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Attorneys for the Complainants

BEFORE THE ARIZONA CORPORATION COMMISSION

RAYMOND R. PUGEL AND JULIE B.
PUGEL, husband and wife as trustees of THE
RAYMOND R. PUGEL and JULIE B. PUGEL
FAMILY TRUST,
and
ROBERT RANDALL and SALLY RANDALL,
husband and wife
Complainants,
v.
PINE WATER COMPANY, an Arizona
Corporation
Respondent..

DOCKET NO. W-03512A-06-0407

REBUTTAL EXHIBITS TO ROBERT
HARDCASTLE'S TESTIMONY
CONCERNING THE NEGOTIATION WITH
LOREN PETERSON

ASSET TRUST MANAGEMENT, CORP.
Complainants,
v.
PINE WATER COMPANY, an Arizona
Corporation
Respondent.

DOCKET NO. W-03512A-06 -0613

Arizona Corporation Commission

DOCKETED

JUL 27 2007

DOCKETED BY

JAMES HILL and SIOUX HILL, husband and
wife and as trustees of THE HILL FAMILY
TRUST,
Complainants,
v.
PINE WATER COMPANY, an Arizona
Corporation
Respondent.

DOCKET NO. W-03512A-07-0100

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AZ CORP COMMISSION
DOCKET CONTROL
2007 JUL 27 A 8 59

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1 **BRENT WEEKES,**
2 **Complainants,**
3 **v.**
4 **PINE WATER COMPANY, an Arizona**
5 **Corporation**
6 **Respondent.**

DOCKET NO. W-03512A-07-0019

- 7 1. Exhibit A: 2006 Letter to Loren Peterson from Brooke Utilities regarding Proposed Water
8 Purchase Agreement
9 2. Exhibit B: 2006 Loren Peterson Water Sales Agreement
10 3. Exhibit C: Drafted Water Exploration Agreement
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1 Original and 19 copies mailed/delivered
2 This 24th day of July, 2007 to:

3 Arizona Corporation Commission
4 Attn: Docket Control
5 1200 W. Washington
6 Phoenix, AZ 85007

7 Copies of the foregoing mailed/delivered
8 This 24th day of July, 2007 to:

9 Kevin O. Torrey
10 Attorney, Legal Division
11 Arizona Corporation Commission
12 1200 W. Washington Street
13 Phoenix, AZ 85007
14 ktorrey@azcc.gov

15 Christopher Kempley, Chief Counsel
16 Legal Division
17 Arizona Corporation Commission
18 1200 W. Washington Street
19 Phoenix, AZ 85007

20 Ernest G. Johnson, Director
21 Utilities Division
22 Arizona Corporation Commission
23 1200 W. Washington Street
24 Phoenix, AZ 85007

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Mesa, AZ 85213

Barbara Hall
PO Box 2198
Pine, AZ 85544

EXHIBIT A

**2006 Letter to Loren Peterson from
Brooke Utilities regarding Proposed
Water Purchase Agreement**

Brooke Utilities, Inc.

P. O. Box 82218 • Bakersfield, California 93380-2218
Customer Call Center • P.O. Box 9005 • San Dimas, California 91773-9016 • (800) 270-6084

ROBERT T. HARDCASTLE
(661) 633-7526
Fax (781) 823-3070
RTH@brookeutilities.com

Loren Peterson
Strawberry Hollow Development Co., Inc.
P.O. Box 2141
Pine, AZ 85544

Re: **Proposed Water Purchase Agreement**

Dear Loren,

I appreciate your interest in proposing the above referenced agreement. Thank you.

As you can see by the attached document our modifications are fairly extensive but most of the foundational issues have received less attention. My interest in this agreement is that it be even handed and near equivalent to both parties. It seems to me that each of us has a benefit to be recognized by our individual organizations and water customers. I confess that I was disappointed to not see more water supply made available under this agreement.

For your consideration, I have provided a few areas of the agreement below that we find the most objectionable and respectfully request your reconsideration of these areas and numerous others.

- (a) **Water Quality** – as provider of potable domestic water from your water system it seems reasonable that a purchaser of the water should expect it to meet the water quality standards required by regulation – whether customers of Pine Water Co. or Strawberry Hollow Domestic Water Improvement District receive it. Accordingly, it seems reasonable that water treatment of the water, if required, should be part of the purchase price.
- (b) **Availability Charge** – in effect the proposed agreement represents little or no economic risk to Strawberry Hollow. A risk bias such as that inherently represents an arrangement that is not equitable to both parties. At the very least, it seems reasonable that if Pine Water Co. were to undertake such risk that plentiful quantities of high quality water should be guaranteed by the agreement.
- (c) **Sale of Additional Water** – while it may be logical to think that Pine Water Co. always requires supplemental water supplies that it not the case during winter months. If Pine Water is compelled to buy additionally available water it is very likely, during certain times of the year, that such water would be operationally unnecessary and

Loren Petersen

*Brooke Water L.L.C. Circle City Water Co. L.L.C. Strawberry Water Co., Inc. Pine Water Co., Inc.
Payson Water Co., Inc. Navajo Water Co., Inc. Tonto Basin Water Co., Inc.*

- would be priced at a premium in excess of the cost of other supplies. This condition would tremendously disadvantage Pine Water ratepayers.
- (d) **Deposit** – it seems fair that a deposit should be held to assure payment of amounts due under the agreement. An extension of this responsibility to provide liquidated damages for a possible good faith omission of a performance obligation causing forfeiture of the deposit is onerous.
 - (e) **Most Favored Nation** – it seems equitable that Pine Water should purchase water from Strawberry Hollow that is no more, but no less, favorable than any other party purchasing water.
 - (f) **Assignment of Contractual Rights** – to assign rights of customer account collection to Strawberry Hollow, an unregulated entity, by Pine Water, a regulated entity, is likely a regulatory impossibility. In addition these conditions are unduly biased in favor of Strawberry Hollow at the expense of our ratepayers in Pine.
 - (g) **Indemnification** – hold harmless and indemnification sections of agreements always function best where they are as evenly balanced as possible. The proposed agreement provides for an indemnification section that is unacceptable to Pine Water.
 - (h) **Availability Charge Following Termination** – it seems very unreasonable that termination at will of the agreement by Pine Water should not result in the continuation of economic performance throughout the term of the agreement at sizeable expense and cost to Pine Water rate payers.

In conclusion, while we appreciate that it is your goal to minimize risk to Strawberry Hollow, as the owner and operator of a regulated utility we must consider the prudence of every decision we make. The burden the Agreement places on Pine Water's rate payers for a very modest amount of additional water supply does not appear to us to be reasonable or prudent.

Frankly, in that light, it would be our preference to start again. Towards that end, I have attached a copy of our standard Water Sharing Agreement, several of which are in now in place. In the last rate case, the Commission was made aware of these agreements and did not question their validity or reasonableness. Moreover, we have always kept and intend to keep our promise to your neighbors not to advantage, or disadvantage, one water sharing "partner" from another. All our water sharing "partners" terms and conditions are materially the same. We hope you will agree it is in the public interest to proceed along these lines and I would invite you to review the attached Water Sharing Agreement and provide your comments and suggestions.

Loren Petersen
Strawberry Hollow Development Co.
Water Purchase Agreement
Page 3

I anxiously await your further comments.

Sincerely,

Robert T. Hardcastle
President

Cc: MJ
Jay Shapiro, Esq.

EXHIBIT B

**2006 Loren Peterson Water Sales
Agreement**

WATER PURCHASE AGREEMENT
By and Between
STRAWBERRY HOLLOW DEVELOPMENT INC.
And
PINE WATER COMPANY, Inc.

Dated

May _____, 2006

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WATER PURCHASE AGREEMENT

This WATER PURCHASE AGREEMENT (hereinafter the "Agreement") is made and entered into this ____ day of May, 2006, by and between **Strawberry Hollow Development, Inc.**, an Arizona corporation, (hereinafter referred to as "Water Producer"), with its principal place of business in Gila County, Arizona, and Pine Water Company, Inc. (hereinafter referred to as "Water Company")

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RECITALS

Whereas, the Water Company provides domestic water to property owners within the area described on Exhibit A, attached hereto; and

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Whereas the Water Company is a public service corporations within the meaning of Article XV of the Arizona Constitution, Arizona Revised Statutes ("A.R.S.") § 40-202 et seq. and Arizona Administrative Code ("AAC") § 14-2-406 and is, therefore, subject to the various joint and several jurisdictions of the Arizona Corporation Commission ("ACC"), Arizona Department of Environmental Quality ("ADEQ"), Arizona Department of Water Resources ("ADWR") and other regulatory authorities, not expressly described by this section, which may have jurisdiction over the operations of the Water Company and are hereafter collectively referred to as "Regulatory Authorities"; and

Whereas, the Water Producer desires to sell and Water Company desires to purchase water from the Water Producer's Well or Wells to be distributed to property owners and other water users within area set forth on Exhibit A; and

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Whereas, the Water Company and Water Producer desire to set forth the terms and conditions for the Water Producer's sale to Water Company of water to be distributed through the domestic water distribution system of the Water Company. (Referred to herein as "Water System")

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AGREEMENT

NOW, THEREFORE, THE PARTIES HEREBY STIPULATE, COVENANT AND AGREE AS FOLLOWS:

1. **Sale and Purchase.** Water Producer agrees to sell and Water Company agrees to purchase water used in the Water System, as more specifically described below:

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(A) **Water.** Water Company agrees to purchase up to 558,000 gallons of water per month at a price and in a manner set forth herein. The maximum daily demand shall not exceed 18,000 gallons and shall be regulated using a methodology mutually acceptable to Water Producer and Water Company. The Water Producer shall not be obligated in any twenty four hour period to provide more than this amount of water to the Water Company. The maximum amount set forth herein is subject to the acceptance of the Water Company. Once this document is executed, the maximum amount of water purchased per month shall remain as set forth at that time and the Water Provider will not reduce said amount, subject to the terms and conditions hereof.

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Deleted: In the event that the Water Producer sells water to other Water Distributors, this number is subject to reduction at the sole discretion of the Water Producer prior to the execution hereof.

(B) **Connection.** The Water Producer shall provide Water Company access to the water at a designated place of connection, (the "Delivery Point") which is acceptable to Water Company. The point of connection shall be through appropriate piping, according to the

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Uniform Plumbing Code. The point of connection shall have the capacity and pressure necessary to provide a flow at a rate of 12.9 gallons per minute.

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(C) *Quantity of Water Provided.* The Parties agree that the Water Producer shall not be required in any month to provide more than the amount set forth in Paragraph A above, however, in the event that the Water Producer has excess water the Water Producer has the option, pursuant to paragraph 1 (p) hereof, to sell such water to the Water Company.

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(D) *Measurement.*

1. The water measurements shall be made by the Water Producer, once each month, through equipment installed by the Water Producer to measure the amount of water taken by the Water Company. Nothing herein shall preclude the Water Company from likewise monitoring the amount of water entering its Water System at or after the Point of Delivery. The rate of the flow of water entering the Water Company's system at the Point of Delivery may be regulated by rate-of flow controllers or other methods installed by the Water Producer. It shall be the responsibility of the Water Producer to notify the Water Company in the event the daily maximum amount of water supplied has been exceeded. The Water Company shall have access to all records of the meter readings and further shall be entitled to be present at the time the meters are read, providing request to be present is provided to the Water Producer at least 72 hours in advance of a water meter reading.

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2. The costs of the necessary and reasonable equipment installed by the Water Producer shall be paid by the Water Company within thirty days of the date of an invoice being presented to the Water Company. All equipment of the Water Producer shall be annually calibrated and results of such calibration shall be provided to the Water Company. All costs related to this section shall be incurred in the most cost effective and reasonable manner possible.

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3. The Water Company may only examine the meters or equipment of the Water Producer accompanied by representatives of the Water Producer. The Water Company shall make no adjustments to the water measuring or flow controlling equipment without the prior consent of the Water Producer.

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4. In the event that the calibration indicates that the meter is inaccurate by a factor of 3% either too high or too low, the meter shall be deemed defective and shall be replaced by the Water Producer.

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5. If the water meter is out of service for any reason, the Water Producer may reasonably estimate the amount of flow to the Water Company by other documented means and bill the Water Company accordingly. As a condition of challenging a bill presented pursuant to this subparagraph, the Water Company shall first pay the bill, noting its objections thereto. The Parties then may engage in their dispute resolution method of choice to resolve this dispute.

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(E) *Quality of Water Provided.* The Parties agree that the Water Producer make every reasonable to assure Water Company that the quality of the water produced meets or exceeds the requirements of appropriate federal, state or local laws or regulations. As a condition to the effectiveness of this Agreement the Water Producer agrees to submit all water quality testing reports related to the water sources of the Water Producer for the immediately preceding twenty-four months. The Water Company is responsible for testing

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of the water to assure compliance with all applicable federal, state and local laws and regulations. Such testing of the water shall be conducted by the Water Company, if practical, prior to the mixing of said water with any other in the Water Company's Water System. In the event that the Water Company receives test results which indicate that the water is not of the Quality mandated by federal, state or local law or regulations, the Water Company shall immediately report the non-compliant water quality test results to the Water Producer. The Water Producer is at all times responsible for providing Water Company with water that is in compliance with all applicable federal, state, and local laws and regulations. The Water Producer shall take all reasonable necessary steps to provide compliant water quality to the Water Company at all times. In the event the quantity of water provided by Water Producer is interrupted, in whole or part, for more than three consecutive days because of failure of the Water Producer to comply with this section a reasonable and equitable offset to any amounts payable by Water Company shall be made which reflects the value of non-delivery of water for the same period.

(F) *Rights to Real Property Use.* The Water Producer shall assign to the Water Company, by easement or license, all real property usage rights and interests therein necessary for the connection of the Water Company's Water System to the Water Producer's facilities and for the maintenance of the Water Company's Water System up to the Point of Connection. Neither said assignment nor the sale of water as herein described shall act, under any circumstances, to create a profit a prendre interest or a profit a rendre interest in the water or create any continuing or perpetual interest in the Water or the lands of the Water Producer for the benefit of the Water Company. No provision of this Agreement shall be construed to create any type of joint or equity ownership of any property or any partnership or joint venture. Neither this Agreement, nor any acts of the Parties hereunder, nor the Water Company's payments, shall be construed as granting to or otherwise vesting in the Water Company any right, title, interest, or equity in the lands, water, or water well and related appurtenant facilities of the Water Producer.

(H) *Water Producer's Exclusive Rights.* Water Producer shall keep and retain the right to provide water to any area currently being served by Water Producer.

(I) *Water Rights Adjudication.* Water Producer shall retain any and all rights to water and claims for rights to use in the water rights adjudication styled IN RE: ALL RIGHTS TO THE GILA RIVER SYSTEM AND SOURCE Maricopa County Superior Court Causes of Action Number W-1, W-2, W-3, W-4 or any other water rights adjudication occurring to which the Water Producer is currently a party.

(K) *Control of Rate of Flow into Water Company's Water System.* The Water Producer shall control the rate of flow of water, in accordance with sections 1 (A) and (B) above, from the Water Producer's facilities into the Water System of the Water Company.

(L) *Backflow Prevention.* The Water Company shall provide, at the Water Company's sole cost, appropriate fixtures and facilities to preclude the backflow of any water from the Water System of the Water Company into the facilities of the Water Producer. Such Backflow prevention facilities must be installed in a professional manner in accordance with regulations relating to such installations.

(M) *Inspections.* The Water Company agrees that the Water Producer, or its designated agent, may examine the Backflow Prevention Facilities at any reasonable time

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- Deleted: all necessary water treatment and purification prior to the water being introduced into the Water Distributor's Water System.
- Deleted: In the event that the problems with the water quality are due to the actions or omissions of the Water Producer, then and in that event, the Water Producer shall take the steps necessary to rectify the situation, or in the alternative, the Water Producer may declare this Agreement terminated at will as provided herein. The Water Distributor further agrees to hold the Water Producer harmless from any claims or damages arising as a result of the chemical or bacterial or viral presence or content in said water.
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during normal working hours, and may examine the Delivery Point of the Water Company for leaks or other problems at any time during normal working hours. The Water Producer agrees that, except in the case of an emergency, that it shall provide at least 24 hours notice to the Water Company through a means designated by the Water Company for giving short term notice, so long as said means do not necessitate the incurrance of unreasonable additional costs to the Water Producer. In the event that the Water Company or its agents chose to accompany the Water Producer or its agents in the inspection, as provided by this section, the Parties agree to cooperate and conduct the joint inspections in a timely manner. In the event of any emergency situation which either endangers the water of the Water Producer, or other emergency which impacts upon or imperils the water, the well and related appurtenant facilities, or the quality or quantity of water being distributed to the Water Company, the Water Producer may conduct its inspection immediately, giving notice of its inspection to the Water Company as provided herein.

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(N) *Interruptions of Water Production or Provision.* The Water Producer shall be entitled at any and all times to install, maintain, repair, and replace such equipment or devices or to take any other action under emergency conditions (including, but not limited to, reduction or cessation of water service to the Water Company) as necessary or appropriate for the operation of its well and related appurtenant facilities. The Water Company further agrees that on occasion the provision of water may be interrupted due to reasonable and necessary maintenance considerations, interruption in power, equipment failure or other similar reasons, or may be interrupted due to the declaration of an emergency by the appropriate authorities requiring the diversion of water from the normal users for emergency use such as fighting fires or for other catastrophic reasons and the Water Company agrees to waive any causes of action which it may have against the Water Producer arising out of such service interruptions.

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(O) *Tampering with Well and Related Appurtenant Facilities.* All valves releasing water from the Water Producer's facilities to the Water Company located upstream of the Delivery Point shall be operated by the Water Producer. The Water Company agrees that under no circumstances, unless directed by the Water Producer, will the Water Company tamper with the facilities of the Water Producer located upstream of the Delivery Point.

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(P) *Sale of Additional Water.* Should the Water Producer have available at any time waters not allocated to the Water Company, or any other with whom the Water Producer may have a contractual arrangement for the provision of water, the Water Producer may offer for sale to Water Company such additional water at reasonable terms and conditions as the Parties may agree upon at that time. Nothing herein shall compel the Water Producer to sell additional water to the Water Company nor compel Water Company to buy additional water from the Water Producer.

(Q) *Term of this Agreement.* The Parties agree that this Agreement shall remain in full force and effect for a term of ten years from the date hereof, unless sooner terminated as provided herein.

(R) *Diminution of Water Supply.* In the event that the supply of water is diminished or reduced by more than fifty percent for a period of more than five days, the availability charge shall be reduced by the proportion that the available supply was diminished until such time as the supply has been re-established. In the event of a reduction of the supply for a

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period of more than fifteen days the Water Company agrees to cooperate with the Water Producer and accept a reduced amount of water.

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(S) Insurance. The Water Company shall carry a General Liability Insurance Policy in an amount of \$2,000,000.00 naming the Water Producer as an additional named insured and shall provide a copy a Certificate of Insurance so indicating the interest of the Water Provider.

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2. Water Producer's Responsibility for Liabilities. Water Company does not assume, and shall not have any obligation or liability for, any debt, tax, obligation or liability of Water Producer, except as expressly provided herein

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3. Purchase Price.

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(A) Price. The Water Company shall pay the Water Producer the sum of Eight dollars (\$8.00) per one thousand gallons of water during the months of May through September annually and the sum of Six Dollars (\$6.00) per one thousand gallons of water during the months October through April annually, payable in immediately available United States funds within fifteen (15) days of the receipt of billing for the same by the Water Producer, said invoice being sent to the Water Company at the address noted herein for Notices; time being of the essence of this agreement.

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(B) Deposit. The Water Company shall pay to the Water Producer, at the time of the execution of this document the sum of Five Thousand Dollars (\$5,000.00) as and for a deposit. This sum shall be retained by the Water Producer as and for a guarantee that the Water Company shall timely pay all invoices when the same are received by the Water Company at the address set forth herein.

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(C) Purpose of the Deposit. Water Producer and Water Company stipulate and agree that said deposit shall not be construed to be the last month's payment for Water. Water Company agrees that such deposit shall secure the faithful performance by Water Company to pay all mounts due under this Agreement. Water Company agrees that if it shall fail to pay the charges for water as required by the terms of this Agreement Water Producer shall be entitled to apply the deposit hereinabove described to any unpaid amounts plus reasonable costs related to collection of overdue amounts. Nothing contained in this paragraph shall in any way be construed to waive any of the Water Producer's other remedies as provided herein. In the event of Water Company's payment of all amounts due under this Agreement, Water Producer shall refund said deposit to Water Company within thirty (30) days of the conclusion of the term of this Agreement.

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(D) Availability Charge. The Water Company agrees that each and every month the Water Company shall pay to the Water Producer an availability charge calculated as set forth herein. The Availability Charge is equal to the difference between the amount of water delivered to the Water Company and the amount set forth in Paragraph 1A hereof, times the rate provided in section 3 (A) herein.

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(E) Late Charges. If the Water Company is late in the payment of any charge or fee due and payable to the Water Producer hereunder a late fee shall be paid. The amount of the late fee shall be equal to the amount owing and due times one per cent per month, compounded monthly.

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4. **Consent of Arizona Corporation Commission.** The Parties agree that, at any time, should approval of this Agreement be required or desired by the Water Company or any regulatory agency that the Parties agree to work cooperatively to obtain same. Accordingly, the effectiveness of this Agreement and any performance obligations of the Water Company, as may be provided hereunder, may immediately be terminated in the event any regulatory agency shall not grant approval of the Agreement.

5. **Testing of Water.** While the Water Producer may, but is not required, to conduct testing of the quantity and quality of the Water being provided hereunder, the Water Company is fully responsible for compliance with all applicable federal, state and local laws, rules and regulations pertaining to the quality of the Water being acquired hereunder. The Water Company shall provide to the Water Producer copies of all results of testing conducted by the Water Company of the water introduced into its Water System at the Delivery Point, said results being provided within three business days of the receipt of the same by the Water Company.

6. **Preservation of Water Rights in Water Producer.** The Parties agree that the Water Rights of the Water Producer are a material aspect of this Agreement and further covenant:

(A) **No Water Rights.** The Water Company shall sell the water as a commodity and neither receive nor retain any property rights in said water nor the use thereof.

7. **Representations, Warranties and Covenants of Water Producer.** Water Producer, to the best of its knowledge, represents, warrants and covenants, to Water Company the following, as of the date of this Water Purchase Agreement and as of the Execution of this Water Purchase Agreement:

(A) **Corporation.** Water Producer is a corporation organized under the laws of the State of Arizona. Water Producer has all power and authority necessary to carry on its business as now being conducted. Water Producer is not a regulated utility in the State of Arizona.

(B) **Authorization.** The execution of this Agreement by Water Producer and its delivery to Water Company and the consummation by Water Producer of the transactions contemplated herein have been duly authorized by all necessary action on the part of Water Producer. No further authorization will be necessary on the part of Water Producer for the execution, delivery, performance or consummation of this Water Purchase Agreement by Water Producer or the consummation by Water Producer of the transactions contemplated herein. This Water Purchase Agreement and the transactions contemplated hereby are valid and binding upon Water Producer and enforceable in accordance with their terms.

(C) **Restrictions.** There are no governmental restrictions on Water Producer's ability to deliver water to the Water Company as provided herein.

(D) **Judgments.** There are no judgments, liens, encumbrances, impediments to title, orders, writs, injunctions or decrees to which Water Producer or Water Producer's Business are subject or bound which have any impact upon this Water Purchase Agreement.

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Deleted: (F) . *Guaranty of Payment.* Should the Water Distributor fail to pay the Water Producer in a timely manner as described herein, the Water Producer may, at its sole discretion, exercise the rights provided to it pursuant to Section 1 (G), and directly bill the customers of the Water Distributor and collect and hold the payments, applying the same to the delinquency arising hereunder. Following the termination of this Agreement, once the Water Producer has been paid in full, if it continues to provide water to the customers of the Water Distributor, it shall continue to bill said customers and collect such amounts as billed, directly, and continue to provide water to such customers of the Water Distributor.

Deleted: form and substance of this Water Purchase Agreement is not presently subject to regulation by the Arizona Corporation Commission. Should such approval be required in the future, the

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Deleted: However, the parties agree that neither will take any action to subject the Water Producer to the jurisdiction or control of the Arizona Corporation Commission.

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Deleted: Nothing in this Water Purchase Agreement shall be construed to require that the Water Producer make the results of any of its tests known to the Water Distributor.

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Deleted: (A) . *No Opposition.* That the Water Distributor shall not appear in any water adjudication in the State of Arizona or elsewhere in opposition to any position taken by the Water Producer, and further that the Distributor accedes to and acquiesces in the fact that any and all water rights arising to the water or the right to use water sold or assigned to the Water Distributor herein shall remain the sole property of the Water Producer; and

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(E) *Maintenance of Premises of the Well.* Water Producer agrees to keep and maintain the Well in good operating condition, subject to the terms hereof, in compliance with all applicable federal, state or local laws, rules or regulations.

(F) *Environmental Matters*

(i) Water Producer holds, and shall at all times maintain full compliance with, all permits or licenses ("Environmental Permits") which are required by the Arizona Department of Environmental Quality and the Arizona Department of Water Resources, or any other governmental agency to own, operate and maintain the Well and appurtenant facilities, under any applicable statute, regulation, ordinance, common law or other law relating to the protection of human health or the environment, including any public or private nuisance ("Environmental Law"), and Water Producer has not received any written notice of any violation of any Environmental Law, and Water Producer is in full compliance with all applicable Environmental Laws with respect to the ownership, operation and maintenance of the operating assets.

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(ii) Water Producer has not received any written request for information, or been notified that it is a potentially responsible party under any Environmental Law with respect to any on-site or off-site location relating to the ownership, operation and maintenance of the operating assets.

(iii) Water Producer has not entered into, or agreed to, any consent decree or order, and is not subject to any outstanding judgment, decree, or judicial order relating to compliance with any Environmental Law or to investigation or cleanup of hazardous wastes, hazardous substances, or hazardous materials under any Environmental Law relating to the operating assets.

(iv) There are no claims, actions, proceedings or investigations pending or, to the best knowledge of Water Producer, threatened against Water Producer before any court, governmental or regulatory agency relating to any Environmental Law with respect to the ownership, operation and maintenance of the operating assets.

(G) *Disclaimer of Water Producer's Warranty.* The Water Producer, except in consideration of the terms and conditions of this Agreement, represents that the Water is being sold to the Water Company "as is, where is." The Water Company has had the opportunity to inspect the same and accepts the same "as is, where is." Except as provided in this Agreement, there are no warranties or guarantees, express or implied regarding the quantity, quality, pressure, rate of flow, or delivery schedule of water hereunder made by the Water Producer.

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(vi) . The Water Distributor hereby agrees that before seeking any remedy against the Water Producer regarding any violation of environmental law, that the Water Distributor will first investigate and determine if such liability arises out of actions or omissions: 1) of the Water Distributor; or 2) of any predecessor of the Water Producer and, if so, the Water Distributor shall commence action against such party and bring the same to a close prior to commencing action against the Water Producer.¶

(H) *Compliance with Governmental Rules and Regulations.* The Water Producer covenants and represents that it is in full compliance with all applicable federal, state and local governmental laws, rules and regulations affecting its activities subject to this Contract. In the event that the Water Producer is not in full compliance, only in the event that the Water Producer, through its own intentional acts or omissions, is not in compliance and not

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able to regain compliance within 180 days of the date of notice of noncompliance shall such noncompliance be considered a material breach hereof.

8. **Representations, Warranties and Covenants of Water Company.** Water Company, to the best of its knowledge, represents, warrants and covenants, to Water Producer the following, as of the date of this Agreement and as of the Execution of this Agreement:

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(A) **Authorization.** The execution of this Agreement by Water Company and its delivery to Water Producer, and the consummation by Water Company of the transactions contemplated herein, have been duly authorized by all necessary action. Water Company has full power and authority to enter into this Agreement and to purchase the water hereunder.

Deleted: Water Distributor represents, warrants and covenants to Water Producer the following: the truth, accuracy and completeness of which, shall constitute a condition precedent to Water Producer's obligations hereunder.¶

(B) **Freedom from Restrictions.** The execution and delivery of this Agreement by Water Company, the consummation by Water Company of the transactions contemplated hereby, and the fulfillment of the terms hereof by Water Company do not violate or conflict with, and will not result in a breach, default or acceleration with respect to, any contract, Agreement, commitment, obligation, judgment, order, writ, injunction, decree or undertaking to or by which Water Company is a party or bound.

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Deleted: The Water Distributor has obtained any and all approvals from the requisite federal, state, and local governmental entities, as the same may be necessary or required, to enter into this Agreement.

(C) **No Other Representations.** Water Company is not relying upon any statement, affirmation or representation made by Water Producer other than the representations set forth in this Agreement.

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(D) **Compliance with Governmental Rules and Regulations.** The Water Company shall comply with all federal, state and local laws, ordinances, rules and regulations applicable to the Distribution of water in the Water System.

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(E) **Water System Maintenance.** The Water Company agrees to maintain the Water System in accordance with the rules and regulations under which jurisdiction is granted to regulatory agencies.

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(F) **No Liens.** The Water Company agrees that it shall take no actions, nor fail to take any actions that would result in the imposition of a lien or other encumbrance or charge against any property of the Water Producer, including but not limited to any real property owned by the Water Producer, the Water, the Well and any appurtenant facilities thereto. In the event that any third party imposes or attempts to impose such a lien, charge or encumbrance upon the Water Producer, the Water Company shall indemnify and hold harmless the Water Producer; shall actively defend any claim or cause of action brought, and shall take all actions necessary to remove such lien or encumbrance from the property of the Water Producer. Such action shall be considered the same as a dispute between the Parties arising hereunder and subject to all applicable provisions of this Agreement regarding the same.

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9. **Indemnities and Waiver.** The Parties agree to indemnify each other as follows:

(A) **Water Producer.** Water Producer agrees to indemnify Water Company and defend and hold it harmless for, from and against all claims, obligations, liabilities, damages, losses, settlements, costs, and expenses (including reasonable attorneys' fees, court costs and other expenses incident to any proceeding, investigation or claim) attributable directly or indirectly to (i) any liabilities or (ii) the inaccuracy of any representation or warranty, not

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expressly disclaimed herein, made by Water Producer herein or in any instrument delivered pursuant hereto or in connection with the transactions contemplated hereby, including, but not limited to, the Exhibits.

(B) *Water Company.* Water Company agrees to indemnify Water Producer and defend and hold it harmless for, from and against all claims, obligations, liabilities, damages, losses, settlements, costs, and expenses (including reasonable attorneys' fees, court costs and other expenses incident to any proceeding, investigation or claim) attributable directly or indirectly to (i) any liabilities or (ii) the inaccuracy of any representation or warranty, not expressly disclaimed herein, made by Water Company herein or in any instrument delivered pursuant hereto or in connection with the transactions contemplated hereby, including, but not limited to, the Exhibits.

(C) *Third Parties.* The Water Company and Water Producer agree that the Water Company and the Water Producer shall indemnify and hold harmless each other from any and all claims of third parties who may be users or consumers of the water conveyed hereunder, pertaining to the condition, quality, adequacy or any other matter related to the Water conveyed hereunder.

10 **Termination**

(A) *Termination due to non-payment.* In the event that the Water Company fails to pay the amounts owing and due to the Water Producer in a reasonable manner, as set forth herein, time being of the essence of this Agreement, the Water Producer may terminate this Agreement and cease providing water to the Water Company. Before ceasing the provision of water to the Water Company the Water Producer shall give the Water Company five (5) business days Notice of Intent to Cease Provision of Water. Should the Water Company make payment prior to the termination of the five day Notice described herein, then this Agreement shall not terminate and shall be in full force and effect.

(B) *Termination for Cause.* The Water Producer may terminate this Agreement at any time for Cause provided that the Water Producer first delivers to the Water Company Notice of Termination for Cause to the address set forth herein. The Water Company shall have thirty (30) days from the date of said Notice to correct the situation and remove the cause for termination. If the Water Company does so, then this Agreement shall continue in full force and effect. If the Water Company fails to rectify the cause for termination within the thirty days from the date of the Notice of Termination for Cause, then the Water Producer may at the end of the thirty day period terminate this Agreement with no further notice to the Water Company.

(C) *Termination at Will.* Either party may terminate this Agreement at will, provided that first the terminating party shall give the non-terminating party thirty (30) days Notice of Termination to the address for notices set forth herein. The Water Company shall remain obligated to pay any and all outstanding invoices, including any submitted upon receipt of the Notice of Termination, owing and due to the Water Producer in a timely manner as set forth herein. In the event all reasonable amounts are paid, then and only then shall the Water Producer return the deposit monies to the Water Company. At the close of the thirty day period provided herein, this Agreement shall be deemed terminated, however, any and all provisions pertaining to termination and breach and dispute resolution shall survive the termination of this contract.

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- Deleted: Water Distributor agrees to indemnify Water Producer, its agents, officers, employees and attorneys and defend and hold it harmless on demand for, from and against all claims, obligations, liabilities, damages, losses, settlements, costs, and expenses (including reasonable attorneys' fees, court costs and other expenses incident to any proceeding, investigation and any claim, including without limitation in any suit by Water Producer against Water Distributor) attributable directly or indirectly to the breach by Water Distributor of any obligation hereunder or the inaccuracy of any representation, or any act or omission of the Water Distributor out of which any claim is made against the Water Producer.¶
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(D) *Waiver of All Claims.* In addition to the waiver of claims in Section 1(N) and 1(R) hereof, the Water Distributor hereby waives any and all claims against the Water Producer arising out of the inability of the Water Producer to provide water to the Water Distributor pursuant to this Agreement. ¶
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(E) *Expiration of Agreement.* If not sooner terminated as provided herein, this Agreement shall be in effect consistent with section 1 (Q) herein. Thereupon it shall expire without the necessity of other or further action by the Parties.

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11. **Miscellaneous Provisions.**

(A) *Additional Acts or Documentation.* Water Producer and Water Company agree to execute and deliver such additional documents and instruments and take such actions as may be necessary or appropriate to carry out the full intent and purpose of this Agreement.

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(B) *Legal Representation.* All Parties are aware that Water Producer is represented by the law firm of Gliege Law Offices P.L.L.C. and Water Company is represented by the law firm of Fennemore Craig or that firm of its choosing. Each party shall bear its own legal expenses in the negotiation of and entry into this Agreement, however, in the event of any dispute arising hereunder, the prevailing party in the resolution of said dispute shall be entitled to the recovery of its reasonable attorney's fees and costs incurred in the resolution of said dispute, whether the same be resolved through court action or otherwise.

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(C) *Notices.* All notices, demands, requests, consents, approvals or other instruments required or permitted to be given pursuant hereto shall be in writing and delivered or mailed to the following addresses:

If to Water Producer:

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¶
¶

Strawberry Hollow Development, Inc.
P.O. Box 2141
Pine, Arizona 85544

With a copy to:

John G. Gliege
Gliege Law Offices, P.L.L.C
P.O. Box 1388
Flagstaff, AZ 86002

If to Water Company:

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Robert T. Hardcastle
Brooke Utilities, Inc.
P.O. Box 82215
Bakersfield, CA 93380

With a copy to:

Robert T. Hardcastle
Brooke Utilities, Inc.
3101 State Rd.
Bakersfield, CA 93309

and

Jay Shapiro, Esq.
Fennemore Craig
3003 No. Central Ave. Suite 2600
Phoenix, AZ 85012-2913

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(D) *Successors and Assigns.* This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective successors in interest, but in no event shall any party be relieved of its obligations hereunder without the express written consent of each other party except as expressly provided herein, said consent to not be unreasonably withheld.

(E) *Severability.* To the full extent possible, each provision of this Agreement shall be interpreted in such fashion as to be effective and valid under applicable law. If any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement, which shall otherwise remain in full force and effect.

(F) *Counterparts.* This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of the executed counterparts shall be deemed an original hereof.

(G) *Governing Law.* This Agreement shall be deemed to be made under and shall be construed in accordance with the laws of the State of Arizona.

(H) *Entire Agreement; Captions.* This Agreement and the Agreements referenced herein contain the entire Agreement and understanding of the Parties with respect to the subject matter hereof, and all Agreements and understandings, entered into prior hereto with respect to the subject matter hereof, are revoked and superseded by this Agreement. No Agreements or understandings not contained in this Agreement regarding the subject matter hereof shall be of any force or effect unless in writing, executed by the party to be bound and dated on or subsequent to the date hereof. Captions and headings are for convenience only and shall not alter any provision or be used in construing this Agreement.

(I) *Time.* Time is of the essence of this Agreement and each and every provision hereof. Any extension of time granted for the performance of any duty under this Agreement shall not be considered an extension of time for the performance of any other duty under this Agreement.

(J) *Gender and Number.* Wherever from the context it appears appropriate, each item stated in the singular shall include the plural and vice versa, and the masculine, feminine, or neuter form shall include the masculine, feminine, and neuter forms.

(K) *Modifications and Waiver.* No change, modification, rescission or waiver of any provision of this Agreement shall be valid or binding unless it is in writing dated after the date hereof and signed by the Parties intended to be bound. No waiver of any breach, term, or condition of this Agreement by either party shall constitute a subsequent waiver of the same or any other breach, term, or condition or a continuing waiver after demand for strict compliance.

(L) *Costs of Enforcement.* In the event of any action or proceeding between the Parties to enforce any of the provisions or rights under this Agreement or on account of a breach of any term or provision hereof (including without limitation arbitration, mediation, negotiation, and court actions at law or in equity), the unsuccessful party to such action or proceeding agrees to pay the prevailing party all costs and expenses, including reasonable attorneys' fees, incurred therein by such prevailing party, including any such costs and expenses incurred in any appeal, and if such prevailing party shall recover an award or judgment in any such action or proceeding, such costs, expenses and fees shall be included in and as part of such award or judgment.

(M) *Third Party Beneficiaries: No Rights Conferred on Others.* Nothing in this Agreement shall confer any right upon any person other than the Water Company and Water Producer named herein.

(P) *Confidentiality and Nondisclosure.* The Parties agree that this executed Agreement shall be confidential and that neither side shall disclose the contents hereof or the existence hereof to any third party without the consent of the other party hereto, except when such disclosure is required by or mandated by law.

(Q) *Most Favored Nation.* The Parties agree that in the event Water Producer becomes, during the term of this Agreement, a supplier of water to any other parties that the terms and conditions under which such other agreements are entered into shall reflect terms which are not more favorable, in any respect, than the terms and conditions of this Agreement. In the event Water Producer desires to enter into an agreement any other party for the supply of water that includes terms and conditions more favorable than the terms and conditions set forth, Water Producer shall seek and obtain Water Company's prior written approval before entering into such an agreement with any other party.

(R) *Force Majeure.* By reason of Force Majeure, if any party hereto shall be rendered partially or wholly unable to carry out its obligations under this Agreement, then if such Party shall give notice in writing of such Force Majeure to the other Party within a reasonable time after occurrence of the event or cause relied upon, the obligations of the Party giving such notice, are suspended so far as such party is affected by such Force Majeure. The Parties agree that whoever is subject to such "Force Majeure" shall endeavor to remove or overcome such inability with all reasonable dispatch. Should such party not be able to remove or overcome such inability within fifteen (15) days of the date of its incurrence, then this Agreement shall be deemed to be terminated at will as provided herein, and all obligations hereunder shall be treated as if said Agreement had been terminated at will by the party claiming the Force Majeure. The term Force Majeure as used herein shall include, but not be limited to natural disasters, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the United States of America or the State of Arizona, or any civil or military authority, insurrections, riots, epidemics, lightning, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions and breakage or accidents to machinery, pipelines, or facilities.

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(N) . *Cancellation.* If the Water Distributor is a municipal Corporation or other governmental entity in the State of Arizona, pursuant to Arizona Revised Statutes § 38-511, the provisions of which are incorporated by reference as if fully set forth herein, all Parties are hereby given notice that this Agreement is subject to cancellation by the such governmental entity, as its sole option and discretion, if any person significantly involved in initiating, negotiating, securing, drafting, or creating this contract on behalf of the local governmental entity is, at any time while this contract or any extension thereof is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to this contract with respect to the subject matter of this contract.¶

¶
(O) . *Waiver of Right of Water Distributor to Condemn Water or Well of Water Producer.* The Water Distributor hereby waives any and all right, if any, it may have to condemn the water or the well or the lands of the Water Producer to effectuate an involuntary transfer of the property of the Water Producer to the Water Distributor. ¶

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IN WITNESS WHEREOF, the Parties hereto, pursuant to duly adopted resolutions of their respective Boards of Directors, have caused this Agreement to be executed by their respective duly authorized officers, all as of the date first written herein above.

WATER PRODUCER:

**STRAWBERRY HOLLOW
DEVELOPMENT, INC.**

By: _____
Loren Peterson, President

WATER DISTRIBUTER:

PINE WATER COMPANY, Inc.

By: _____
Robert Hardcastle, President

Page 6: [1] Comment [MSOffice1] **Bob Hardcastle** **6/12/2006 10:00:00 AM**
Please clarify your understanding of this term.

Page 6: [2] Comment [MSOffice2] **Bob Hardcastle** **6/12/2006 10:00:00 AM**
Please clarify your understanding of this term.

Page 6: [3] Deleted **Bob Hardcastle** **6/12/2006 10:02:00 AM**
(G) *Contractual Rights.* The Water Distributor shall assign to the Water Producer all contractual rights to sell and distribute domestic water within the boundaries set forth in Exhibit A and all rights to bill and collect monies to from customers who receive water from the Water System, which the Water Producer may use to continue service in the event of a termination of this Agreement, or which the Water Producer may use to collect payments from the customers of the Water Distributor, should the Water Distributor fail to pay the costs of the water as provided herein.

Page 6: [4] Deleted **Bob Hardcastle** **6/12/2006 10:05:00 AM**
any rights which it may have to provide water to the area outside of Water Distributor's area more specifically described on Exhibit A, attached hereto.

Page 6: [5] Deleted **Bob Hardcastle** **6/12/2006 10:07:00 AM**
or may be a party, now or in the future.

Page 6: [6] Deleted **Bob Hardcastle** **6/12/2006 10:09:00 AM**
(J) *No Resale except to the Area Designated.* The Water Distributor agrees that it shall not sell any water to any person, nor provide service to any property outside of the area set forth in Exhibit A. The Water Distributor shall not engage in any bulk sale of water to third Parties for purposes of delivery of the same inside or outside the area set forth on *Exhibit A*.

Page 6: [7] Deleted **Bob Hardcastle** **6/12/2006 10:12:00 AM**
Notwithstanding anything in this Agreement or in the requirements of any regulatory agency to the contrary, the Water Producer does not represent or guarantee to the Water Distributor that the Water provided hereunder will be provided at any specific minimum pressure at the Delivery Point and the Water Producer is under no obligation with respect thereto. The Water Distributor understands, recognizes and acknowledges that maintaining a certain water pressure in the Water Distributor's delivery system may require the use of storage or pumps on the Water System, which the Water Distributor shall install and maintain at its own expense.

Page 6: [8] Deleted **Bob Hardcastle** **6/12/2006 10:14:00 AM**
and approved by the Water Producer, or its designated representative, prior to the introduction of any water from the Water Producer into the Water System of the Water Distributor.

Page 8: [9] Deleted **Bob Hardcastle** **6/12/2006 10:51:00 AM**
damages suffered by Water Producer as a result of Water Distributor's default, to the extent of the amount of the damages suffered. The remainder of the amount, if any, shall be forfeited to the Water Producer as and for liquidated damages. Water Distributor further agrees that in the event Water Distributor files or is the subject of a petition under any Chapter of the Bankruptcy Act of the United States of America, Water Producer may terminate this Water Purchase Agreement and said deposit shall be forfeited to the Water Producer as and for liquidated damages.

| | | |
|--|-----------------------|------------------------------|
| Page 8: [10] Deleted | Bob Hardcastle | 6/12/2006 10:53:00 AM |
| performance of all of the terms and conditions of this Water Purchase Agreement | | |
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| termination of this Water Purchase | | |
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| and compliance with all of the terms hereof. | | |
| Page 8: [13] Deleted | Bob Hardcastle | 6/12/2006 10:57:00 AM |
| of \$8.08 per one thousand gallons. Said Availability Charge shall be paid to the Water Producer in the same manner as the charges for water are paid pursuant to Paragraph 3A hereof. | | |
| Page 12: [14] Deleted | Bob Hardcastle | 6/12/2006 11:25:00 AM |
| Should the Water Distributor fail to make payment of all amounts owing and due, this Agreement shall terminate and the Water Producer shall cease providing water to the Water Distributor without any further Notice to the Water Distributor. The burden of delivery of the payment to the Water Producer shall rest solely upon the Water Distributor. | | |
| Page 12: [15] Deleted | Bob Hardcastle | 6/12/2006 11:26:00 AM |
| and after applying the Deposit Monies provided herein to the unpaid obligations of the Water Distributor, the Water Producer may retain the remainder of the Deposit as and for liquidated damages. | | |
| Page 12: [16] Deleted | Bob Hardcastle | 6/12/2006 11:28:00 AM |
| In the event of Termination at Will by the Water Distributor, the remaining Availability Charge, as set forth herein, (total charge per month times the number of months remaining under this contract should the same continue until the end of the term set forth herein) shall be paid in full to the Water Producer in one lump sum within thirty (30) days from the close of the giving of the Notice of Termination. | | |
| Page 12: [17] Deleted | Bob Hardcastle | 6/12/2006 11:29:00 AM |

(D) *Continuation of Availability Charge after Termination.* The Parties agree that in the event that this Agreement is terminated prior to the end of the term set forth in Paragraph 1(Q) above at no fault of the Water Producer, the Availability Charge set forth in Paragraph 3(D) shall continue until the end of the term hereof as if the Water Distributor was not using any water, but only paying the monthly Availability Charge in the amount set forth above. Such amount shall be payable in full at the demand of the Water Producer upon termination of this Agreement prior to the expiration hereof.

EXHIBIT C

**Drafted Water Exploration
Agreement**

Water Exploration Agreement

This Water Exploration Agreement ("Agreement") is entered into this <day number> day of <effective month> <year> by and between Brooke Utilities, Inc. ("Brooke") with its principal corporate mailing address at P.O. Box 82218, Bakersfield, California 93380 and <Property Owner> an individual, ("Property Owner") with its principal mailing address at <mailing address, city, state, zip code> (hereafter collectively referred to as the "Parties"). The Parties do hereby enter into this Agreement for the purpose of allowing Brooke, its designee or assignee, to explore for domestic, potable water on Property, subject to the terms and condition of this Agreement.

Section I: Recitals

1. WHEREAS, Brooke is a properly organized Arizona corporation in good standing with its principal business located at that location first set forth above; and,
2. WHEREAS, Brooke, as of the date of this Memorandum, is the exclusive owner of United Utilities, Inc. ("UU"), E&R Water Company, Inc. ("E&R"), Williamson Waterworks, Inc. ("WWW"), C&S Water Company, Inc. ("C&S"), Pine Water Co., Inc. ("Pine Water"), Strawberry Water Co., Inc. ("Strawberry Water"), and Payson Water Co., Inc. ("Payson Water"), all of which are Arizona corporations in good standing operating in Gila County, Arizona; and, Brooke Water L.L.C. ("BWLLC"), and Circle City Water Co., L.L.C. ("CCWCo."), Arizona organized limited liability companies in good standing operating in Maricopa and La Paz Counties, Arizona; and, High Desert Water Company, Inc. ("HDWCo."), Pine-Oak Water Company, Inc. ("P-O"), Desert Utilities, Inc. ("DUI"), and Navajo Water Co., Inc. ("Navajo Water") all of which are Arizona corporations in good standing operating in Navajo County, Arizona; and, all of Brooke's water companies are hereafter collectively referred to as "Water Subsidiaries"; and
3. WHEREAS, Water Subsidiaries operate individual water systems ("Water Systems") pursuant to various regulatory authorities in locations determined from the valid issuance, from the Arizona Corporation Commission ("ACC"), of Certificates of Convenience and Necessity ("CC&N") throughout all of the aforementioned Arizona counties and Pinal County, Arizona, presently serving approximate eight thousand domestic water customers; and,
4. WHEREAS, Water Subsidiaries are considered public service corporations within the meaning of Article XV of the Arizona Constitution, Arizona Revised Statutes ("A.R.S.") §§ 40-202 *et. seq.* and Arizona Administrative Code ("AAC") § 14-2-406 and are, therefore, subject to the various joint and several jurisdictions of ACC, Arizona Department of Environmental Quality ("ADEQ"), Residential Utility Consumers Organization ("RUCO"), Arizona Department of Water Resources ("ADWR") and other regulatory authorities which may have jurisdiction over the

operations of the Water Subsidiaries and are hereafter collectively referred to as "Regulatory Authorities"; and,

5. WHEREAS, Brooke desires to maintain the exclusive right to assign the benefits under this Agreement to any of Water Subsidiaries as an assignee of such benefits; and,
6. WHEREAS, any assignment of the benefits of this Agreement by Brooke to the Water Subsidiaries may be subject to the advance review, consideration and approval (the "Regulatory Approval Process") by Regulatory Authorities. In any instances where the Regulatory Approval Process is required a condition precedent to the initial effectiveness of this Agreement is created. Therefore, where this Agreement is subject to such approval of the Regulatory Authorities, this Agreement shall not become effective, in whole or part, nor serve as a responsibility of the Parties to perform any of the duties and obligations hereunder until the Regulatory Approval Process is successfully completed in a form consistent with such approval from the Regulatory Authorities; and,
7. WHEREAS, Brooke desires to explore for water, in that location more fully described in Exhibit C attached hereto ("Exploration Site") and in accordance with this Agreement, on that property owned by Property Owner ("Property"); and,
8. WHEREAS, the Parties agree, acknowledge and recognize that the process of exploring for domestic, potable water does not necessarily assure finding same; and,
9. WHEREAS, the Parties agree, acknowledge and recognize that discovery of de minimus volumes of domestic, potable water may not be economically justifiable, as exclusively determined by Brooke, consistent with the terms of this Agreement; and,
10. WHEREAS, the Parties acknowledge that a water source which produces greater volumes of water is likely more valuable than a water source which produces lesser volumes of water; and,
11. WHEREAS, Property Owner presently owns Property, as more fully described in Exhibit A, as evidenced by Property Owner's Grant Deed, Special Warranty Deed, General Warranty Deed or through an equivalent instrument thereto and attached hereto as Exhibit B; and,
12. WHEREAS, Property Owner desires to allow Brooke to explore for domestic potable water at the Exploration Site of the Property; and,
13. WHEREAS, Brooke and Property Owner hereby agree, subject to the conditions hereunder, to obligate themselves to subsequently enter into a Water Sharing Addendum ("Addendum") in the form attached hereto for a period of not less than

five (5) years which shall commence simultaneously with the execution of this Agreement.

NOW, THEREFORE BE IT RESOLVED the Parties to this Agreement do hereby agree to all terms and conditions of this Agreement as follows:

Section II: Covenants of the Parties

1. **Responsibilities of Brooke:** Brooke agrees to explore for domestic, potable water on Property by means of a contractual engagement ("Drilling Contract") with a licensed well drilling contractor ("Contractor"), which shall be exclusively selected by Brooke, for the purpose of drilling a water well on Property. Brooke shall be financially responsible for the obligations of Drilling Contract except as herein defined. Brooke shall have complete authority to direct and manage the Contractor including, but not necessarily limited to, determining the depth of the water well; bore size of the water well; subsequent fracturing of the water well; use, and to what extent, of water well casing; water well casing materials; and all other reasonable contingencies which are customarily encountered with the drilling of a water well. Further, Brooke shall be responsible for providing Property Owner with a policy of general liability insurance and property damage insurance coverage, which shall remain in full force and effect until completion of the Drilling Contract, of not less than five hundred thousand dollars and no cents (\$500,000) combined single limit for injuries to or death of any person or persons and property damage resulting from each occurrence with evidence of same being provided to Property Owner within ten (10) days of the execution of this Agreement.
2. **Responsibilities of Property Owner:** Property Owner shall be obligated to fully cooperate and, at all times, provide Brooke and Contractor with reasonable assistance necessary to construct the water well. Property Owner shall further be responsible for (a) providing Brooke with a policy of general liability insurance and property damage insurance coverage, which shall remain in full force and effect until completion of the Drilling Contract, of not less than three hundred thousand dollars and no cents (\$300,000) combined single limit for injuries to or death of any person or persons and property damage resulting from each occurrence with evidence of same being provided to Brooke within ten (10) days of the execution of this Agreement, and (b) all property tax assessments of the real and personal property associated with terms hereunder.
3. **Ownership of the Water Source:** In all cases under this Agreement the water source, and all equipment and appurtenances thereto, constructed hereunder shall be owned by Brooke, or its designee or assignee, and Property Owner shall acknowledge Brooke's ownership of same, in any manner reasonable requested by Brooke, and shall reasonably cooperate with Brooke in its documentation of such ownership.

4. Multiplicity of Water Sources: Throughout the term of this Agreement or the accompanying Addendum, whichever is longer, Property Owner agrees not to further explore for water upon that property described in Exhibit "A" whether for personal, domestic, or commercial purposes, without the prior expressed approval of Brooke. Further, under no circumstances shall property owner put any water source of any kind located upon the property described in Exhibit "A", whether existing or not, into actual operation without the prior expressed approval of Brooke.
5. Production Determination: Brooke shall exercise its powers and rights hereunder to determine if the water source constructed on the Property is economically, operationally and regulatorily justified to be placed into production as a supplemental water source for the Water Subsidiaries. Brooke's determination under this section shall be exclusive and may be based upon any reasonable criteria Brooke deems appropriate and applicable. In the event Brooke determines that the water well is not justified, subject to the criteria of this section, then Brooke shall be under no obligation to place water source into production and subsequently enter into the Water Sharing Agreement ("Sharing Agreement"), Water Sharing Addendum ("Addendum") or equivalent document; nor shall Brooke be responsible for any duties or obligations thereunder; nor shall Brooke be under any obligation, except as defined herein, to otherwise place the water source into production for itself or Property Owner.
6. Production of De Minimus Water Source: Despite Brooke's determination that the water source is not justifiable, in accordance with the terms of this Agreement, Property Owner may elect to place the water source into production for its exclusive benefit. If, within five (5) years of Property Owner's decision to place the water source into production, Property Owner agrees to temporarily share, on a regular and continuous basis, the water production from the water source with Brooke, or its designees or assignees, subject to the rate of compensation ("Recovery Compensation") described in Exhibit D hereunder, until Brooke fully and completely recovers the original costs associated with constructing the water source.
7. Easements and Access to Water Source: At Brooke's option Property Owner shall grant to Brooke, within fifteen (15) days after its request to do so, and in a manner and form acceptable to Brooke, a perpetual private utility easement (the "Easement") for the term of this Agreement related to the water source which is sufficient, as exclusively determined by Brooke, for reasonable access to the water source on the Exploration Site so as to be able to perform regular repairs, operations, and maintenance of the water source which may be required under the Sharing Agreement. In any event, Brooke, its contractors, employees, agents, and similar representatives shall, at all times, be allowed reasonable access, ingress and egress to the water source for the purpose of production monitoring, meter readings, water source supervision, production maintenance and repairs and all other routine and regular purposes normally associated with the operation and maintenance of a water source similar to that which is the subject hereunder.

8. License to Enter Property: For the purposes of this Agreement, and the responsibilities contemplated hereunder, Property Owner grants Brooke, or its designees or assignees, a license to enter the Exploration Site to perform the duties hereunder.
9. Property Owner's Current Water Provider: As indicated by its execution of this Agreement, Property Owner does hereby declare that it is not a current water customer of the Water Subsidiaries.

Section III: Consideration

1. Consideration: Upon execution of this Agreement, Brooke shall pay to Property Owners one hundred dollars and no cents (\$100.00) as Property Owner's full, complete and final consideration under this Agreement for the rights, powers and privileges defined hereunder.

Section IV: Term

1. Term: The term of this Agreement shall be five (5) years from the date first set forth above and shall expire at the conclusion of that period or shall expire upon the earlier execution of the Addendum. Brooke shall, until expiration of this Agreement, retain all rights, powers and privileges hereunder in their full force and effect to explore for domestic, potable water at the Exploration Site on the Property.

Section V: General Conditions

1. Successors and Assigns: This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns and representatives; provided, however, that no assignment or transfer of any of the obligations, powers, duties or rights created in the obligee or assignee by this Agreement shall be binding upon any of the Parties to this Agreement until such assignment or transfer is approved in writing by each of the Parties hereto.
2. Indemnification: Each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless each other Party ("Indemnified Party") from and against any loss, claim, damage, expense or liability, including without limitation reasonable attorneys' fees and costs, imposed upon or suffered by the Indemnified Party (i) in the performance of its duties hereunder where such loss, claim, damage, expense or liability results from the negligence or intentional acts of the Indemnifying Party; or (ii) as a result of the Indemnifying Party's breach or default under the terms of this Agreement.
3. Attorneys' Fees: If any suit or other action or proceeding is brought to enforce the terms of this Agreement, the prevailing party in such action shall be entitled to

recover reasonably attorneys' fees and costs, such amounts as may be established by a court and not a jury.

4. Entire Agreement: This Agreement embodies the entire agreement between the Parties and supersedes all prior and contemporaneous oral or written agreements, representations and understandings, if any, relating to the subject matter hereof which shall hereby be superseded and merged. All documents attached to this Agreement shall be read and interpreted as consistent with one another.
5. Headings: Section headings are for the convenience of reference only and shall in no way affect the interpretation of this Agreement. This Agreement is the result of good faith negotiations between the Parties and, accordingly, shall not be construed for or against either Party regardless of which Party drafted this Agreement or any portion thereof.
6. Third Party Beneficiaries: Property Owner does not intend the benefits of this Agreement to inure to any third party, nor shall this Agreement be construed to make or render Brooke or Water Subsidiaries liable to any creditor, materialman, supplier, tax collector, contractor, subcontractor, broker, purchaser or lessee of Property or Property Owner. Brooke may, at its option, create a third party beneficiary by means of its assignment or transfer of this Agreement to Water Subsidiaries.
7. Further Assurances: Each Party shall execute and deliver all such documents and perform all such acts as reasonably requested by any party from time to time to perform the duties and obligations contemplated by this Agreement.
8. Incorporation of Exhibits: All annexes, schedules and exhibits attached hereto are hereby incorporated into this Agreement by each reference thereto as if fully set forth at each reference.
9. Authority: Each Party acknowledges and warrants that it is fully authorized and empowered to execute this Agreement by and through the individuals executing below.
10. Notices: Any notices or communication required or permitted to be given to any of the Parties to this Agreement must be in writing and shall be effective upon the earlier of (a) the date when received by such party, or (b) the date which is three (3) days after mailing, postage prepaid, by certified or registered mail, return receipt requested, to the address of such party as indicated below, or (c) by telefacsimile delivered or transmitted to the party to whom such notice is required or directed:

Brooke Utilities, Inc.

P.O. Box 82218
Bakersfield, CA 93380
attn: Robert T. Hardcastle, President
Telefacsimile: (661) 633-7526

With copies to Brooke
Utilities, Inc.

1011 So. Stover Rd.
Payson, AZ 85541
attn: Robert T. Hardcastle, President
Telefacsimile: (520) 474-1695

Property Owner:

<property owner name>
<address>
<city, state, zip code>
attn: <persons name>

Any such notices to be personally delivered may be delivered to the principal offices or location of the other party to whom such notice is directed. Any such notice shall be deemed to have been given (whether actually received or not) on the day it is personally delivered as aforesaid. Any party to this Agreement may change its address or delivery location by giving notice to the other party pursuant to this section.

11. Time of Essence: Time is of the essence with regard to each provision of this Agreement as to which time is a factor. If this Agreement provides that any time period expires or date for performance specified in this Agreement falls on a non-business day (i.e. Saturday, Sunday or legal holiday recognized by the State of Arizona), such time period or performance deadline shall be extended to the next business day.
12. Preparation of Documents: Brooke has prepared this Agreement. Property Owner and, at its option, its counsel acknowledge the opportunity to review this document. Accordingly, the Agreement shall not be construed against Brooke or its Water Subsidiaries because the Agreement was drafted by Brooke.
13. Arizona Law: This Agreement has been prepared, is being executed and delivered, and is intended to be performed in the State of Arizona. The substantive laws of the State of Arizona and the applicable federal laws of the United States of America shall govern the validity, construction, enforcement and interpretation of this Agreement and all documents related hereto without regard to conflict of the law rules.
14. Cooperation of Parties: The Parties hereto agree to do all such things and take all such action, and to make, execute and deliver such documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of this Agreement.
15. Counterparts: This Agreement may be executed in multiple counterparts, each of which, when so executed shall be deemed an original but all such counterparts shall constitute but one and the same Agreement.

16. Joint and Several Liability: Property Owner, if actually defined to represent more than a single individual, shall be jointly and severally liable for all duties and obligations under this Agreement.

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Acceptance

IN WITNESS HEREOF, the Parties do hereby agree to the foregoing covenants, terms and conditions of the Agreement dated as first set forth above.

For: Property Owner

By:

Its:

<name>

<position>

For: Brooke Utilities, Inc.

By:

Its:

Robert T. Hardcastle
President

Assignment and Assumption

Brooke Utilities, Inc. ("Assignor"), an Arizona corporation, hereby assigns, transfers, and conveys to <water company> ("Assignee") all of Assignor's, title, right and interest to that Water Exploration Agreement ("Agreement") dated <date> between Assignor and <water owner> ("Water Owner"). Assignee hereby accepts the foregoing assignment and assume all of Assignor's obligations under the Agreement.

Dated: _____ / _____ / _____

For Assignor:

Brooke Utilities, Inc.
President

Its:

For Assignee:

<water Company>
President

Its:

Exhibit A

Property Legal Description

<provide written legal description>

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Exhibit B

Property Owner's Evidence of Ownership

<provide Grant Deed, Special Warranty Deed, or General Warranty Deed or other equivalent evidence of ownership of property>



Exhibit C

Water Exploration Site Vicinity Map

<provide vicinity map>



Exhibit D

Recovery Consideration

| Water Source Production | | | |
|-------------------------|--------------------------|--------------------------|-----------------------|
| Water Source | Daily Water | Monthly Water | Rate of Consideration |
| Production in GPM | Production in Gallons | Production in Gallons | per 1,000 Gallons |
| 5 | 7,200 | 216,000 | \$ 0.50 |
| 6 | 8,640 | 259,200 | \$ 0.50 |
| 7 | 10,080 | 302,400 | \$ 0.50 |
| 8 | 11,520 | 345,600 | \$ 0.50 |
| 9 | 12,960 | 388,800 | \$ 0.50 |
| 10 | 14,400 | 432,000 | \$ 0.50 |
| 11 | 15,840 | 475,200 | \$ 0.50 |
| 12 | 17,280 | 518,400 | \$ 0.50 |
| 13 | 18,720 | 561,600 | \$ 0.60 |
| 14 | 20,160 | 604,800 | \$ 0.60 |
| 15 | 21,600 | 648,000 | \$ 0.60 |
| 16 | 23,040 | 691,200 | \$ 0.60 |
| 17 | 24,480 | 734,400 | \$ 0.60 |
| 18 | 25,920 | 777,600 | \$ 0.60 |
| 19 | 27,360 | 820,800 | \$ 0.60 |
| 20 | 28,800 | 864,000 | \$ 0.75 |
| 21 | 30,240 | 907,200 | \$ 0.75 |
| 22 | 31,680 | 950,400 | \$ 0.75 |
| 23 | 33,120 | 993,600 | \$ 0.75 |
| 24 | 34,560 | 1,036,800 | \$ 0.75 |
| 25 | 36,000 | 1,080,000 | \$ 0.75 |
| 26 | 37,440 | 1,123,200 | \$ 0.75 |
| 27 | 38,880 | 1,166,400 | \$ 1.00 |
| 28 | 40,320 | 1,209,600 | \$ 1.00 |
| 29 | 41,760 | 1,252,800 | \$ 1.00 |
| 30 | 43,200 | 1,296,000 | \$ 1.00 |
| 31 | 44,640 | 1,339,200 | \$ 1.00 |
| 32 | 46,080 | 1,382,400 | \$ 1.00 |
| more | 1,382,401 | | \$ 1.25 |

Water Sharing Addendum

This Water Sharing Addendum ("Addendum") is entered into this <day number> th day of <effective month> 1997 by and between <water company> ("Water Company") and <Water Owner> ("Water Owner"). This Addendum is attached to and made part of that Water Exploration Agreement ("Agreement") dated <date> between Water Owner and Brooke Utilities, Inc. ("Brooke") whose interest was thereafter assigned to Water Company. In the event of any conflict between the provision of the Agreement and the provisions of this Addendum the provisions of the Addendum will govern and control.

Section I: Recitals

1. WHEREAS, Brooke exercised its powers and rights under the Agreement and determined that the water source constructed on the property is economically, operationally and regulatorily justified to be placed into production as a supplemental water source for Water Company.

NOW, THEREFORE BE IT RESOLVED the Parties to this Agreement do hereby agree as indicated hereafter:

Section II: Covenants of the Parties

1. Production Determination: Brooke shall exclusively determine the production requirements of the Water Source supplying any of Water Subsidiaries based on water system demand from its customers as determined, in whole or part, in conjunction with its other operating water sources of the applicable Water Subsidiary. In this regard, Brooke shall have the exclusive right to determine the amount, frequency and the time of required production from the Water Source for the benefit of its water system customers. However, at no time shall Brooke be obligated to utilize the Water Source as a supplemental water source for its Water Subsidiaries.
2. Responsibilities of Brooke: Brooke agrees to be responsible, as defined by this section, for the operation and maintenance of Water Owner's Water Source more fully described in Exhibit A of this Agreement. In this regard, and for all applications herein, this operational and maintenance responsibility shall include and be limited to the following: (a) monthly meter reading measuring the discharged gallons since the previous meter reading; (b) initial installation of a new water meter on the downstream side of the Water Source and necessary plumbing and equipment so as to be able to connect to the applicable water system; (c) monthly electrical utilities in excess of the average electrical utility cost more fully described by Exhibit D ("Utility Expense") and for subsequent annual utility costs thereafter as more fully described therein; (d) operator certification pursuant to ADEQ regulation R18-4-101 (5); (e) ADEQ periodic water monitoring and testing pursuant to R18-4-202, R18-4-104 (1)

and R18-4-104 (a) (1); (f) general compliance related to water quality and delivery; (g) general liability insurance and property damage insurance coverage of not less than five hundred thousand dollars and no cents (\$500,000) combined single limit for injuries to or death of any person or persons and property damage resulting from each occurrence with evidence of same being provided to Water Owner within ten (10) days of the execution of this Agreement; and, (h) general repairs and maintenance to the Water Source, as exclusively determined by Brooke, not in excess of five-hundred dollars (\$500.00) annually (hereafter referred to as "Maintenance Expenses") as determined from that date first set forth above. Excluded from Brooke's responsibility under this section shall be all capital expenses, usually attributable to Water Owner, in excess of the Maintenance Expenses which act to materially extend the useful operating life of the Water Source beyond those general repair and maintenance expenses regularly incurred in the operation and maintenance of such facilities. For the purposes of this Agreement, any payment by Brooke of Maintenance Expenses as related to the Water Source, which is the subject of this Agreement, and as measured in the aggregate, is less than the annual Maintenance Expense amount, as determined from that date first set forth above, is not transferable to any subsequent Water Source operating period.

3. Responsibilities of Water Owner: Water Owner agrees to be responsible for all expenses of the Water Source as described in Exhibit A; except, however, Brooke shall be responsible for certain repair, operational and maintenance expenses more fully described by Section 2. Water Owner's resulting responsibility, hereunder, shall include, but not necessarily be limited to; (a) general liability insurance and property damage insurance coverage of not less than three hundred thousand dollars and no cents (\$300,000) combined single limit for injuries to or death of any person or persons and property damage resulting from each occurrence with evidence of same being provided to Brooke within ten (10) days of the execution of this Agreement; (b) the monthly amount represented herein as Utility Expenses by Exhibit D; (c) real and/or personal property taxes related, in whole or part, to the Water Source; (d) Water Source repair, operational, and maintenance expense in excess of the Maintenance Expenses, and (e) compliance with all applicable laws. Also, Water Owner shall be responsible, hereunder, for all Water Source capital expenses and costs which otherwise act to materially extend the useful operating life of the Water Source beyond any of those expenses and costs otherwise described by this section and otherwise customarily incurred in the repair, operation and maintenance of such facilities. For the purposes of this Agreement, any payment by Brooke of Maintenance Expenses as related to the Water Source, which is the subject of this Agreement, and as measured in the aggregate, is less than the annual Maintenance Expense amount, as determined from that date first set forth above, is not transferable to any subsequent Water Source operating period. Water Owner shall be responsible for prompt and timely payment, so as to not interrupt the production of the Water Source, of all expenses related to the Water Source for which he is responsible hereunder.

4. Water Source Utility Expenses: Notwithstanding any other provisions of this section, Brooke shall be responsible for reimbursing Water Owner for the electrical utility expense in excess of the Utility Expenses directly related to the Water Source. Water Owner shall be responsible for submitting the cost of utilities related to the Water Source in sufficient detail and supported by a billing statement from the applicable utility company within ten (10) days after the receipt of same. Brooke shall pay to Water Owner, after its review and verification of same, the utility costs associated with the Water Source, less the Utility Expense amount more fully described by Exhibit D, within ten (10) after receipt of same from Water Owner. Water Owner and Brooke mutually agree and acknowledge that Brooke shall not, under any circumstances, be responsible for the payment of electrical utility costs, in accordance with this Agreement, which are not directly related to the Water Source. Failure by Water Owner to submit the electrical utility costs associated with the Water Source, in accordance with this section, shall constitute a waiver by Water Owner of Brooke's duties and obligation under this section for the applicable period of utility services.
5. Option to Install Separate Utility Meter: At its option and for any reason whatsoever, Brooke, after providing not less than thirty (30) days written notice to Water Owner, shall have the exclusive option, at its sole expense, to arrange for the installation of a separate electrical utility meter specifically and solely measuring the amount of electrical utility consumed by the Water Source.
6. Exclusivity of Water Use: The Parties to this Agreement do hereby agree, as evidenced by the execution of this Agreement, that the use of water from the Water Source, for the entire duration of this Agreement and its subsequent renewal portions, shall be exclusively limited to the Parties or their assigns, heirs, or transferees as conducted in accordance with this Agreement.
7. Easements and Access to Water Source: At Brooke's option Water Owner shall grant to Brooke a private utility easement or a license to enter Water Owner's property for any purpose necessary under this Agreement. Brooke's access to Water Owner's property shall be related to the Water Source which must be sufficient, as exclusively determined by Brooke, for the access to the Water Source site so as to be able to perform regular repairs, operations, and maintenance of the Water Source. In any event, Brooke shall, at all times, be allowed reasonable access, ingress and egress to the Water Source for the purpose of production monitoring, well supervision, production maintenance and repairs and all other routine and regular purposes normally associated with the operation and maintenance of a water source similar to that which is the subject hereunder.
8. Connection to Public Water System: Brooke, or its agent or representative, shall connect Water Owner's Water Source to the applicable water system of the Water Subsidiaries in accordance with proper and good workmanship and general conditions of the industry. At all times, Brooke shall maintain the water connection in good condition and comply with the requirements of authorities having jurisdiction over

such connection, at Brooke's sole cost and expense. The costs and expenses incurred by Brooke under this section 8 shall not be considered "Maintenance Expenses" for the purposes of this Agreement. Brooke shall, in every case where Water Owner's property is traversed for the purposes under this section, make every reasonable effort to approximately return Water Owner's property to that condition which existed prior to Brooke's work under this section.

9. Water Owner's Current Water Provider: As evidenced by its execution of this Agreement, Water Owner does hereby declare that it is not a current water customer of the Water Subsidiaries.

Section III: Option to Purchase Water Source

1. Brooke's Option to Purchase Water Source: If applicable, Brooke shall be granted an option to purchase Water Owner's Water Source in accordance with Exhibit F herein.

Section IV: Consideration

1. Payment of Consideration: Brooke shall pay to Water Owner not later than fifteen (15) days following its reading of the meter connected to the Water Source that complete consideration, except as may be defined herein, pursuant to Schedule 1 of Exhibit E. Brooke's payment to Water Owner shall be determined by measuring the total gallons of water provided to Water Subsidiary since the last meter reading at the Rate of Consideration indicated in Schedule 1 of Exhibit E. Brooke's payment shall be in valid currency of the United States or by means of corporate check. Brooke reserves the right to process such payments at any administrative facility it deems appropriate. For the purposes of this Agreement, Brooke's payment to Water Owner hereunder shall be considered paid when Brooke places payment in the United States mails for delivery to Water Owner at the address first indicated above. Excepting the first month's meter reading, in no case shall the meter of Water Owner's Water Source be read by Brooke more than approximately thirty-five (35) days from that date when such meter was previously read. The first month's water production under this Agreement, as determined by Brooke's meter reading under this Agreement, shall be measured, without consideration of the date first set forth above, from that date Brooke actually began receiving water from the Water Source through the last business day of the applicable month.
2. Supplemental Consideration: Upon execution of this Agreement and the subsequent successful accomplishment of all conditions precedent hereunder, including but not necessarily limited to the review and approval by Regulatory Authorities, if any, of this Agreement, Brooke, or at its election its assignee, shall pay to Water Owner the sum of five hundred dollars and no cents (\$500.00) as further consideration ("Supplemental Consideration") and an inducement to Water Owner to execute this Agreement. The Supplemental Consideration payment described by this section shall be in addition to any other form of consideration described hereunder.

3. Minimum Consideration: Notwithstanding any provisions of the section Brooke shall have no obligation to pay Water Owner any minimum amount for its regular monthly use or nonuse of the Water Source.

Section V: Term

1. Term: The term of this Agreement shall be fifteen (15) years from the date first set forth above and shall, absent either Parties proper notice of the other Party of its intention to terminate or renegotiate the Agreement, in accordance with the requirements set forth herein, automatically be renewed for consecutive and individual five year terms thereafter subject to the termination and renegotiation provisions set forth hereunder.

Section VI: Termination and Renegotiation of the Agreement

1. Notice to Terminate: In the event either Party desires to terminate this Agreement the Party seeking termination shall be required to provide the other Party written notice ("Termination Notice") of its intention to terminate this Agreement. The Termination Notice required hereunder shall not to be received by the non-terminating Party less than one hundred and eighty (180) days prior to the expiration of this Agreement. Failure by the Party seeking termination under this section to provide proper notice as described hereunder shall constitute a full and complete waiver by the Party seeking termination of its intentions to terminate this Agreement until the applicable notice period of the immediately succeeding five (5) year contract period.
2. Notice to Renegotiate: In the event either Party desires to renegotiate this Agreement the Party seeking renegotiation shall be required to provide the other Party written notice ("Renegotiation Notice") of its intention to renegotiate this Agreement. The Renegotiation Notice required hereunder shall not to be received by the non-noticing Party less than ninety (90) days prior to the expiration of this Agreement. Failure by the Party seeking renegotiation under this section to provide proper notice as described hereunder shall constitute a full and complete waiver by the Party seeking renegotiation of its intentions to renegotiate this Agreement until the applicable notice period of the immediately succeeding five (5) year contract period.
3. Notices to Either Party: All proper notices to either Party, as required by this section, shall be provided in accordance with other applicable notice provisions of this Agreement.
4. Non-Cancelable Agreement: Except in accordance with the terms and conditions of this section this Agreement shall be non-cancelable and non-terminable by either Party.

Acceptance

IN WITNESS HEREOF, the Parties do hereby agree to the foregoing covenants, terms and conditions of the Agreement dated as first set forth above.

For: Water Owner

By:

Its:

<name written>

<position>

For: <water company>

By:

Its:

Robert T. Hardcastle
President

Exhibit A

Water Source Description and Production Statistics

That Water Source that is the subject of this Agreement is located on that property more fully described by the legal description in Exhibit B and the vicinity map depicted in Exhibit C is further described as follows:

| | |
|--|---|
| Well Production Statistical Date | <date> |
| Water Well Statistical Method: | Sounding conducted by Brooke |
| Well Location: | approximately <feet> feet from the <north/south/east/west> property line commonly bordering or adjacent to <street name> Road, and approximately <feet> feet from the <north/south/east/west> property line commonly bordering or adjacent to <street name> Road of the <subdivision name> subdivision located in <county name>, Arizona. |
| Arizona Department of Water Resources Identification Number: | <ADWR identification number> |
| Static Water Level: | <feet> feet |
| Water Well Pump Capacity: | <number of> gallons per minute |
| Water Well Pump Elevation: | <number of feet> feet from well bottom |
| Water Well Bore Depth: | <feet> feet |
| Water Well Bore Size: | <number of> inches in diameter |
| Water Well Casing Depth: | <feet> feet |
| Water Well Drilling Permit Number: | <well drilling permit number and date> |
| Water Well Drilling Date: | <date> |
| Drilling Contractor: | <well drilling contractor name> |
| Other Pertinent Information: | <other or none> |

Exhibit B

Water Source Property Description

<provide written legal description>



Exhibit C

Water Source Property Vicinity Map

<provide vicinity map>

Exhibit D

Water Source Utility Expenses

Water Owner covenants, promises, acknowledges and hereby certifies, as indicated by its execution of this Agreement, that the electrical utility costs of the water well which is the subject of this Agreement, for the immediately preceding twelve (12) months have been as indicated below:

| | |
|--|--|
| Electrical Utility Provider: | Arizona Public Service |
| Utility Account Number: | <account number> |
| Meter Number: | <meter number> |
| Description of Utility Service: | Exclusively to subject Water Source |
| Preceding 1st Month Cost: | Month: _____ Year: 1996 Cost: \$ _____ |
| Preceding 2nd Month Cost: | Month: _____ Year: 1996 Cost: \$ _____ |
| Preceding 3rd Month Cost: | Month: _____ Year: 1996 Cost: \$ _____ |
| Preceding 4th Month Cost: | Month: _____ Year: 1996 Cost: \$ _____ |
| Preceding 5th Month Cost: | Month: _____ Year: 1996 Cost: \$ _____ |
| Preceding 6th Month Cost: | Month: _____ Year: 1996 Cost: \$ _____ |
| Preceding 7th Month Cost: | Month: _____ Year: 1996 Cost: \$ _____ |
| Preceding 8th Month Cost: | Month: _____ Year: 1996 Cost: \$ _____ |
| Preceding 9th Month Cost: | Month: _____ Year: 1996 Cost: \$ _____ |
| Preceding 10th Month Cost: | Month: _____ Year: 1996 Cost: \$ _____ |
| Preceding 11th Month Cost: | Month: _____ Year: 1996 Cost: \$ _____ |
| Preceding 12th Month Cost: | Month: _____ Year: 1996 Cost: \$ _____ |
| Average Monthly Utility Cost¹: | \$ <dollars> "Utility Expenses" |

¹ Water Owner agrees and acknowledges that the utility costs referred to herein ("Utility Expenses") include consumption of utility expense other than, and in addition to, those utility costs related exclusively to the Water Source. The Parties to this Agreement further agree that the Utility Expense shall be hereafter determined annually, within forty-five days from the anniversary date of this Agreement, using the same methodology as provided in Exhibit D above.

Exhibit E

Consideration

Water Owner's full and complete consideration received from Brooke for use of its Water Source as a supplemental water supply shall be based on the gallons of water utilized from the Water Source, as otherwise defined in accordance with this Agreement as measured in gallons per minute ("GPM"). Accordingly, Brooke and Water Owner agree that such compensation shall be paid in accordance with Schedule 1 provided below:

Schedule 1:

| Water Source Production | | | |
|-------------------------|-------------|---------------|-----------------------|
| Water Source | Daily Water | Monthly Water | |
| Production | Production | Production | Rate of Consideration |
| in GPM | in Gallons | in Gallons | per 1,000 Gallons |
| 5 | 7,200 | 216,000 | \$ 0.50 |
| 6 | 8,640 | 259,200 | \$ 0.50 |
| 7 | 10,080 | 302,400 | \$ 0.50 |
| 8 | 11,520 | 345,600 | \$ 0.50 |
| 9 | 12,960 | 388,800 | \$ 0.50 |
| 10 | 14,400 | 432,000 | \$ 0.50 |
| 11 | 15,840 | 475,200 | \$ 0.50 |
| 12 | 17,280 | 518,400 | \$ 0.50 |
| 13 | 18,720 | 561,600 | \$ 0.60 |
| 14 | 20,160 | 604,800 | \$ 0.60 |
| 15 | 21,600 | 648,000 | \$ 0.60 |
| 16 | 23,040 | 691,200 | \$ 0.60 |
| 17 | 24,480 | 734,400 | \$ 0.60 |
| 18 | 25,920 | 777,600 | \$ 0.60 |
| 19 | 27,360 | 820,800 | \$ 0.60 |
| 20 | 28,800 | 864,000 | \$ 0.75 |
| 21 | 30,240 | 907,200 | \$ 0.75 |
| 22 | 31,680 | 950,400 | \$ 0.75 |
| 23 | 33,120 | 993,600 | \$ 0.75 |
| 24 | 34,560 | 1,036,800 | \$ 0.75 |
| 25 | 36,000 | 1,080,000 | \$ 0.75 |
| 26 | 37,440 | 1,123,200 | \$ 0.75 |
| 27 | 38,880 | 1,166,400 | \$ 1.00 |
| 28 | 40,320 | 1,209,600 | \$ 1.00 |
| 29 | 41,760 | 1,252,800 | \$ 1.00 |
| 30 | 43,200 | 1,296,000 | \$ 1.00 |
| 31 | 44,640 | 1,339,200 | \$ 1.00 |
| 32 | 46,080 | 1,382,400 | \$ 1.00 |
| more | 1,382,401 | | \$ 1.25 |

Exhibit F

Brooke's Option to Purchase Water Source

For the purposes of this Agreement, Brooke shall not be granted an option to purchase Water Source from Water Owner.

DRAFT

Water Sharing Agreement Invoice

Date: ____ / ____ / ____

To: <specify company name>
 P.O. Box 82218
 Bakersfield, CA 93380-2218

Attn: Accounts Payable Department

From: <customer name>
 <customer address>
 <customer city, state, zip>

Re: *Utility Expense for Month of* _____ *Year* _____

Reimbursement of Utility Expenses in excess of those incurred pursuant to Exhibit "D" of Water Sharing Agreement dated <specify WSA date> APS account number <specify APS account number> meter number <specify APS meter number>.

| | | |
|-----------------------|----|------------------------|
| Invoice Amount | \$ | _____. |
| Less: Utility Expense | \$ | _____ <specify amount> |
| Balance Due | \$ | _____. |

| | |
|---------------|--|
| Expense Code: | Company <specify company number> Division <specify division number> Account A615.1 |
| Approval: | _____ |