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DOCKETED

OCT 30 2006

AZ CORP COMMISSION  
DOCUMENT CONTROL

DOCKETED BY [Signature]

BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE APPLICATION  
OF JOHNSON UTILITIES COMPANY FOR  
AN EXTENSION OF ITS CERTIFICATE OF  
CONVENIENCE AND NECESSITY FOR  
WASTEWATER SERVICE.

DOCKET NO. WS-02987A-04-0889

MOTION REQUESTING A  
PROCEDURAL CONFERENCE

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Johnson Utilities, LLC, ("Johnson" or the "Company") hereby moves that a Procedural Conference be set in this matter for the reasons set forth herein.

1. On March 14, 2006, Johnson filed an Application to Amend Decision No. 68236 (the "Decision") requesting authority to file a Letter of Credit for \$500,000 in lieu of filing a Performance Bond as required by the Decision.

2. On April 21, 2006 the Commission Staff filed Staff's Response to Motion to Amend Decision No. 68236 indicating that the Letter of Credit "conforms sufficiently to the ordered Performance Bond to be acceptable".

3. Subsequently the Commission determined that an evidentiary hearing was necessary to discuss the differences between Letters of Credit and Performance Bonds. During the course of that hearing, the Company's Executive Vice President, Brian P. Tompsett, testified, among other things, that the Company was having difficulty obtaining a Performance Bond and

1 that due to that difficulty and the higher cost, the Company had filed the subject Letter of Credit.  
2 Also during that hearing, expert witnesses for both parties testified that the Letter of Credit was  
3 in many ways superior to the Performance Bond, but suggested certain revisions to the form of  
4 the Letter of Credit.

5 4. At the conclusion of the hearing, the Administrative Law Judge directed the  
6 parties to meet off the record and to submit recommended forms of language for the Letter of  
7 Credit and the ordering paragraphs in the requested Amended Decision. The parties did in fact  
8 meet, but Johnson and Staff could not agree upon the language. Therefore, the Company and  
9 Staff submitted separate recommendations on October 5, 2006, and October 10, 2006,  
10 respectively. The Administrative Law Judge issued his Recommended Opinion and Order (the  
11 "ROO") on October 19, 2006.

12 5. The Company has concerns with the form of the ROO, and is of the opinion that  
13 certain of the Findings of Fact and the Conclusions of Law contained therein are not supported  
14 by the record in this proceeding. As examples, the ROO speaks of the "Sonoran litigation". Mr.  
15 Tompsett testified in this proceeding that the Sonoran litigation had been settled with prejudice.  
16 (See attached Order of the Superior Court dated February 24, 2006, and refer to the Company's  
17 Compliance Filing dated April 4, 2006). Nor was there any evidence that there was a need for  
18 "protection" of the customers from any action of the Company or Mr. Johnson. Additionally,  
19 there was no evidence of even a remote possibility that the Company, Mr. Johnson, or any of the  
20 affiliated companies would file bankruptcy.

21 6. The alternative recommendations by the Staff and Company in this Docket appear  
22 to attempt clarifying the Letter of Credit language and ordering paragraphs, without resolution of  
23 the larger issue before the Commission which was raised in the evidentiary hearing, namely, the

1 ability of the Commission to utilize the Performance Bond or Letter of Credit proceeds for the  
2 intended purpose, to protect the customers. The Company was of the opinion those issues were  
3 to be addressed in the Generic Docket the Commission has opened in that regard. However, the  
4 ROO proposes to adopt language that appears to attempt circumvention of the alleged statutory  
5 prohibition.

6 7. To assist the Company in responding to the ROO, the Company believes that a  
7 Procedural Conference among the parties would be beneficial to discuss the ROO and  
8 preparation of the possible Exceptions by the parties for the Commissions consideration. The  
9 Company also believes a short extension within which to file comments/exceptions resulting  
10 from any action at the Procedural conference would be appropriate. The Company recognizes  
11 and agrees such a Procedural Conference may extend the date at which the Commission might  
12 consider this matter beyond the presently scheduled November 21, 2006 Open Meeting. The  
13 Company hereby agrees to the rescheduling of that consideration to a later Open Meeting.

14 WHEREFORE, the Company respectfully requests that the Administrative Law Judge set  
15 a Procedural Conference for the Judge and parties to further discuss the basis for the  
16 Recommended Opinion and Order and clarification of the alternatives, and further requests that  
17 the deadline for filing Exceptions to the ROO be extended a minimum of five (5) business days  
18 from the Procedural Conference or from any amended ROO, whichever occurs later.

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1 RESPECTFULLY submitted this 30<sup>th</sup> day of October 2006.

2 SALLQUIST, DRUMMOND & O'CONNOR, P.C.

3  
4 By: 

Richard L. Sallquist  
4500 South Lakeshore Drive, Suite 339  
Tempe, Arizona 85282  
Phone: (480) 839-5202  
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5  
6  
7  
8 Original and fifteen copies of the  
9 foregoing filed this 30 day  
of October 2006:

10 Docket Control  
11 Arizona Corporation Commission  
12 1200 West Washington  
Phoenix, Arizona 85007

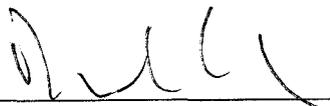
13 A copy of the foregoing  
14 mailed/hand delivered this  
30 day of October 2006, to:

15 Brian C. McNeil  
16 Arizona Corporation Commission  
17 Executive Secretary  
1200 West Washington Street  
Phoenix, Arizona 85007

18 Hearing Division  
19 Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

20 Utilities Division  
21 Arizona Corporation Commission  
1200 West Washington  
22 Phoenix, Arizona 85007

1 Legal Division  
Arizona Corporation Commission  
2 1200 West Washington  
Phoenix, Arizona 85007

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**BEUS GILBERT PLLC**  
ATTORNEYS AT LAW  
4800 NORTH SCOTTSDALE ROAD  
SUITE 6000  
SCOTTSDALE, ARIZONA 85251  
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Leo R. Beus/AZ Bar No. 002687  
Linnette R. Flanigan/AZ Bar No. 019771

*Attorneys for Plaintiff*

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF PINAL**

LENNAR COMMUNITIES  
DEVELOPMENT, INC., an Arizona  
corporation,

Plaintiff,

vs.

SONORAN UTILITY SERVICES, L.L.C., an  
Arizona limited liability company; GEORGE  
H. JOHNSON and JANE DOE JOHNSON,  
husband and wife; BOULEVARD  
CONTRACTING COMPANY, INC., an  
Arizona corporation; PINAL COUNTY  
BOARD OF SUPERVISORS, a political  
subdivision of the State of Arizona; LIONEL  
D. RUIZ, in his capacity as a member of the  
Pinal County Board of Supervisors; SANDIE  
SMITH, in her capacity as a member of the  
Pinal County Board of Supervisors; DAVID  
SNIDER, in his capacity as a member of the  
Pinal County Board of Supervisors; JIMMIE  
KERR, in his capacity as a former member of  
the Pinal County Board of Supervisors; THE  
387 WATER IMPROVEMENT DISTRICT, a  
Pinal County Improvement District and a  
political subdivision of the State of Arizona;  
THE 387 WASTEWATER IMPROVEMENT

Case No.: CV 2006 00012

**NOTICE OF SETTLEMENT**

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DISTRICT, a Pinal County Improvement District and a political subdivision of the State of Arizona,

Defendants.

NOTICE IS HEREBY GIVEN that Plaintiff Lennar Communities Development, Inc. and Defendants Pinal County Board of Supervisors, the 387 Water Improvement District, the 387 Wastewater Improvement District, Lionel D. Ruiz, Sandie Smith, David Snider, and Jimmie Kerr have reached a settlement of this matter. Once the parties finalize all settlement documentation, a Stipulation for Dismissal will be submitted to the Court.

DATED this 25 day of February 2006.

BEUS GILBERT PLLC

By Linnette R. Flanigan

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

1 Original of the foregoing filed and a  
2 copy mailed this 21st day  
of February 2006 to:

3 Honorable William J. O'Neil  
4 Pinal County Superior Court  
5 Division I  
6 P.O. Box 847  
7 Florence, AZ 85232

8 Copy of the foregoing mailed this 21st  
9 day of February 2006 to:

10 Lawrence C. Wright  
11 **WRIGHT & ASSOCIATES**  
12 Suite 3500 Financial Plaza  
13 1201 South Alma School Road  
14 Mesa, AZ 85210

15 Thomas K. Irvine  
16 **IRVINE LAW FIRM, P.A.**  
17 1419 North Third Street, Suite 100  
18 Phoenix, AZ 85004  
19 *Attorneys for Defendant Sonoran*

20 James M. Jellison  
21 **SCHLEIER JELLISON SCHLEIER, P.C.**  
22 3101 North Central, Suite 1090  
23 Phoenix, AZ 85012  
24 *Attorney for Defendants Pinal County Board of Supervisors & The 387 Districts*

25 Lat J. Celmins  
Blake E. Whiteman  
Michael L. Kitchen  
**Margrave Celmins, P.C.**  
8171 East Indian Bend, Suite 101  
Scottsdale, AZ 85250  
*Attorneys for Defendants Johnson & Boulevard*

Musa L. Rahn

FILED PINAL COUNTY  
SUPERIOR COURT  
KERRI YOUTSEY RUIZ CLERK

FEB 24 2006

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Lat J. Celmins (004408)  
Michael L. Kitchen (019848)  
**MARGRAVE CELMINS WHITEMAN, P.C.**  
8171 East Indian Bend, Suite 101  
Scottsdale, Arizona 85250  
Telephone (480) 994-2000  
Facsimile (480) 994-2008  
*Attorneys for Defendants George H. Johnson  
and Jana Johnson and Boulevard Contracting Company, Inc.*

**SUPERIOR COURT OF ARIZONA  
COUNTY OF PINAL**

**LENNAR COMMUNITIES  
DEVELOPMENT, INC.,** an Arizona  
corporation,

*Plaintiff,*

v.

**SONORAN UTILITY SERVICES, L.L.C.,**  
an Arizona limited liability company;  
**GEORGE H. JOHNSON and JANE  
DOE JOHNSON,** husband and wife;  
**BOULEVARD CONTRACTING  
COMPANY, INC.,** an Arizona  
corporation; **PINAL COUNTY BOARD  
OF SUPERVISORS,** a political  
subdivision of the State of Arizona;  
**LIONEL D. RUIZ,** in his capacity as a  
member of the Pinal County Board of  
Supervisors; **SANDIE SMITH,** in her  
capacity as a member of the Pinal  
County Board of Supervisors; **DAVID  
SNIDER,** in his capacity as a member  
of the Pinal County Board of  
Supervisors; **JIMMIE KERR,** in his  
capacity as a former member of the  
Pinal County Board of Supervisors;  
**THE 387 WATER IMPROVEMENT  
DISTRICT,** a Pinal County  
Improvement District and a political  
subdivision of the State of Arizona;  
**THE 387 WASTEWATER  
IMPROVEMENT DISTRICT,** a Pinal  
County Improvement District and a  
political subdivision of the State of  
Arizona,

*Defendants.*

Case No. CV200600012

**ORDER**

*(Assigned to the Honorable  
William J. O'Neil)*

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GEORGE H. JOHNSON, a married man

v.

Counterclaimant,

LENNAR COMMUNITIES DEVELOPMENT, INC., an Arizona corporation; LENNAR CORPORATION, a Delaware corporation; ALAN JONES and JANE DOE JONES, husband and wife; MARK BITTEKER and JANE DOE BITTEKER, husband and wife; JOHN SUTHERLAND and JANE DOE SUTHERLAND, husband and wife; JOHN DOES and JANE DOES I-X; ABC PARTNERSHIPS I-X; ABC LIMITED LIABILITY COMPANIES; XYZ CORPORATIONS I-X,

Counterdefendants.

Pursuant to the parties' Stipulation and good cause appearing therefor,

**IT IS ORDERED** that the above-entitled action shall be and is dismissed with prejudice as to all claims against Defendants George H. Johnson and Jana Johnson and Boulevard Contracting Company, Inc. only, and as to all counterclaims filed by George Johnson against Lennar Communities Development, Inc., Lennar Corporation, Alan Jones and Jodie Jones, husband and wife, Mark Bittaker and Tamara Bittaker, husband and wife, and John Sutherland, and an Order of Dismissal be entered accordingly, each party to bear its own attorney's fees and costs.

WILLIAM J. O'NEIL

Honorable William J. O'Neil  
Judge of the Superior Court

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Lat J. Celmins (004408)  
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and Jana Johnson and Boulevard Contracting Company, Inc.*

PIAL COUNTY  
SUPERIOR COURT  
KIRSTI YOUTSEY RUIZ CLERK

**FEB 23 2006**

**SUPERIOR COURT OF ARIZONA  
COUNTY OF PINAL**

**LENNAR COMMUNITIES  
DEVELOPMENT, INC.**, an Arizona  
corporation,

Case No. CV200600012

Plaintiff,

**STIPULATION FOR DISMISSAL  
WITH PREJUDICE AND  
ORDER**

v.

*(Assigned to the Honorable  
William J. O'Neil)*

**SONORAN UTILITY SERVICES, L.L.C.**,  
an Arizona limited liability company;  
**GEORGE H. JOHNSON and JANE  
DOE JOHNSON**, husband and wife;  
**BOULEVARD CONTRACTING  
COMPANY, INC.**, an Arizona  
corporation; **PINAL COUNTY BOARD  
OF SUPERVISORS**, a political  
subdivision of the State of Arizona;  
**LIONEL D. RUIZ**, in his capacity as a  
member of the Pinal County Board of  
Supervisors; **SANDIE SMITH**, in her  
capacity as a member of the Pinal  
County Board of Supervisors; **DAVID  
SNIDER**, in his capacity as a member  
of the Pinal County Board of  
Supervisors; **JIMMIE KERR**, in his  
capacity as a former member of the  
Pinal County Board of Supervisors;  
**THE 387 WATER IMPROVEMENT  
DISTRICT**, a Pinal County  
Improvement District and a political  
subdivision of the State of Arizona;  
**THE 387 WASTEWATER  
IMPROVEMENT DISTRICT**, a Pinal  
County Improvement District and a  
political subdivision of the State of  
Arizona,

Defendants.

1 **GEORGE H. JOHNSON, a married**  
2 **man**

3 v.  
4 **Counterclaimant,**

5 **LENNAR COMMUNITIES**  
6 **DEVELOPMENT, INC., an Arizona**  
7 **corporation; LENNAR CORPORATION,**  
8 **a Delaware corporation; ALAN JONES**  
9 **and JANE DOE JONES, husband and**  
10 **wife; MARK BITTEKER and JANE DOE**  
11 **BITTEKER, husband and wife; JOHN**  
12 **SUTHERLAND and JANE DOE**  
13 **SUTHERLAND, husband and wife;**  
14 **JOHN DOES and JANE DOES 1-X;**  
15 **ABC PARTNERSHIPS I-X; ABC**  
16 **LIMITED LIABILITY COMPANIES; XYZ**  
17 **CORPORATIONS I-X,**

18 **Counterdefendants.**

19 **Lennar Communities Development, Inc., Lennar Corporation, Alan and**  
20 **Jane Doe Jones, Mark and Jane Doe Bittaker, John and Jane Doe Sutherland,**  
21 **George and Jana Johnson, and Boulevard Contracting Company, Inc. (collectively**  
22 **the "Parties"), through their respective counsel, hereby stipulate that the above-**  
23 **entitled action has been settled by the Parties. All claims against George H.**  
24 **Johnson and Jana Johnson and Boulevard Contracting Company, Inc. only, and**  
25 **all counterclaims filed by George Johnson against Lennar Communities**  
26 **Development, Inc., Lennar Corporation, Alan and Jodie Jones, Mark and Tamara**  
27 **Bittaker, John Sutherland shall be dismissed *with* prejudice and the parties**  
28 **request that an Order of Dismissal be entered accordingly, each party to bear its**  
**own attorney's fees and costs. This dismissal relates to the aforementioned**  
**Parties only, and has no effect on any claim pending against any other party to**  
**the lawsuit.**

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DATED this 17th day of February, 2006.

**BEUS GILBERT**  
*Leo Beus*  

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**Leo Beus**  
*Attorneys for Lennar Communities Development, Inc., Lennar Corporation, Alan Jones and Jodie Jones, Mark Bittaker and Tamara Bittaker and John Sutherland*

*Margrave Celmins*  

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**MARGRAVE CELMINS WHITEMAN, P.C.**  

---

**Lat J. Celmins**  
**Michael L. Kitchen**  
*Attorneys for Johnson and Boulevard Contracting Company, Inc.*

**COPY** of the foregoing mailed/  
hand-delivered this 17th day  
of February, 2006 to:

Honorable William J. O'Neil  
**PIVAL COUNTY SUPERIOR COURT**  
971 North Jason Lopez Circle, Bldg. A  
Florence, Arizona 85232

James M. Jellison  
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Lawrence C. Wright  
**WRIGHT & ASSOCIATES**  
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Thomas K. Irvine  
**IRVINE LAW FIRM, P.C.**  
1419 North Third Street, Suite 100  
Phoenix, Arizona 85004

*Margrave Celmins*  

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**N:\WP50\JOHNSON\LENNAR\Stipulation Dismissal.wpd**  
February 17, 2006