records of Pima County, Arizona, described as follows:

COMMENCING at the Southerly corner of Lot 275 of said FORTY NINER COUNTRY CLUB ESTATES;

Thence North 39 degrees, 19 minutes, 26 seconds East, along the Southeast line of said Lot 275 a distance of 153.00 feet ;

Thence South 50 degrees, 40 minutes, 34 seconds East, 60.15 feet to the Point of Beginning;

Thence North 85 degrees, 57 minutes, 12 seconds East , 8.74 feet ;

Thence South 02 degrees, 54 minutes, 28 seconds East, 10.61 feet ;

Thence South 86 degrees, 40 minutes, 31 seconds West, 8.76 feet ;

Thence North 02 degrees, 47 minutes, 40 seconds West, 10.50 feet to the Point of Beginning.

Parcel E :

A portion of Blocks 6 and 7, Forty Niner Country Club Estates, according to the plat of record in Book 15 of Maps Plats at Page 39, records of Pima County Arizona described as follows :

Commencing at the most Easterly corner of Lot 275 of said Forty Niner Country Club Estates ;

Thence South 39 degrees, 22 minutes, 45 seconds West along the Southerly line of said Lot 275, a distance of 180.00 feet to the most Southerly corner of said Lot 275 ;

Thence South 01 degrees, 26 minutes, 05 seconds East , a distance of 34.22 feet to the most Northerly corner of Parcel described in Docket 9990 at page 1480, records of Pima County, Arizona and the Point of Beginning ;

Thence South 39 degrees, 02 minutes, 01 seconds East along the Easterly line of said Parcel E a distance of 73.33 feet ;

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Thence leaving said Easterly line , South 76 degrees, 18 minutes, 41 seconds West a distance of 104.20 feet ;

Thence South 13 degrees, 58 minutes, 20 seconds East a distance of 31.37 feet;

Thence South 67 degrees, 14 minutes, 17 seconds West a distance of 15.82 feet to a point on the Westerly line of said Parcel E ;

Thence along said Westerly line and the Northerly line of said Parcel E, the following courses and distances ;

North 58 degrees, 10 minutes, 34 seconds West along said Westerly line, a distance of 22.58 feet to a point on the arc of a non tangent curve concave Easterly, a radial line of said curve through said point having a bearing of South 10 degrees, 38 minutes, 17 seconds East ;

Northerly along the arc of said curve to the right having a radius of 30.41 feet and a central angle of 188 degrees, 20 minutes, 42 seconds for an arc distance of 99.96 feet ;

North 59 degrees, 08 minutes, 47 seconds East a distance of 83.85 feet ;

Thence North 79 degrees, 27 minutes, 49 seconds East a distance of 16.38 feet to the Point of Beginning.

PARCEL F :

DELETED

Parcel G :

That portion of Lot 262 and Block 7 of FORTY NINER COUNTRY CLUB ESTATES according to the plat of record in the office of the County Recorder of Pima County Arizona, in Book 15 of Maps and Plats at page 39 , described as follows:

Commencing at the Southeast corner of said Lot 262 ;

Thence North 04 degrees, 40 minutes, 34 seconds East, along the East line of said Lot 262, a distance of 20.78 feet to the Point of Beginning ;

Thence South 74 degrees, 34 minutes, 51 seconds West, 82.78 feet ;

Thence North 21 degrees, 36 minutes, 38 seconds West, 32.91 feet ;

Thence North 74 degrees, 43 minutes, 56 seconds East 91.80 feet ;

Thence South 20 degrees, 07 minutes, 53 seconds East 32.58 feet ;

Thence South 74 degrees, 34 minutes, 51 seconds West, 8.15 feet to the Point of Beginning

Parcel H:

That portion of Block 18 of FORTY NINER COUNTRY CLUB ESTATES, according to the plat recorded in Book 1 Maps and Plats at page 39, records of Pima County, Arizona , described as follows :

Commencing at the intersection of the centerline of Soldier Trail Road, and the centerline of Forty Niners Drive, as sb on said plat of Forty Niners Country Club Estates ;

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Thence North 89 degrees , 41minutes, 44 seconds East, along said centerline of said Forty Niner Drive a distance of 391.10 feet ;

Thence North 00 degrees, 18 minutes, 16 seconds West, 30.00 feet to the Point of Beginning on the North right of way line of said Forty Niner Drive ;

Thence North 08 degrees, 35 minutes, 43 seconds West, 18.46 feet ;

Thence North 81 degrees, 24 minutes, 17 seconds East, 28.16 feet ;

Thence South 08 degrees, 35 minutes, 43 seconds East, 22.57 feet to the said North right of way line of Forty Niner Drive ;

Thence South 89 degrees, 41 minutes, 44 seconds West along said North right of way line, a distance of 28.46 feet to the Point of Beginning

Parcel I:

DELETED

Parcel J:

DELETED

FURTHER EXCLUDING ANY PORTION LYING WITHIN THE FOLLOWING DESCRIBED PROPERTY:

That portion of Blocks 10, 18 and 19 of said FORTY NINER COUNTRY CLUB ESTATES and Section 5, Township 14 South, Range 16 East, Gila and Salt River and Meridian, Pima County, Arizona ,more particularly described as follows

Commencing at the Northwest corner of said Section 5, Township 14 South, Range 16 East, Gila and Salt River Meridian;

Thence North 89 degrees, 42 minutes, 40 seconds East, along the North line of the Northwest quarter of said Section 5, a distance of 605.18 feet ;

Thence South 00 degrees, 17 minutes, 20 seconds East, 35.00 feet to the POINT OF BEGINNING, said Point lying on a line 35.00 feet South of, and parallel with said North line of said Northwest quarter , said point being a point of curvature to the right from which the radius point bears South 00 degrees, 17 minutes, 20 seconds East 25.00 feet ;

Thence Southeasterly along the arc of said curve to the right through a central angle of 90 degrees, 00 minutes, 00 seconds , 39.27 feet to a point of tangency ;

Thence South 00 degrees, 17 minutes, 20 seconds East, 53.24 feet to a point of tangent curvature to the left from which radius point bears North 89 degrees, 42 minutes, 40 seconds East 225.00 feet ;

Thence Southeasterly along the arc of said curve to the left through a central angle of 32 degrees, 53 minutes, 04 seconds 129.14 feet to a point of reverse curvature to the right from which the radius point bears South, 56 degrees, 49 minute seconds West, 375.00 feet ;

Thence Southeasterly along the arc of a curve to the right through a central angle of 32 degrees, 53 minutes, 04 seconds 215.23 feet to a point of tangency ;

Thence South 00 degrees, 17 minutes, 20 seconds East 262.02 feet to a point of tangent curvature to the right from which the radius point bears South 89 degrees, 42 minutes, 40 seconds West, 25.00 feet ;

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Thence Southwesterly along the arc of said curve to the right through a central angle of 90 degrees, 00 minutes, 00 seconds 39.27 feet to a point of cusp with a tangent line said point being on the North right of way of Forty Niner Drive as shown on the final plat of Forty Niner's Guest Ranch Estates, recorded in Book 30 of Maps and Plats at Page 38, records of Pima County Arizona ;

Thence North 89 degrees, 42 minutes, 40 seconds East, along said right of way of Forty Niner Drive 100.00 feet to a point of cusp on a curve to the right from which the radius point bears North 00 degrees, 17 minutes, 20 seconds West, 25.00 feet ;

Thence Northwesterly along the arc of said curve to the right through a central angle of 90 degrees, 00 minutes, 00 seconds 39.27 feet to a point of tangency ;

Thence North 00 degrees, 17 minutes, 20 seconds West, 262.02 feet to a point of tangent curvature to the left from which the radius point bears South 89 degrees, 42 minutes, 40 second West 425.00 feet ;

Thence Northwesterly along the arc of said curve to the left through a central angle of 32 degrees, 53 minutes, 04 seconds 243.92 feet to a point of reverse curvature to the right from which the radial point bears North 56 degrees, 49 minutes, 36 seconds East 175.00 feet ;

Thence Northwesterly along the arc of said curve , through a central angle of 32 degrees, 53 minutes, 04 seconds 100.44 feet to a point of tangency ;

Thence North 00 degrees, 17 minutes, 20 seconds West, 53.24 feet to a point of tangent curvature to the right from which the radius bears North 89 degrees, 42 minutes, 40 seconds East, 25.00 feet ;

Thence Northeasterly along the arc of said curve through a central angle of 90 degrees, 00 minutes, 00 seconds 39.27 feet to a point of cusp with a line being 35.00 feet South of the North line of the Northwest quarter of said Section 5 ;

Thence South 89 degrees, 42 minutes, 40 seconds West, along said line being 35.00 feet South of and parallel with said North line of the Northwest quarter 100.00 feet to the POINT OF BEGINNING .

**FURTHER EXCLUDING ANY PORTION LYING WITHIN THE FOLLOWING DESCRIBED PROPERTY :**

That portion of Block 11, FORTY NINER COUNTRY CLUB ESTATES, Pima County, Arizona, according to the plat of record in the office of the Pima County Recorder in Book 15 of Maps, page 39, described as follows:

**BEGINNING** at the Northeast corner of Lot 36 of said Forty Niner Country Club Estates ;

Thence South 80 degrees, 20 minutes, 52 seconds East, 20.27 feet to the Northwest corner of Lot 37 of said Forty Niners Country Club Estates ;

Thence South 00 degrees 06 minutes 15 seconds West along the Westerly line of said Lot 37 a distance of 175.00 ft the Southwest corner of said Lot 37 on the Northerly right-of-way line of Wagon Trail Road ;

Thence North 80 degrees, 18 minutes, 00 seconds West, along said Northerly right-of-way line a distance of 20.28 ft the Southeast corner of said Lot 36 ;

Thence North 00 degrees, 06 minutes, 15 seconds East, along the Easterly line of said Lot 36 a distance of 174.98 ft the Point of Beginning;

**AND FURTHER EXCLUDING** from Blocks 10, and 18 any portion falling within the following described property :

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That portion of Lots 1, 2 and 3 and Blocks 10, 19 and 20 of Forty Niner County Club Estates as recorded in Book 15 of Maps and Plats at page 39, records of Pima County, Arizona, and a portion of Lot 4, Section 5 and Lot 1 Section 6, Township 14 South, Range 16 East, Gila and Salt River Meridian, Pima County, Arizona described as follows :

Beginning at the Northwest corner of Lot 3, according to said Forty Niner Country Club Estates Plat ;

Thence South 10 degrees, 45 minutes, 50 seconds West along the West line of said Lot 3, a distance of 178.45 feet to the Northerly line of Block 11 of said Forty Niners Country Club Estates ;

Thence North 89 degrees, 28 minutes, 00 seconds East, along said Northerly line, a distance of 184.97 feet ;

Thence South 78 degrees, 18 minutes, 30 seconds East, along said Northerly line a distance of 306.96 feet ;

Thence South 77 degrees, 48 minutes, 44 seconds East, along said Northerly line a distance of 458.95 feet to the East line of said Block 11;

Thence South 00 degrees, 06 minutes, 15 seconds West, along said East line a distance of 134.08 feet to the Northeast corner of Lot 37 of said Forty Niner Country Club Estates ;

Thence continue South 00 degrees, 06 minutes, 15 seconds West along the East line of said Lot 37 a distance of 150.00 feet to a point of curvature of a tangent curve, concave Northwesterly ;

Thence Southwesterly along the arc of said curve having a radius of 25.00 feet and a central angle of 90 degrees, 00 minutes 00 seconds , for an arc distance of 39.27 feet to a point of tangency ;

Thence South 89 degrees, 53 minutes, 45 seconds East, a distance of 100.00 feet ;

Thence North 89 degrees, 42 minutes, 40 seconds East, a distance of 25.00 feet ;

Thence North 00 degrees, 06 minutes, 15 seconds East, a distance of 78.91 feet ;

Thence South 89 degrees, 53 minutes, 45 seconds East, a distance of 50.00 feet ;

Thence North 75 degrees, 00 minutes, 00 seconds East, a distance of 189.86 feet ;

Thence North 14 degrees, 10 minutes, 00 seconds East, a distance of 84.30 feet ;

Thence North 71 degrees, 03 minutes, 34 seconds East, a distance of 256.66 feet ;

Thence South 41 degrees, 17 minutes, 48 seconds East, a distance of 142.09 feet ;

Thence North 02 degrees, 24 minutes, 01 seconds West , a distance of 187.07 feet ;

Thence South 82 degrees, 18 minutes, 46 seconds West, a distance of 256.96 feet ;

Thence North 47 degrees, 40 minutes, 00 seconds West, a distance of 287.65 feet ;

Thence North 41 degrees, 07 minutes, 48 seconds East, a distance of 109.74 feet ;

Thence South 84 degrees, 41 minutes, 55 seconds East, a distance of 249.56 feet ;

Thence South 43 degrees, 16 minutes, 00 seconds East, a distance of 141.93 feet ;

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Thence North 00 degrees, 05 minutes, 59 seconds East, a distance of 204.94 feet to the Southerly right of way line of Tanque Verde Road per Docket 9763, Page 1112 ;

Thence South 89 degrees, 42 minutes, 40 seconds West, a distance of 257.64 feet ;

Thence South 00 degrees, 06 minutes, 15 seconds West, a distance of 10.00 feet ;

Thence South 89 degrees, 42 minutes, 40 seconds West, a distance of 300.00 feet ;

Thence South 89 degrees, 28 minutes, 00 seconds West, along said Southerly line, a distance of 970.84 feet ;

Thence South 10 degrees, 45 minutes, 50 seconds West, a distance of 30.60 feet to the Point of Beginning.

**FURTHER EXCLUDING ANY PORTION LYING WITHIN THE FOLLOWING DESCRIBED PROPERTY :**

A portion of Block 6 , Forty Niner Country Club Estates, Blocks 1- 19, Book 15 of Maps and Plats at Page 39, records of Pima County, Arizona described as follows :

Commencing at the Northeast corner of said Block 6 ;

Thence South 73 degrees, 58 minutes, 23 seconds West along the Northerly line of said Block 6, a distance of 285.89 feet ;

Thence leaving said Northerly line , South 16 degrees, 01 minutes, 37 seconds East a distance of 2.18 feet to the Point of Beginning;

Thence South 76 degrees, 18 minutes, 34 seconds East, a distance of 15.00 feet ;

Thence South 13 degrees, 41 minutes, 26 seconds West, a distance of 15.00 feet ;

Thence North 76 degrees, 18 minutes, 34 seconds West, a distance of 15.00 feet ;

Thence North 13 degrees, 41 minutes, 26 seconds East, a distance of 15.00 feet to the Point of Beginning

**PARCEL 2:**

All that portion of Soldier Trail Road lying within Forty Niner Country Club Estates , a subdivision of Pima County Arizona according to the plat of record in the office of the County Recorder of Pima County, Arizona in Book 15 of Maps and Plats at Page recorded in Book 15 at Page 39 of Maps and Plats, said portion more particularly described as follows:

COMMENCING at the Southeast corner of Lot 107 of said subdivision, said point also being the Northeast corner of Block 14 and also being the Point of Beginning;

Thence South 52 degrees 44 minutes 44 seconds East, a distance of 188.20 feet, to a point which is the Southwest corner Lot 247 and the Northwest corner of Block 15 ;

Thence along the Westerly property line of Block 15, South 00 degrees, 06 minutes, 15 seconds West, a distance of 362 feet, to a point which is the Southwest corner of Block 15 ;

Thence North 57 degrees, 34 minutes, 48 seconds West, a distance of 88.75 feet, to a point which is the center line Soldier Trail Road ;

Thence North 62 degrees, 59 minutes, 00 seconds West, a distance of 84.11 feet, to the Southeast corner of Block 14 ;

Thence North 00 degrees, 06 minutes, 15 seconds East, a distance of 391.07 feet, to the Point of Beginning.

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PARCEL 3 :

That portion of Block 6 & 7 of FORTY NINER COUNTRY CLUB ESTATES, a subdivision of Pima County, Arizona, according to the plat recorded in Book 15 of Maps and Plats at Page at page 39, records of Pima County, Arizona, and Government Lot 7, in Section 5, Township 14 South, Range 16 East, Gila and Salt River Meridian, Pima County, Arizona, described as follows:

Commencing at the most Easterly corner of Lot 275 of said FORTY NINER COUNTRY CLUB ESTATES, Pima County, Arizona, according to the plat of record in the office of the Pima County, Recorder in Book 15 of Maps, Page 39;

Thence South 39 degrees, 22 minutes, 45 seconds West, along the Southerly line of said Lot 275, a distance of 180.00 feet to the most Southerly corner of said Lot 275 ;

Thence South 01 degree, 26 minutes, 05 seconds East 34.22 to the most Northerly corner of Parcel "E", described in Docket 9990 at page 1480 records of Pima County, Arizona ;

Thence continue along the boundary line of said parcel "E", the following courses and distances :

South 39 degrees, 02 minutes, 01 seconds East 73.32 feet to the Point of Beginning

South 39 degrees, 02 minutes, 01 seconds East 0.78 feet ;

South 86 degrees, 37 minutes, 45 seconds East 97.87 feet ;

South 04 degrees, 46 minutes, 26 seconds West 92.11 feet ;

South 79 degrees, 26 minutes, 33 seconds West 172.23 feet ;

North 23 degrees, 16 minutes, 39 seconds West 74.55 feet ;

North 67 degrees, 14 minutes, 17 seconds East, 15.82 feet ;

North 13 degrees, 58 minutes, 20 seconds West 31.37 feet ;

North 76 degrees, 18 minutes, 41 seconds East 104.19 feet to the Point of Beginning

PARCEL 4 :

Those certain easements for existing Golf Cart paths ( shown herein as parcels one through five ) and Tee Box ( paragraph six) as conveyed in the Deed from Magna Investment and Development Ltd, a Utah Limited partnership to 49ER Country Club LLC dba in Arizona as IRI Arizona I LLC, a Delaware Limited Liability Company, recorded September 17, 1999 Docket 11134 at page 260, described as follows :

Parcel One :

That certain existing cart path approximately 8 feet in width lying within a portion of the Northerly parcel of Soldiers I Road conveyed to Grantor by Deed in Docket 9763 , page 1112, records of Pima County, Arizona having a Westerly p on the North Boundary of said cart path 10.18 feet East of the Southwest corner of said parcel and having an Easterly p on the North boundary of said cart path at a Point where said parcel intersects the Southwesterly spandrel of Block I said Subdivision. Said path being delineated as Detail 4-5 of that certain Records of Survey by J. Scott Shane dated Ju 1999, Job No. 89032-34

11-001-0120

Parcel Two ;

That certain existing cart path approximately 8 feet in width in the Southerly portion of Lots 1, 2, and 3 of said Subdivision, the most Westerly point on the North boundary of said cart path being 107 feet West of the Southeast corner of Lot 3 and the most Easterly point on the North boundary of said cart path being 60 feet East of the Southwest corner of Lot 1, said path being delineated as Detail 5-1 of that certain Record of Survey by J. Scott Shane dated July 9, 1999, Job No. 9032-34

Parcel Three :

A portion of Lot 89 ,Forty Niner Country Club Estates , Block 1-19, according to the plat recorded in Book 15 of Maps and Plats at Page 39 Records of Pima County, Arizona described as follows :

Commencing at the Northeast corner of said Lot 89 ;

Thence South 37 degrees, 36 minutes, 07 seconds West along the Easterly line of said Lot 89 a distance of 74.22 feet to the Point of Beginning;

Thence continue South 37 degrees, 36 minutes, 07 seconds East along said Easterly line a distance of 100.00 feet;

Thence leaving said Easterly line South 52 degrees, 23 minutes, 53 seconds West a distance of 15.00 feet;

Thence North 37 degrees, 36 minutes, 07 seconds East a distance of 100.00 feet ;

Thence North 52 degrees, 23 minutes, 53 seconds East a distance of 15.00 feet to the Point of Beginning

Said pathway/easement also being delineated as Detail 5-6 of that certain Record of Survey by J. Scott Shane, dated July 9, 1999, Job No.9032-34

Parcel Four :

That certain existing cart path approximately 10 feet in width on the Easterly portion of Lot 262 of said Subdivision , the Northerly point of the Western boundary of said cart path being 39 feet Southeasterly on the East boundary of Lot 262 from the Northeast corner of Lot 262 and the Southerly point of the Western boundary of said cart path being 141.08 feet Northeasterly on the East boundary of Lot 262 from the Southeast corner of Lot 262.said cart path being delineated as Detail 6-4 of that certain Record of Survey by J. Scott Shane, dated Jul9,7,1999 Job no. 9032-34.

Parcel Five

A portion of Blocks 10 and 20 of Forty Niner Country Club Estates, according to the plat of record in the office of t County Recorder of Pima County, Arizona in Book 15 of Maps and Plats at Page 39, records of Pima County, Arizona a two parcels of land referred to in exhibits "B" and "C" described in Docket 9763 at page 1112, records of Pima Coun Arizona being a 20.00 foot wide strip of land lying 10.00 feet on both sides of the following described centerline

Commencing at the Northeasterly corner of Block 11 of said Forty Niner Country Club Estates;

Thence North 77 degrees, 48 minutes, 44 seconds West along the Northerly line of said Block 11,a distance of 14.52 f the Point of Beginning ;

Thence North 58 degrees, 40 minutes, 00 degrees, East 275.28 feet ;

Thence North 89 degrees, 42 minutes, 40 seconds East 78.39 feet to the Point of Terminus .

11810226

The sidelines of the herein described easement are to be lengthened or shortened so as to meet at the intersection of a line that bears North 77 degrees, 48 minutes, 44 seconds West from the Point of Beginning .

The sideline sidelines of the herein described easement are to be lengthened or shortened so as to meet at the intersection of a line that bears North 47 degrees, 40 minutes, 00 seconds West from the Point of Terminus.

Said path being delineated as Detail 5-5 of the certain Record of Survey by J. Scott Shane, dated July 7, 1999 , Job no. 9032-34

The above Parcel Five, being a temporary easement as per the terms and conditions of that certain Cart Path and Tee Box Easement Agreement recorded September 17, 1999, in Docket 11134 at page 260.

**Parcel Six :**

The existing Tee of Hole 18 of 49er Golf and Country Club being in a portion of the Northerly parcel of Soldiers Trail Road conveyed to Grantor by Deed in Docket 9763 at page 1112, records of Pima County, Arizona, which has its Eastern boundary 36 feet of the Eastern Boundary of said parcel and extending in an oblong shape to the West with the most Westerly point being approximately 10 feet East of the Westerly boundary of said parcel and being delineated as Detail 4-5 of that certain Record of Survey by J. Scott Shane , dated July 7, 1999, Job no 9032-34

73278

LIST OF METER DEPOSITS

EXHIBIT F TO  
EX A TO RESOLUTION NO. 19505

CITY OF TUCSON CONTRACT NO. 0443-03

49'er WATER COMPANY  
 Meter Deposits as of 12/31/01  
 Page 1

Service ID #	Name	Service Address	Mailing Address	Remaining Balance
ER0001	Frank Zambo	12301 E. Gold Pan Pl	6655 N Canyon Crest - Tucson AZ 85750	\$345.00
ER0002	Steve L. Bruce	12321 E. Gold Pan Pl.	12321 E Gold Pan Pl - Tucson AZ 85749	\$240.00
ER0003	Mike Chapman	12341 E. Gold Pan Pl	12341 E Gold Pan Pl - Tucson AZ 85749	\$240.00
ER0004	Russell G. Dennis	12362 E. Gold Pan Pl	12362 E Gold Pan Pl - Tucson AZ 85749	\$240.00
ER0005	Shawn Spahr	12342 E. Gold Pan Pl	12342 E Gold Pan Pl - Tucson AZ 85749	\$270.00
ER0006	Richard Meyer	12322 E. Gold Pan Pl	12322 E Gold Pan Pl - Tucson AZ 85749	\$276.00
ER0008	Wayne Armstrong	12303 E. Fennimore Pl.	12303 E Fennimore Pl - Tucson AZ 85749	\$516.00
ER0009	William Cressler	12333 E. Fennimore Pl.	12333 E Fennimore Pl - Tucson AZ 85749	\$262.50
ER0010	Daniel J. Beaver	12363 E. Fennimore Pl.	12363 E Fennimore Pl - Tucson AZ 85749	\$310.50
ER0011	Donald D. Berlin	12364 E. Fennimore Pl.	12364 E Fennimore Pl - Tucson AZ 85749	\$262.50
ER0013	Dave Souder	12304 E. Fennimore Pl.	12304 E Fennimore Pl - Tucson AZ 85749	\$262.50
ER0014	Prince Homes	2098 N. Fennimore Ave.	2250 N. Conestoga Ave - Tucson AZ 85749	\$300.00
ER0016	David Brown	2038 N. Fennimore Ave.	2038 N Fennimore Ave - Tucson AZ 85749	\$240.00
ER0017	Kevin Morrisey	2018 N. Fennimore Ave.	2018 N Fennimore Ave - Tucson AZ 85749	\$240.00
RG0004	VCI Development	E. Fairway Ln.	6404 E Tanque Verde - Tucson AZ 85715	\$270.00
RG0005	Dean McAllister	11700 E. Fairway Ln.	11700 E Fairway Ln - Tucson AZ 85749	\$240.00
RG0006	Olmecc Dev.	11660 E. Fairway Ln.	3535 23rd St - Boulder CO 80304	\$240.00
RG0012	VCI Development	E. Fairway Ln.	6404 E Tanque Verde - Tucson AZ 85715	\$270.00
RG0013	Scott Tyson	11502 E. 49er Fairway	11502 E 49er Fairway - Tucson AZ 85749	\$270.00
RG0013I	49er Homeowners Assn.	Lot 13 N. Conestoga Ave.	11700 E Fairway Ln - Tucson AZ 85749	\$240.00
RG0014	Vincent Cunningham	2300 N. Conestoga Ave.	2300 N Conestoga Ave - Tucson AZ 85749	\$270.00
RG0015	Prince Homes	2250 N. Conestoga Ave.	2250 N Conestoga Ave - Tucson AZ 85749	\$240.00
RG0017	Bruce Broughton	2220 N. Conestoga Ave.	2220 N Conestoga Ave - Tucson AZ 85749	\$240.00
RG0018	Scott Stanton	2202 N. Conestoga Ave.	2202 N Conestoga Ave - Tucson AZ 85749	\$300.00
RG0019	Leonard M. Padron	2140 N. Conestoga Ave.	2140 N Conestoga Ave - Tucson AZ 85749	\$270.00
RG0020	Matalone Const.	2130 N. Conestoga Ave.	6009 B Grant Rd - Tucson AZ 85712	\$300.00
RG0021	Desert American	N. Conestoga Ave.	PO Box 31291 - Tucson AZ 85751	\$270.00



49'er WATER COMPANY  
 Meter Deposits as of 12/31/01  
 Page 3

Service ID #	Name	Service Address	Mailing Address	Remaining Balance
RG0301	Robert Cohen	12340 E. Cape Horn Dr.	12340 E Cape Horn Dr - Tucson AZ 85749	\$60.00
RG0302	Yufen Davis	12350 E. Cape Horn Dr.	12350 E Cape Horn Dr - Tucson AZ 85749	\$60.00
RG0304	John Wisner	12410 E. Cape Horn Dr.	12410 E Cape Horn Dr - Tucson AZ 85749	\$40.00
RG0305	Tom Blase	12420 E. Cape Horn Dr.	12420 E Cape Horn Dr - Tucson AZ 85749	\$60.00
RG0307	Robert Scala	12500 E. Cape Horn Dr.	12500 E Cape Horn Dr - Tucson AZ 85749	\$60.00
RG0308	Robert Hutchison	12510 E. Cape Horn Dr.	12510 E Cape Horn Dr - Tucson AZ 85749	\$60.00
RG0312	Paul Lialios	12610 E. Cape Horn Dr.	2050 E Calle de Dulcinea - Tucson AZ 85718	\$310.50
RG0313	Michael Hauer	12620 E. Cape Horn Dr.	12620 E Cape Horn Dr - Tucson AZ 85749	\$240.00
RG0314	Jeri Griffin	12630 E. Cape Horn Dr.	12630 E Cape Horn Dr - Tucson AZ 85749	\$337.50
RG0315	Alan J. Vaughn	1939 N. Wentworth Rd.	1939 N Wentworth Rd - Tucson AZ 85749	\$337.50
RG0316	Hal M. Goodwin	1931 N. Wentworth Rd.	1931 N Wentworth Rd - Tucson AZ 85749	\$240.00
RG0317	Carol Elmer	1925 N. Wentworth Rd.	1925 N Wentworth Rd - Tucson AZ 85749	\$315.00
RG0318	Byron Watson	1917 N. Wentworth Rd.	1917 N Wentworth Rd - Tucson AZ 85749	\$240.00
RG0319	Robert J. Trudeau	1909 N. Wentworth Rd.	1909 N Wentworth Rd - Tucson AZ 85749	\$240.00
RG0320	Lawrence Rose	1901 N. Wentworth Rd.	1901 N Wentworth Rd - Tucson AZ 85749	\$270.00
RG0321	William Pearce	1825 N. Wentworth Rd.	1825 N Wentworth Rd - Tucson AZ 85749	\$337.50
RG0322	Rosemarie Johnson	1817 N. Wentworth Rd.	1817 N Wentworth Rd - Tucson AZ 85749	\$337.50
RG0323	David R. Pearce	1809 N. Wentworth Rd.	1809 N Wentworth Rd - Tucson AZ 85749	\$310.50
RG0324	David Schisel	1801 N. Wentworth Rd.	1801 N Wentworth Rd - Tucson AZ 85749	\$262.50
RG0325	Gwen Jones	1725 N. Wentworth Rd.	1725 N Wentworth Rd - Tucson AZ 85749	\$337.50
RG0326	McCreary Homes	1701 N. Wentworth Rd.	1647 N Alvernon - Tucson AZ 85712	\$270.00

TOTAL METER DEPOSITS:

\$17,749.50

1. 9.2.

**NON-GOLF COURSE CONTRACT RIGHTS**

1. Oral or written agreements with Residential and Commercial Customers.

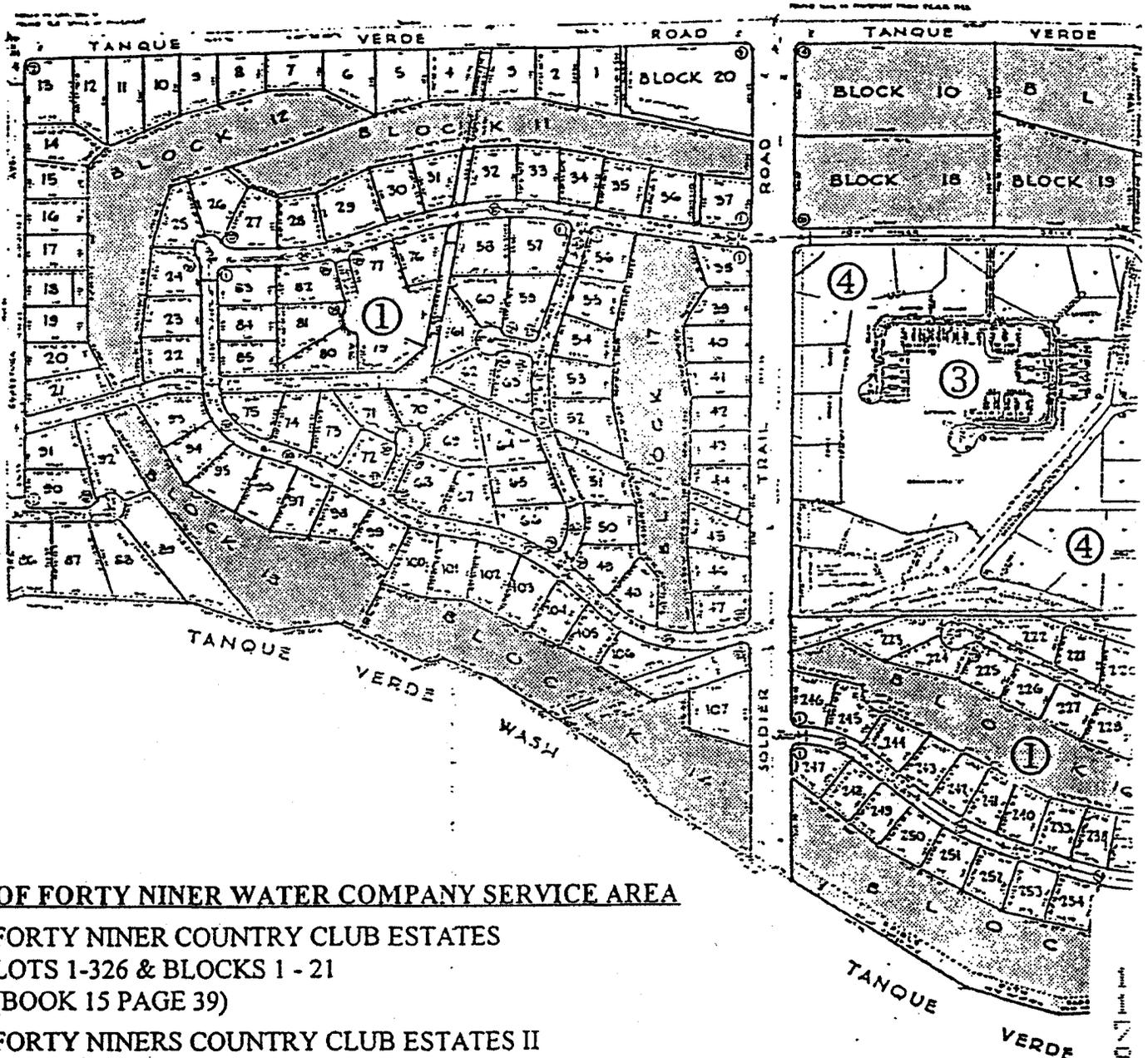
EXHIBIT G TO  
EX. A TO RESOLUTION NO. 19505

CITY OF TUCSON CONTRACT NO. 0443-03

NON-GOLF COURSE DISTRIBUTION MAP

EXHIBIT H TO  
EX A TO RESOLUTION NO. 19505

CITY OF TUCSON CONTRACT NO. 0443-03



**MAPS OF FORTY NINER WATER COMPANY SERVICE AREA**

- ① FORTY NINER COUNTRY CLUB ESTATES  
LOTS 1-326 & BLOCKS 1 - 21  
(BOOK 15 PAGE 39)
- ② FORTY NINERS COUNTRY CLUB ESTATES II  
LOTS 1-17  
(BOOK 49 PAGE 66)
- ③ FORTY NINERS' GUEST RANCH ESTATES  
LOTS 9 - 30, 34 & COMMON AREA "A"  
(BOOK 34 PAGE 95)
- ④ FORTY NINERS' GUEST RANCH ESTATES  
LOTS 1-43 AND COMMON AREAS "A" - "G"  
(BOOK 30 PAGE 38)

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NER WATER COMPANY SERVICE AREA  
 ED TO CITY OF TUCSON WATER - SEE EXHIBIT "A"

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3.8.8.

WATER COMPANY LAND

EXHIBIT I TO  
EX A TO RESOLUTION NO. 19505

CITY OF TUCSON CONTRACT NO. 0443-03

**PARCEL ONE :**

**PUMP SITE IN BLOCK 6**

That portion of Block 6 of FORTY NINERS COUNTRY CLUB ESTATES, according to the plat of record in the office of the County Recorder of Pima County, Arizona in Book 15 of Maps and Plats at Page 39, described as follows :

Commencing at the Northerly common corner of Lot 282 and Lot 281 of said Forty Niner Country Club Estates;

Thence South 30 degrees, 25 minutes, 52 seconds East along the line common to said Lots 282 and 281, a distance of 184.10 feet to the common Southerly corner of said Lots 282 and 281, said corner also being the Northwest corner of the drainageway between Block 6 and Block 5 as shown on said plat of Forty Niner Country Club Estates ;

Thence continue South 30 degrees, 25 minutes, 52 seconds East along the West line of said drainageway, a distance of 92.89 feet to the Southwest corner of said drainageway ;

Thence North 73 degrees, 53 minutes, 28 seconds East along the South line of said drainageway, a distance of 105.74 feet ;

Thence South 16 degrees, 06 minutes, 32 seconds East 76.33 feet to the Point of Beginning

Thence South 65 degrees, 49 minutes, 55 seconds East 17.25 feet ;

Thence South 10 degrees, 01 minutes, 08 seconds East 16.31 feet ;

Thence South 23 degrees, 38 minutes, 11 seconds West, 9.70 feet ;

Thence North 65 degrees, 15 minutes, 13 seconds West 24.91 feet ;

Thence North 20 degrees, 10 minutes, 42 seconds East 23.00 feet to the Point of Beginning.

( APN NO. 205-50-160E )

**PARCEL TWO :**

**EAST WELL SITE IN BLOCK 6**

CASE No. 499561C

117810729

That portion of Block 6 of Forty Niner Country Club Estates, according to the plat of record in the office of the County Recorder of Pima County, Arizona in Book 15 of Maps and Plats at Page 39 , described as follows :

Commencing at the Northerly common corner of Lots 282 and 281 of said Forty Niner Country Club Estates ;

Thence South 30 degrees, 25 minutes, 52 seconds East along the line common to Lots 282 and 281, a distance of 184.10 feet to the common Southerly corner of Lots 282 and 281, said corner also being the Northwest corner of the drainageway between said Block 6 and Block 5 as shown on said plat of Forty Niner Country Club Estates ;

Thence continue South 30 degrees, 25 minutes, 52 seconds East along the West line of said drainageway a distance of 92.89 feet to the Southwest corner of said drainageway ;

Thence North 73 degrees, 53 minutes, 28 seconds East along the South line of said drainageway, a distance of 130.64 feet ;

Thence South 16 degrees, 06 minutes, 32 seconds East 293.77 feet to the Point of Beginning ;

Thence South 76 degrees, 25 minutes, 16 seconds East 13.92 feet ;

Thence South 10 degrees, 05 minutes, 50 seconds West 19.66 feet ;

Thence North 78 degrees, 41 minutes, 53 seconds West 14.57 feet ;

Thence North 11 degrees, 50 minutes, 03 seconds East 20.21 feet to the Point of Beginning .

(APN NO. 205-50-160F)

PARCEL THREE :

WEST WELL SITE IN BLOCK 6

THAT PORTION OF Block 6 of Forty Niner Country Club Estates, according to the plat of record in the office of the County Recorder of Pima County, Arizona in Book 15 of Maps and Plats at Page 39 described as follows :

Commencing at the most Southerly corner of Lot 275 of said Forty Niner Country Club Estates ;

Thence North 89 degrees, 19 minutes, 26 seconds East along the Southeast line of said Lot 275, a distance of 153.00 feet ;

Thence South 50 degrees, 40 minutes, 34 seconds East 60.15 feet to the Point of Beginning ;

Thence North 85 degrees, 57 minutes, 12 seconds East 8.74 feet ;

Thence South 02 degrees, 54 minutes, 28 seconds East, 10.61 feet ;

CASE No. 499561C

117810730

Thence South 86 degrees, 40 minutes, 31 seconds West 8.76 feet ;

Thence North 02 degrees, 47 minutes, 40 seconds West, 10.50 feet to the Point of Beginning .

( APN NO. 205-50-160J )

PARCEL FOUR :

**MAINTENANCE AREA IN BLOCKS 6 , 7 AND THE TANQUE VERDE WASH**

That portion of Government Lot 7 in Section 5, Township 14 South, Range 16 East , Gila and Salt River Base and Meridian, Pima County, Arizona, described as follows :

Commencing at the most Easterly corner of Lot 275 of Forty Niner Country Club Estates according to the plat recorded in the office of the County Recorder of Pima County, Arizona in Book 15 of Maps and Plats at Page 39 ;

Thence South 39 degrees, 19 minutes, 26 seconds West along the Southeast line of said Lot 275, a distance of 180.00 feet to the most Southerly corner of said Lot 275 ;

Thence South 01 degrees, 22 minutes, 46 seconds East 34.22 feet to the Point of Beginning ;

Thence South 38 degrees, 58 minutes, 42 seconds East 74.10 feet ;

Thence South 86 degrees, 34 minutes, 26 seconds East 97.87 feet ;

Thence South 04 degrees, 49 minutes, 45 seconds West 92.11 feet ;

Thence South 79 degrees, 29 minutes, 52 seconds West 172.23 feet ;

Thence North 23 degrees, 13 minutes, 20 seconds West 74.55 feet ;

Thence North 58 degrees, 07 minutes, 15 seconds West 22.58 feet to a point on the arc of a non tangent curve concave to the East , a radial line of said curve through said point having a bearing of South 10 degrees, 34 minutes, 58 seconds East ;

Thence Westerly , Northerly and Northeasterly along the arc of said curve, to the right having a radius of 30.41 feet and a central angle of 188 degrees, 20 minutes, 56 seconds , for an arc distance of 99.98 feet to a non tangent line ;

Thence North 59 degrees, 12 minutes, 21 seconds East 83.85 feet ;

Thence North 79 degrees, 31 minutes, 08 seconds East 16.38 feet to the Point of Beginning .

CASE No. 499561C

102010

Excepting therefrom any portion thereof as conveyed to Magna Investment and Development Ltd ,a Utah Limited partnership in the Quitclaim Deed recorded September 17, 1999 in Docket 11134 at Page 280 :

( APN NO 205-50-161B )

**PARCEL FIVE :**

**WELL SITE ON LOT 268**

That portion of Lot 268 of Forty Niner Country Club Estates, according to the plat of record in the office of the County Recorder of Pima County, Arizona in Book 15 of Maps and Plats at Page 39 described as follows :

Commencing at the Northeast corner of said Lot 268 ;

Thence South 01 degrees, 56 minutes, 30 seconds West along the East line of said Lot 268, a distance of 58.25 feet to the Point of Beginning ;

Thence South 77 degrees, 03 minutes, 50 seconds East, 3.72 feet ;

Thence South 12 degrees, 56 minutes, 10 seconds West 22.51 feet ;

Thence North 77 degrees, 03 minutes, 50 seconds West 18.88 feet ;

Thence North 12 degrees, 56 minutes, 10 seconds East 22.51 feet ;

Thence South 77 degrees, 03 minutes, 50 seconds East 15.16 feet to the Point of Beginning .

Except any portion of the above lying within the boundaries of Lot 269 of said Forty Niner Country Club Estates

( APN NO. 205-50-099B )

**PARCEL SIX :**

**WELL SITE ON LOT 262 AND BLOCK 7**

That portion of Lot 262 and Block 7 of Forty Niner Country Club Estates, according to the plat of record in the office of the County Recorder of Pima County, Arizona in Book 15 of Maps and Plats at Page 39 described as follows :

CASE No. 499561C

11134-280

Commencing at the Southeast corner of said Lot 262 ;

Thence North 04 degrees, 40 minutes, 34 second East, along the East line of said Lot 262 ,a distance of 20.78 feet to the Point of Beginning ;

Thence South 74 degrees, 34 minutes, 51seconds West 82.78 feet ;

Thence North 21 degrees, 36 minutes, 38 seconds West 32.91 feet ;

Thence North 74 degrees, 43 minutes, 56 seconds East 91.80 feet ;

Thence South 20 degrees, 07 minutes, 53 seconds East 32.58 feet ;

Thence South 74 degrees, 34 minutes, 51 seconds West 8.15 feet to the Point of Beginning .

( APN NO. 205-50-093B )

PARCEL SEVEN:

**PUMP SITE IN BLOCK 18**

**That portion of Block 18 of Forty Niner Country Club Estates according to the plat of record in the office of the County Recorder of Pima County, Arizona in Book 15 of Maps and Plats at Page 39 described as follows :**

**Commencing at the intersection of the centerline of Soldier Trail Road and the centerline of Forty Niner Drive, as shown on said plat of Forty Niner Country Club Estates ;**

**Thence North 89 degrees, 41 minutes, 44 seconds East along said centerline of Forty Niner Drive, a distance of 391.10 feet ;**

**Thence North 00 degrees, 18 minutes, 16 seconds West 30.00 feet to the Point of Beginning on the North right of way line of said Forty Niner Drive ;**

**Thence North 08 degrees, 35 minutes, 43 seconds West, 18.46 feet ;**

**Thence North 81 degrees, 24 minutes, 17 seconds East 28.16 feet ;**

**Thence South 08 degrees, 35 minutes, 43 seconds East 22.57 feet to the said North right of way line of Forty Niner Drive ;**

**Thence South 89 degrees, 41 minutes, 44 seconds West along the said North right of way line a distance of 28.46 feet to the Point of Beginning .**

( APN NO. 205-49-068C )  
CASE No. 499561C

111204 0303

AMORTIZATION SCHEDULE

EXHIBIT J TO  
EX A TO RESOLUTION NO. 19505

CITY OF TUCSON CONTRACT NO. 0443-03

## Amortization Schedule: Annual and Monthly Payments

Amount Due:	\$1,041,300.00
Annual Interest Rate:	3.00%
Monthly Interest Rate:	0.25%
Term (Years):	5

Date	Beginning Balance	Total Payment Amount	Principal	Interest	Ending Balance
05/01/2004	\$1,041,300.00	\$520,650.00	\$520,650.00		\$520,650.00
05/01/2005	\$520,650.00	\$113,686.00	\$98,066.50	\$15,619.50	\$422,583.50
06/01/2005	\$422,583.50	\$9,473.83	\$8,417.37	\$1,056.46	\$414,166.13
07/01/2005	\$414,166.13	\$9,473.83	\$8,438.41	\$1,035.42	\$405,727.72
08/01/2005	\$405,727.72	\$9,473.83	\$8,459.51	\$1,014.32	\$397,268.21
09/01/2005	\$397,268.21	\$9,473.83	\$8,480.66	\$993.17	\$388,787.55
10/01/2005	\$388,787.55	\$9,473.83	\$8,501.86	\$971.97	\$380,285.69
11/01/2005	\$380,285.69	\$9,473.83	\$8,523.12	\$950.71	\$371,762.57
12/01/2005	\$371,762.57	\$9,473.83	\$8,544.42	\$929.41	\$363,218.15
01/01/2006	\$363,218.15	\$9,473.83	\$8,565.78	\$908.05	\$354,652.37
02/01/2006	\$354,652.37	\$9,473.83	\$8,587.20	\$886.63	\$346,065.17
03/01/2006	\$346,065.17	\$9,473.83	\$8,608.67	\$865.16	\$337,456.50
04/01/2006	\$337,456.50	\$9,473.83	\$8,630.19	\$843.64	\$328,826.31
05/01/2006	\$328,826.31	\$9,473.83	\$8,651.76	\$822.07	\$320,174.55
06/01/2006	\$320,174.55	\$9,473.83	\$8,673.39	\$800.44	\$311,501.16
07/01/2006	\$311,501.16	\$9,473.83	\$8,695.08	\$778.75	\$302,806.08
08/01/2006	\$302,806.08	\$9,473.83	\$8,716.81	\$757.02	\$294,089.27
09/01/2006	\$294,089.27	\$9,473.83	\$8,738.61	\$735.22	\$285,350.66
10/01/2006	\$285,350.66	\$9,473.83	\$8,760.45	\$713.38	\$276,590.21
11/01/2006	\$276,590.21	\$9,473.83	\$8,782.35	\$691.48	\$267,807.86
12/01/2006	\$267,807.86	\$9,473.83	\$8,804.31	\$669.52	\$259,003.55
01/01/2007	\$259,003.55	\$9,473.83	\$8,826.32	\$647.51	\$250,177.23
02/01/2007	\$250,177.23	\$9,473.83	\$8,848.39	\$625.44	\$241,328.84
03/01/2007	\$241,328.84	\$9,473.83	\$8,870.51	\$603.32	\$232,458.33
04/01/2007	\$232,458.33	\$9,473.83	\$8,892.68	\$581.15	\$223,565.65
05/01/2007	\$223,565.65	\$9,473.83	\$8,914.92	\$558.91	\$214,650.73
06/01/2007	\$214,650.73	\$9,473.83	\$8,937.20	\$536.63	\$205,713.53
07/01/2007	\$205,713.53	\$9,473.83	\$8,959.55	\$514.28	\$196,753.98
08/01/2007	\$196,753.98	\$9,473.83	\$8,981.95	\$491.88	\$187,772.03
09/01/2007	\$187,772.03	\$9,473.83	\$9,004.40	\$469.43	\$178,767.63
10/01/2007	\$178,767.63	\$9,473.83	\$9,026.91	\$446.92	\$169,740.72
11/01/2007	\$169,740.72	\$9,473.83	\$9,049.48	\$424.35	\$160,691.24
12/01/2007	\$160,691.24	\$9,473.83	\$9,072.10	\$401.73	\$151,619.14
01/01/2008	\$151,619.14	\$9,473.83	\$9,094.78	\$379.05	\$142,524.36
02/01/2008	\$142,524.36	\$9,473.83	\$9,117.52	\$356.31	\$133,406.84
03/01/2008	\$133,406.84	\$9,473.83	\$9,140.31	\$333.52	\$124,266.53
04/01/2008	\$124,266.53	\$9,473.83	\$9,163.16	\$310.67	\$115,103.37
05/01/2008	\$115,103.37	\$9,473.83	\$9,186.07	\$287.76	\$105,917.30
06/01/2008	\$105,917.30	\$9,473.83	\$9,209.04	\$264.79	\$96,708.26
07/01/2008	\$96,708.26	\$9,473.83	\$9,232.06	\$241.77	\$87,476.20
08/01/2008	\$87,476.20	\$9,473.83	\$9,255.14	\$218.69	\$78,221.06
09/01/2008	\$78,221.06	\$9,473.83	\$9,278.28	\$195.55	\$68,942.78
10/01/2008	\$68,942.78	\$9,473.83	\$9,301.47	\$172.36	\$59,641.31
11/01/2008	\$59,641.31	\$9,473.83	\$9,324.73	\$149.10	\$50,316.58
12/01/2008	\$50,316.58	\$9,473.83	\$9,348.04	\$125.79	\$40,968.54
01/01/2009	\$40,968.54	\$9,473.83	\$9,371.41	\$102.42	\$31,597.13
02/01/2009	\$31,597.13	\$9,473.83	\$9,394.84	\$78.99	\$22,202.29
03/01/2009	\$22,202.29	\$9,473.83	\$9,418.32	\$55.51	\$12,783.97
04/01/2009	\$12,783.97	\$9,473.83	\$9,441.87	\$31.96	\$3,342.10
05/01/2009	\$3,342.10	\$3,350.46	\$3,342.10	\$8.36	\$0.00
		\$1,082,956.47	\$1,041,300.00	\$41,656.47	

EXHIBIT "K"

RECLAMATION WATER USERS AGREEMENT

EXHIBIT K TO  
EX A TO RESOLUTION NO. 19505

CITY OF TUCSON CONTRACT NO. 0443-03

Site Number \_\_\_\_\_

## TUCSON WATER RECLAIMED WATER USER AGREEMENT

Tucson Water's reclaimed water is a valuable renewal water resource that originates as treated wastewater from the Tucson metropolitan area's wastewater treatment plants. The treated wastewater is then filtered and chlorinated before it is delivered as reclaimed water. It is subject to a variety of federal, state and local regulations that protect the safety of the public and the integrity of the potable water supply system. This Reclaimed Water User Agreement establishes terms and conditions that apply to the ultimate user of Tucson's reclaimed water, or Buyer, and to the City of Tucson.

1. **Place of Use.** Tucson Water will deliver to a meter reclaimed water in accordance with the open access reuse standards established in Tucson Water's ADEQ Reuse Permit. Reclaimed water delivered under this Agreement can be stored and used only at the following location: \_\_\_\_\_
2. **Resale of Reclaimed Water.** Buyer may not resell reclaimed water to any other person or legal entity. Buyer is also prohibited from conveying reclaimed water delivered under this Agreement to any other premises or location.
3. **Commodity Rate.** Buyer will pay for reclaimed water delivered under this Agreement according to the rate schedule established in the Tucson City Code during the term of this Agreement. If the City establishes rate classifications applicable to reclaimed water, Buyer will pay the rate established by the Code that applies to Buyer's particular circumstances. If the rate to be paid by Buyer is specified by other Agreement(s), such agreements shall be noted in Section 15, below. Nothing herein shall excuse Buyer from payment of service or other charges as are applicable to the time, place or manner of Buyer's reclaimed water service and delivery.
4. **Costs of Buyer.** The City's reclaimed water distribution system commonly terminates after the meter. Buyer is solely responsible for any private delivery system costs, including the initial construction cost of valve stations for automated control of storage facilities by Tucson Water arising out of Buyer's use of reclaimed water and from the construction, maintenance or operations of the private reclaimed water delivery system on Buyer's property.
5. **Compliance with Regulations.** Buyer agrees to obey any state, federal, and local laws, regulations and standards that may apply to Buyer's use of reclaimed water during the term of this Agreement. Such laws, regulations, and standards may include:
  - requirements and restrictions governing use of the reclaimed water

- application methods that reasonably preclude certain kinds of human contact with reclaimed water
  - control of access to the reclaimed water, its delivery system, and the area of storage and use
  - requirements to prevent reclaimed water from standing on open access areas during normal periods of use
  - requirements to prevent reclaimed water from coming into contact with drinking fountains, water coolers, or eating areas
  - requirements to identify certain components on the delivery system, or to provide public notice that reclaimed water is used on Buyer's premises.
6. **Hose Bibs.** Buyer specifically agrees not to install hose bibs or utilize existing hose bibs on any component of the private reclaimed water delivery system.
  7. **Signs.** Upon the commencement of reclaimed water service, the City will provide Buyer with an appropriate amount of signage to inform the public that reclaimed water is used on Buyer's premises. Buyer shall post such signs at all entrances to the premises where reclaimed water is used. Buyer may also be responsible for posting other signage that may be required under the State of Arizona's Administrative Code or that may be established by City of Tucson regulation. Buyer will be responsible for the maintenance and replacement of reclaimed water signage.
  8. **Backflow Prevention.** Buyer will install a reduced pressure backflow assembly on all potable water services at the site, as required by City Ordinance, before receiving reclaimed water service from the City. Buyer is responsible for the maintenance and testing of any backflow protection.
  9. **Thermal Expansion Control.** Buyer agrees to install and maintain any thermal expansion control, as may be required by the adopted Uniform Plumbing Code.
  10. **Inspection.** Buyer agrees that the City of Tucson or any other public agency with the authority to verify compliance with reclaimed water use regulation may inspect Buyer's premises to verify compliance with the applicable reclaimed water use regulations.

Buyer further acknowledges the responsibility to inform, notify, and request inspection and approvals from various agencies, including Tucson Water, City of Tucson Development Services, and Pima County permitting agencies, for certain activities relating to the construction, maintenance, and operation of its private reclaimed water delivery system, including, but not necessarily limited to, materials, construction, facility testing, violations, and emergency situations.

11. **Plans.** Buyer acknowledges that it has the responsibility to maintain a copy of the conceptual plans of the on-site reclaimed water system at the premises on which reclaimed water is being used. These plans will show the locations of the property lines, all structures on the site, reclaimed water lines, and turn-off valves.

12. **Potential Disruption of Service.** Buyer accepts the possibility that the City may be required to disrupt reclaimed water service to Buyer's premises due to emergency conditions, peak demands, or planned system maintenance. Buyer shall be responsible for any damage that may be caused to Buyer-owned facilities by such disruptions.

- When there is an unforeseen emergency relating to the City's Reclaimed Water delivery system, the City may terminate deliveries of reclaimed water without notice. When notice of an emergency is given, Buyer agrees to reduce or cease usage of reclaimed water service upon the City's request.
- In order to accommodate peak demand periods or planned maintenance of its reclaimed water system, the City shall provide Buyer with twenty-four (24) hour notice of the need to cease reclaimed water usage altogether, or to reduce the volume of reclaimed water used. Upon being provided such notice, Buyer will alter its reclaimed water usage according to the City's request.

14. **Transfer of Property.** Buyer agrees that all leases of the premises subject to this Agreement shall be in writing, and must be made expressly subject to this Agreement. Should Buyer sell or otherwise transfer ownership or control of the premises described herein to a Third Party, Tucson Water shall not be obligated to provide reclaimed water to any subsequent owner or user of the premises unless such sale or disposal incorporates this Agreement by reference, and makes any successors and assigns expressly subject to this Agreement. If such a third-party disposition does not include such provisions, Buyer will close its account with Tucson Water and pay any fees or charges incurred by Buyer before the disposition of Buyer's property is effective.

15. **Termination of Service.** Buyer acknowledges that reclaimed water service may be discontinued for failure to comply with the terms and conditions of this agreement.

16. **Other Agreements.** Unless expressly listed below, this Agreement constitutes the complete and entire Agreement between the parties. If applicable, list other Agreements:

ENTERED INTO AND APPROVED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature of Authorized Officers or Agents for Buyer/User

\_\_\_\_\_  
Authorized Officers or Agents for Buyer/User Printed Name

\_\_\_\_\_  
Signature of Tucson Water Director/ Designated Representative

\_\_\_\_\_  
Tucson Water Representative Printed Name

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney