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BEFORE THE ARIZONA CORPORATION

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COMMISSIONERS

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Arizona Corporation Commission

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NOV 30 2007

MIKE GLEASON, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

AZ CORP COMMISSION  
DOCKET CONTROL

DOCKETED BY	ne
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IN THE MATTER OF THE APPLICATION OF PERKINS MOUNTAIN WATER COMPANY FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY IN MOHAVE COUNTY.

DOCKET NO. W-20380A-05-0490

IN THE MATTER OF THE APPLICATION OF PERKINS MOUNTAIN UTILITY COMPANY FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY IN MOHAVE COUNTY.

DOCKET NO. SW-20379A-05-0489

**AMENDMENT TO APPLICATIONS AND REQUEST FOR PROCEDURAL SCHEDULE**

On August 1, 2007, Perkins Mountain Water Company and Perkins Mountain Utility Company (collectively, the "Perkins Companies") filed a Motion for Reconsideration or, in the alternative, Motion for Temporary Stay of Proceedings. At the procedural conference held August 3, 2007, the Arizona Corporation Commission's ("Commission") Administrative Law Judge ("ALJ") granted a 90-day stay and ordered the Perkins Companies to file a pleading by November 2, 2007, stating whether they intend to proceed with their respective applications for water and wastewater Certificates of Convenience and Necessity ("CC&Ns") in Mohave County, Arizona. On November 2, 2007, the Perkins Companies filed a request for a 30-day continuance of the temporary stay in order to finalize an alternative plan to be presented to the Commission. On November 27, 2007, the ALJ granted the Perkins Companies' request and ordered that they file by December 3, 2007 a pleading describing their intent to pursue the pending applications and indicating when they would be prepared to resume the hearing.

Snell & Wilmer

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1 On November 29, 2007, Rhodes Homes Arizona, L.L.C. ("RHA"), the sole  
2 shareholder of the Perkins Companies, executed a Stock Purchase and Utilities Services  
3 Agreement (the "Stock Purchase Agreement") by which RHA transferred all issued and  
4 outstanding shares of stock in the Perkins Companies to Utilities, Inc. ("Utilities Inc." or  
5 the "Company"), a public utility holding company with approximately 90 subsidiaries  
6 operating more than 500 water, wastewater and irrigation systems in 17 states serving  
7 more than 300,000 customers. In Arizona, Utilities Inc. owns Bermuda Water  
8 Company, a Class B utility which provides water service to approximately 7,900  
9 customers in the southern portion of Bullhead City and on the Mojave Mesa in Mohave  
10 County, Arizona. The acquisition of the Perkins Companies by Utilities Inc. is a logical  
11 expansion of the company's utility operations in Mohave County.

12 The Perkins Companies hereby file this amendment to their respective  
13 applications for CC&Ns ("Applications") to: (i) notify the Commission of the change in  
14 ownership and control of the Perkins Companies; (ii) provide information regarding  
15 Utilities Inc., the new owner of the Perkins Companies; (iii) update other information  
16 contained in the Applications; and (iv) request appropriate modifications to certain of the  
17 conditions in the December 15, 2006 Addendum to Staff Report ("Staff Report  
18 Addendum") in light of the changed circumstances. The Perkins Companies further  
19 request that the ALJ set a procedural conference to establish a procedural schedule so  
20 that the amended Applications may be considered by the Commission at the earliest  
21 possible date.

22 **PROCEDURAL HISTORY**

23 On July 7, 2005, the Perkins Companies filed their respective Applications to  
24 provide water and wastewater services to two proposed master planned communities in  
25 Mohave County, Arizona, known as Golden Valley South and The Villages at White  
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1 Hills (collectively, the "RHA Developments").<sup>1</sup> Subsequent to the filing:

- 2 • Staff filed its Staff Report dated November 10, 2005 recommending approval of
- 3 the Applications with conditions;
- 4 • An evidentiary hearing was held on December 5, 2005;
- 5 • Staff filed its Staff Report Addendum maintaining its recommendation of
- 6 approval of the Applications with conditions for a majority of Golden Valley
- 7 South and approval of an order preliminary for the remainder of Golden Valley
- 8 South and all of The Villages at White Hills;
- 9 • Additional evidentiary hearings were held on the Applications on February 15,
- 10 16, 20, and 26, and March 2, 6 and 8, 2007;
- 11 • On March 30, 2007, the Perkins Companies filed their Closing Brief and, together
- 12 with various late-filed exhibits that were filed in the docket, the record was closed
- 13 and the matter was submitted to the ALJ for preparation of a Recommended
- 14 Opinion and Order ("ROO");
- 15 • On July 30, 2007, the ALJ issued a procedural order stating that the closed record
- 16 should be reopened for additional testimony and evidence and scheduled a
- 17 procedural conference for August 3, 2007.

18 At the August 3, 2007 procedural conference, the Perkins Companies requested a  
19 90 to 120 day stay of the proceedings to explore other options pertaining to water and  
20 wastewater service, stating through legal counsel that:

21 We could seek out an existing certificated [u]tility company in the State of  
22 Arizona that could serve these projects. We could look to the County to  
23 talk about formation of a district, a community facilities district or a  
24 domestic water improvement and wastewater improvement district.  
25 Municipal service is also a possibility that's out there.<sup>2</sup>

26 At the conclusion of the procedural conference, the ALJ granted a 90-day stay of  
27 the proceedings and ordered that the Perkins Companies:

28 [S]ubmit a pleading that describes where things are and whether [the

<sup>1</sup> Rather than restate the entire procedural history herein, please see "Procedural History" set forth in the *Response of Perkins Mountain Water Company and Perkins Mountain Utility Company to Request to Re-Open the Record* filed in this docket on July 23, 2007.

<sup>2</sup> Transcript of August 3, 2007, procedural conference at page 6.

1 Perkins Companies] intend to pursue these applications. And, if so, an idea  
2 of what timing we would expect to be able to return to hearing if you intend  
3 to pursue these, or when you would be in a position to withdraw the  
4 applications.<sup>3</sup>

5 In accordance with the August 3 and November 27, 2007 orders of the ALJ, the  
6 Perkins Companies hereby notify the Commission that they intend to pursue the  
7 Applications as amended and resume proceedings at the earliest possible date.

8 **THE PERKINS COMPANIES ARE NOW OWNED BY UTILITIES INC.**

9 Immediately following the August 3, 2007 procedural conference, RHA began re-  
10 examining the various options for providing water and wastewater service to the RHA  
11 Developments. RHA concluded that the best option was to proceed with the  
12 Applications filed by the Perkins Companies, but that a change in ownership should be  
13 explored to address issues raised by Commissioners during the hearings on the  
14 Applications. As a result, RHA entered into discussions with Utilities Inc. and  
15 ultimately concluded that Utilities Inc. possessed the requisite financial resources and  
16 technical expertise to successfully own, control and operate the Perkins Companies. On  
17 November 29, 2007, RHA and Utilities Inc. entered into the Stock Purchase Agreement  
18 whereby Utilities Inc. purchased all of the issued and outstanding stock of Perkins  
19 Mountain Water Company and Perkins Mountain Utility Company, and agreed to  
20 provide water and wastewater services to the RHA Developments upon issuance of  
21 CC&Ns to the Perkins Companies, subject to the terms and conditions of the Stock  
22 Purchase Agreement.<sup>4</sup>

23 As of November 29, 2007, Utilities Inc. is the sole shareholder of the Perkins  
24 Companies with control over the operations of the Perkins Companies and the  
25 Applications. Utilities Inc. has no ownership interest in any entity owned by or  
26 controlled by James Rhodes or any of Mr. Rhodes' affiliated business enterprises.

27 <sup>3</sup> *Id* at page 32.

28 <sup>4</sup> A copy of the Stock Purchase Agreement has been provided to Staff under separate cover pursuant to the terms of the August 11, 2006, Protective Agreement between the parties.

1 Likewise, neither Mr. Rhodes nor any of his affiliated business enterprises have any  
2 ownership interest in Utilities Inc. or any entity controlled by or under common control  
3 with Utilities Inc.

4 **OVERVIEW OF UTILITIES INC.**

5 *National Operations*

6 Utilities Inc. is one of the largest privately-owned water and wastewater utilities  
7 operating in the United States. The Company currently serves more than 300,000  
8 residential and commercial customers in 17 states, including Arizona and Nevada.  
9 Utilities Inc. was founded in 1965 with a focus on water company and wastewater  
10 company acquisitions and formations in the Midwestern United States. However, during  
11 the early 1970s, Utilities Inc. expanded operations into high growth areas in the  
12 Southeastern United States. By the 1980s, the Company successfully pursued large,  
13 multi-state acquisitions.

14 Throughout its 42-year history, Utilities Inc. has established a successful pattern  
15 of providing capital to meet business development and expansion strategies. The  
16 Company is backed by a private equity owner with extensive capital to fund prudent  
17 growth.

18 Utilities Inc. is experienced in managing virtually every type of water and  
19 wastewater system, from basic to advanced equipment and processes. The Company's  
20 management team is comprised of individuals with diverse backgrounds who have years  
21 of regulated utility experience.

22 *Arizona Operations*

23 Utilities Inc. acquired Bermuda Water Company ("Bermuda") through a stock  
24 transaction in 1999. Bermuda is a Class B water utility pursuant to the Commission's  
25 regulations and is authorized to provide water service in Mohave County, Arizona, to an  
26 area encompassing approximately 24 square miles, extending southward from Bullhead  
27 City, Arizona, into Mohave Valley. The Commission granted a CC&N to Bermuda in  
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1 Decision No. 33710 on February 26, 1962 and Bermuda is in good standing with the  
2 Commission. Bermuda currently provides service to approximately 7,900 customers  
3 within its CC&N.

4 **THE EVIDENTIARY RECORD AND THE STAFF REPORT ADDENDUM**  
5 **CONDITIONS**

6 Except as set forth below, the Perkins Companies stipulate to the evidentiary  
7 record in this proceeding. This record establishes that (i) there is an immediate public  
8 need and necessity for water and wastewater services for the RHA Developments; (ii)  
9 the proposed initial rates and charges of the Perkins Companies are just and reasonable;  
10 and (iii) the Arizona Department of Water Resources ("ADWR") has determined per the  
11 Department's Analysis of Adequate Water Supply that 9,000 acre-feet of groundwater  
12 will be physically and continuously available and that 2,895.69 acre-feet of reclaimed  
13 effluent will be available for 100 years for Golden Valley South. Additionally, Utilities  
14 Inc. hereby agrees to accept all of the proposed CC&N conditions set forth in the Staff  
15 Report Addendum except as follows:

16 **Performance Bond**

17 Staff recommended a performance bond or letter of credit of \$2,500,000 for each  
18 of the Perkins Companies because of various concerns regarding the Perkins Companies.  
19 Specifically, in recommending this amount, Staff stated:

20 In recent Commission Decisions, performance bonds have been required  
21 for new CC&Ns where a substantial number of customer deposits or  
22 advances may be held by a regulated utility, the company has no prior  
23 experience in operating a water or wastewater facility, or where the  
24 financial strength of the entity could be in jeopardy due to inadequate  
25 funding, pending lawsuits, etc. Performance bonds or letter of credit  
26 provide the customers security in the event a new utility files for  
27 bankruptcy.

28 Based on the information provided in this docket and from Staff's review of  
other available materials regarding the Utilities and related affiliated  
entities, Staff concludes that:

- The Utilities have no prior operating experience,
- There is evidence of negative determinations or questionable business practices regarding Mr. Rhodes and/or affiliated entities, and
- The financial capability of its two immediate parent companies is not secure.

Therefore, Staff recommends that the Utilities provide a performance bond or irrevocable letter of credit which is adequate to secure the first four years of the estimated operating expenses.<sup>5</sup>

As Utilities Inc. is the new owner of the Perkins Companies, the above concerns raised in the Staff Report Addendum supporting Staff's higher level of bonding or letter of credit are no longer necessary or appropriate. Through these amended Applications, the Perkins Companies have and will provide to the Commission additional information demonstrating that the Perkins Companies are "fit and proper" and have the experience and financial wherewithal to successfully operate. Moreover, Utilities Inc. is the owner of Bermuda which is already certificated by the Commission as fit and proper to provide water service in Mohave County. Therefore, the Perkins Companies should not be required to post a performance bond or letter of credit.

### Capital Structure

Staff has recommended that the Perkins Companies finance at least 50 percent of their plant with equity. This recommendation was offered because the Perkins Companies were new utilities with no prior operating experience. Since Utilities Inc., the parent company of the Perkins Companies, is a large national public utility holding company with existing operations in Arizona, the Perkins Companies submit that this recommendation is no longer necessary. Utilities Inc. and the Perkins Companies plan to finance plant construction through a combination of developer advances and utility capital, with the bulk of the investment taking the form of refunds of advances in aid of construction. The Perkins Companies submit that their proposal matches investment in plant with customer and revenue growth, providing a sound financial base for the utility

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<sup>5</sup> Staff Report Addendum, pages 7-8.

1 and protecting customers by placing utility investment at risk only after each customer  
2 has begun taking service.

3 Semi-Annual Litigation Reports

4 Staff has recommended that the Perkins Companies file semi-annual compliance  
5 reports on the status of all pending litigation against James Rhodes. Since Mr. Rhodes is  
6 no longer the owner of the Perkins Companies, this requirement is not necessary.

7 AMENDMENTS TO APPLICATIONS

8 The Perkins Companies submit the following amendments to the Applications:  
9 CC&Ns for The Villages at White Hills

10 The Perkins Companies had originally requested an order preliminary for The  
11 Villages at White Hills because RHA had not obtained an Analysis of Adequate Water  
12 Supply from ADWR for the development. RHA has since received an Analysis of  
13 Adequate Water Supply from ADWR demonstrating the availability of groundwater and  
14 reclaimed effluent for The Villages at White Hills, a copy of which is attached hereto as  
15 Exhibit A. The ADWR Analysis finds that 11,922 acre-feet of groundwater will be  
16 physically and continuously available and that 2,607.81 acre-feet of reclaimed effluent  
17 will be available for 100 years for The Villages at White Hills. The total amount of  
18 14,529.8 acre-feet is more than ADWR's annual estimated water demand for the  
19 development of 12,651.03 acre-feet per year at build-out.

20 Accordingly, the Perkins Companies request that the Commission issue water and  
21 wastewater CC&Ns with conditions for The Villages at White Hills, instead of orders  
22 preliminary.<sup>6</sup>

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<sup>6</sup> The Perkins Companies are not seeking to amend the request for an Order Preliminary for the small  
portion of Section 8 of Golden Valley South set forth in the record.

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Revised Financial Information

The Perkins Companies will provide revised financial information set forth in Exhibit E of the Application to reflect the change in ownership, updated cost estimates and the proposed financing for the Perkins Companies.

REQUEST FOR PROCEDURAL SCHEDULE

The Perkins Companies request that a procedural conference be scheduled at the earliest possible date to establish a procedural schedule for the continuation of this proceeding to address the changed circumstances regarding the Applications. The Perkins Companies suggest that following Staff's re-evaluation of the Applications in light of the change of ownership and the issuance of an updated staff report, it will be necessary for the Commission to conduct a brief evidentiary hearing for the parties to present evidence relating to the changes in the Applications, revisions to proposed conditions and the new owner.

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1 CONCLUSION

2 The Perkins Companies submit that they are fit and proper to provide water and  
3 wastewater services to customers in the master-planned developments of Golden Valley  
4 South and The Villages at White Hills, and that there is an immediate public need and  
5 necessity for such services. The Perkins Companies are ready, willing and able to  
6 construct the necessary water and wastewater facilities. The Perkins Companies have  
7 the financial resources, demonstrated water resources, an experienced certified operator,  
8 and have obtained water and wastewater franchises and other approvals. For these  
9 reasons, the Perkins Companies respectfully request that the Commission issue CC&Ns  
10 consistent with the amended Applications.

11 RESPECTFULLY SUBMITTED this 30th day of November, 2007.

12 SNELL & WILMER L.L.P.

13  
14 By   
15 Jeffrey W. Crockett  
16 Bradley S. Carroll  
17 One Arizona Center  
18 400 East Van Buren  
19 Phoenix, Arizona 85004-2202  
20 Attorneys for Perkins Mountain Water  
21 Company and Perkins Mountain Utility  
22 Company

and

SACKS TIERNEY P.A.

23  
24 By   
25 Marvin S. Cohen  
26 4250 N. Drinkwater Blvd., 4<sup>th</sup> Floor  
27 Scottsdale, AZ 85251-3693  
28 Attorneys for Perkins Mountain Water  
Company and Perkins Mountain Utility  
Company

1 ORIGINAL and 15 copies filed this  
2 30th day of November, 2007, with:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 West Washington  
6 Phoenix, Arizona 85007

7 COPY of the foregoing hand-delivered  
8 this 30th day of November, 2007, to:

9 Dwight D. Nodes, Administrative Law Judge  
10 Hearing Division  
11 Arizona Corporation Commission  
12 1200 West Washington  
13 Phoenix, Arizona 85007

14 Keith Layton, Staff Attorney  
15 Legal Division  
16 Arizona Corporation Commission  
17 1200 West Washington  
18 Phoenix, Arizona 85007

19 Ernest Johnson, Director  
20 Utilities Division  
21 Arizona Corporation Commission  
22 1200 West Washington  
23 Phoenix, Arizona 85007

24 COPY of the foregoing mailed this  
25 30th day of November, 2007, to:

26 Booker T. Evans, Jr.  
27 Kimberly A. Warshawski  
28 Greenberg Traurig, L.L.P.  
2375 East Camelback Road, Suite 700  
Phoenix, Arizona 85016

29 Scott Fisher  
30 Sports Entertainment  
31 808 Buchanan Blvd., Ste. 115-303  
32 Boulder City, Nevada 89005

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34 \_\_\_\_\_  
35 2064889.3

# **EXHIBIT A**

**ARIZONA DEPARTMENT OF WATER RESOURCES**

**Office of Assured and Adequate Water Supply**

3550 North Central Ave., Phoenix, Arizona 85012

Telephone (602) 771-8585

Fax (602) 771-8689



Janet Napolitano  
Governor

Herbert R. Guenther  
Director

**ANALYSIS OF ADEQUATE WATER SUPPLY**

July 18, 2007

**File Number:** 43-401674.0000  
**Development:** The Villages at White Hills  
**Location:** Township 27 North, Range 21 West, Section 25  
Township 27 North, Range 20 West, Section 16, 20, 21,23,30  
Mohave County, Arizona  
**Land Owner:** American Land Management, LLC, a South Dakota Limited Liability Company

The Arizona Department of Water Resources has evaluated the Analysis of Adequate Water Supply application for The Villages at White Hills pursuant to A.A.C. R12-15-712. The proposed development includes 19,995 single-family residential lots, 5,998 multi-family units, commercial tracts, schools, parks, a golf course and irrigated right-of-way. The applicant has indicated that most non-residential open space will eventually be irrigated with effluent. An undetermined water provider will deliver water and treated effluent to the master-planned development. Conclusions of the review are indicated below based on the adequate water supply criteria referenced in A.R.S. § 45-108 and A.A.C. R12-15-712.

- **Physical, Continuous, and Legal Availability of Water for 100 Years**  
On the basis of the Department's review, the Department has determined that 11,922.00 acre-feet per year of groundwater will be **physically and continuously available**. Based on the physical availability of groundwater, an additional 2,607.81 acre-feet per year of treated effluent will be physically available at build-out for a total of 14,529.8 acre-feet per year, which is more than the Department's annual estimated water demand for the development of 12,651.03 acre-feet per year. The development is located outside the service area of any water provider. Therefore, **legal availability** of the groundwater and the effluent are considered not proven. Applications for Water Reports that follow the Analysis of Adequate Supply will need to reference this letter. Individual Notices of Intent to Serve will be required for each application for a Water Report. A review of the progress of completion of the necessary treatment and delivery systems will be conducted for each application for a Water Report.
- **Adequate Water Quality**  
This requirement will be evaluated according to the criteria in A.A.C. R12-15-719 at the time an application for a Water Report is filed. Prior to preparing an application for a Water Report, the Office of Assured Water Supply may be contacted for further guidance.

- **Financial Capability of the Owner to Construct the Necessary Distribution System**  
This requirement will be evaluated according to the criteria in A.A.C. R12-15-720 at the time an application for a Water Report is filed. Prior to preparing an application for a Water Report for an individual subdivision plat, the Office of Assured Water Supply may be contacted for further guidance.

The term of this Analysis of Adequate Water Supply is ten years from the date of this letter and may be renewed upon request, subject to approval by the Department. See A.A.C. R12-15-712. Throughout the term of this determination, the annual estimated water demand of this development will be considered when reviewing other requests for adequate water supply in the area. The demand projected for this development assumes that the conservation measures the applicant has identified to the Department will be required for the homes in this development, including the effluent use requirements for public parks, large turf areas and golf course, and low water use landscaping on the property. Additionally, it must be noted that based upon the limited hydrogeologic data available for the proposed development area, the amount of groundwater that may be physically available to 1,200 feet below land surface for this project may be limited. As additional hydrogeologic data becomes available, applications for Water Reports and the determination of physical availability in this Analysis may be affected by that additional data.

**Prior to obtaining plat approval by the local platting authority and approval of the public report by the Department of Real Estate, a Water Report must be obtained for each subdivision plat. The findings of this Analysis of Adequate Water Supply may be used to demonstrate that certain requirements for a Water Report have been met. This determination may be invalidated if the development plan or other conditions change prior to filing for a Water Report.**

Questions may be directed to the Office of Assured/Adequate Water Supply at (602) 771-8585.

  
Sandra Fabritz-Whitney, Assistant Director  
Water Management Division

cc: Greg Wallace, Errol L. Montgomery & Assoc., Inc.  
Office of Assured and Adequate Water Supply  
Nicole Swindle, Legal Division