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# **EXHIBITS**

**L-00000GG-08-0407-00139**

**L-00000GG-08-0408-00140**

**PART 2 OF 2**

**BAR CODE # 0000089437**

**To review Part 1 please see:**

**BAR CODE #0000089419**

# Renewable Energy and Natural Gas: Issues and Considerations

Bob Gray, ACC Staff

September 2008

Docket Numbers: L-00000GC-08-0407-00139

L-00000GC-08-0408-00140



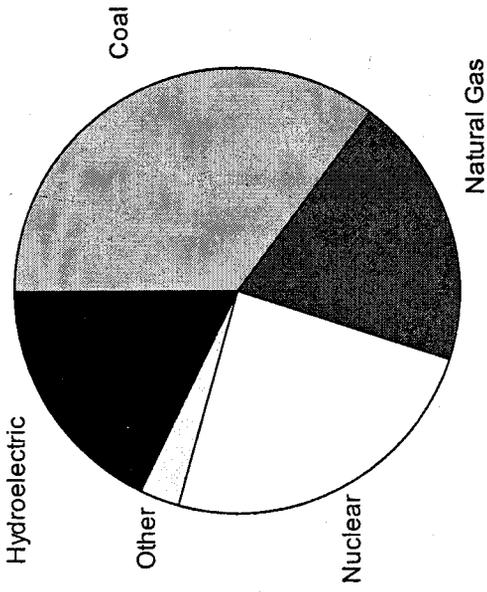
# Why Are We Talking About Natural Gas in a Line Siting Case Involving a Solar Generating Station?

- Nationally, and in Arizona, natural gas-fired generation has been the default source for most additional electric generation capacity additions for many years
- This trend is likely to continue, as noted by Federal Energy Regulatory Commission Chairman Joseph Kelliher's February 15, 2008 statement that "the U.S. is likely to rely very heavily on natural gas generation additions over the next ten years."
- Growing reliance on natural gas as the fuel of choice to meet electricity demand raises a variety of important policy issues
- In recent line siting cases, Staff has expressed its concern with the ongoing trend of growing reliance on natural gas-fired generation, both in Arizona and nationally
- Solar energy is touted as one possible avenue for reducing our growing reliance on natural gas-fired electric generation

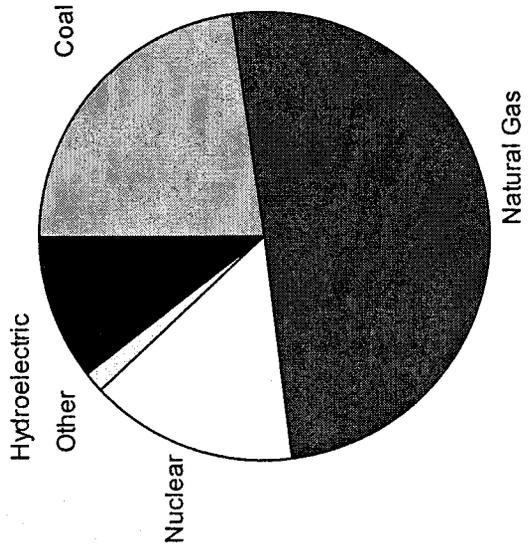
# Policy Issues Related to Increased Reliance on Natural Gas-Fired Electric Generation

- Significant natural gas price volatility will tend to result in higher volatility in electric rates for end users
- Consumption of natural gas for electric generation has driven up natural gas prices and contributed to the flight of portions of the United States' industrial base as residential, commercial, and industrial end-users have suffered higher natural gas prices in recent years
- Long term projections of natural gas supplies show increasing reliance on natural gas imports from overseas, raising issues similar to those related to the United States' on-going reliance on foreign oil
- Use of natural gas to generate electricity is an inefficient use of natural gas on a total energy basis
- For Arizona, the lack of natural gas storage or similar tools to help manage natural gas supplies in the state is a cause of long term concern, as it could impair the state's ability to maintain natural gas service if a substantial supply interruption was caused by an event such as wellhead freeze-offs or a major infrastructure failure

Arizona Generation Capacity in 2000

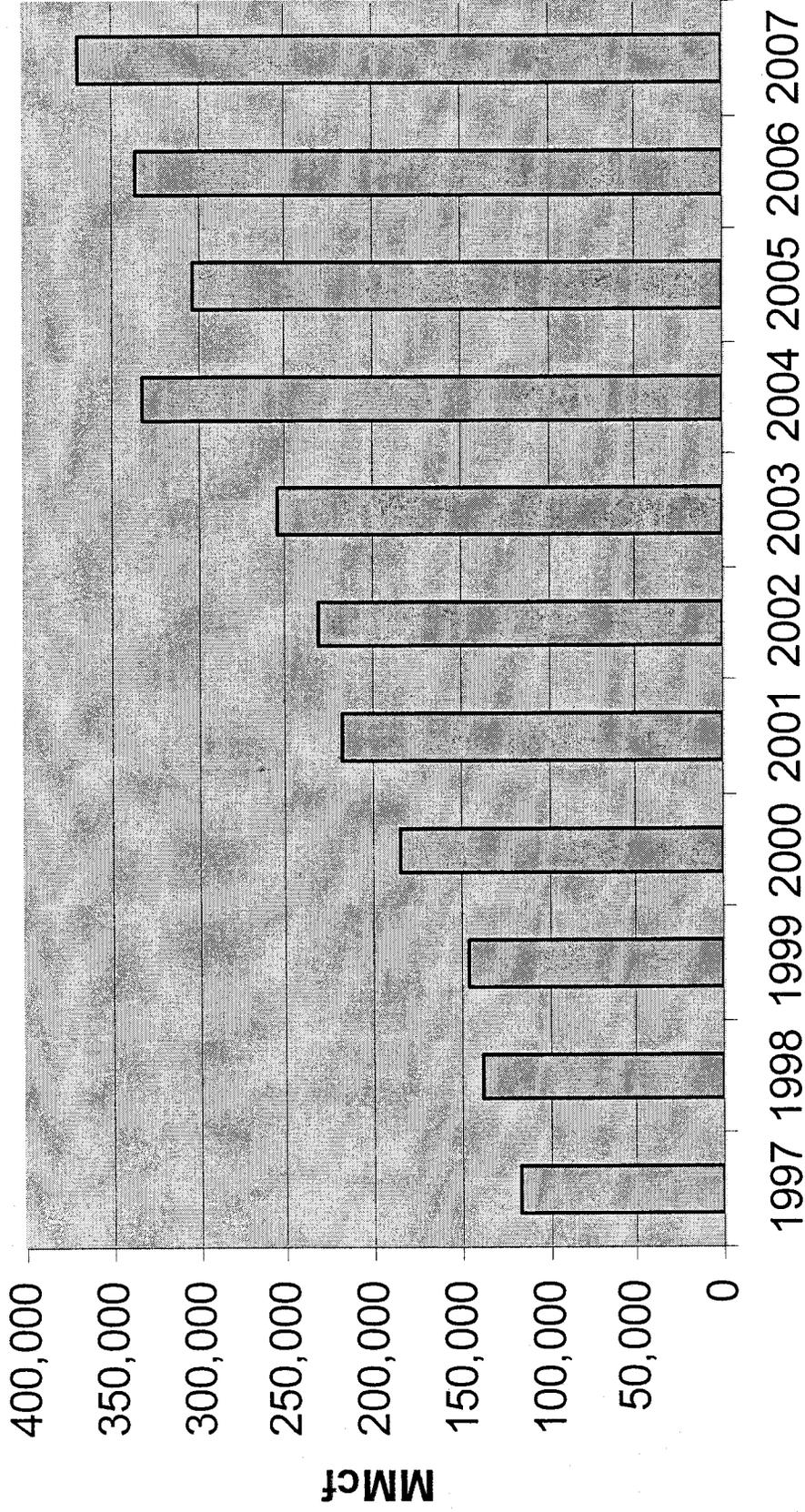


Arizona Generation Capacity in 2006



Source: U.S. Department of Energy, Energy Information Administration

# Arizona's Growing Consumption of Natural Gas



Source: U.S. Department of Energy, Energy Information Administration

## Will Projects Such as Solana Reduce Our Reliance on Natural Gas and Reduce Natural Gas Prices?

- Yes and No
- As a general principal, the deployment of any electric generation technology that does not burn natural gas, including solar, will over a long timeframe reduce reliance on natural gas or at least slow the rate at which we are becoming more dependent on natural gas
- Solar energy's cost structure, with high up-front costs and relatively low costs thereafter is markedly different than that of natural gas-fired generation, where the fixed up front cost is relatively low, but there is significant exposure to fuel price volatility and the availability of natural gas supplies in the future

## Important Caveats

- While solar has the potential to impact natural gas prices in the long term, it is likely to do little or nothing to impact natural gas prices in a more short term timeframe. Many other factors have a much greater impact on natural gas prices than a relatively small increment of gas-fired generation that isn't built or run due to new solar resources.
- Other major factors driving natural gas prices include weather, world market prices, economic conditions, changing production levels (such as the recent shale play discoveries), changing consumption patterns, and hurricane events in the Gulf of Mexico
- The sheer volume of gas-fired generation in the United States will dwarf solar resources, and their ability to impact gas supplies and prices, for many years. According to the Energy Information Administration, there were 543 Gigawatts of installed nameplate gas-fired generation in the United States as of 2006, and another 46 Gigawatts of projected gas-fired additions from 2007 through 2011.
- This massive base of gas-fired generation serves as a sort of hedge against significant long term reductions in natural gas prices. This is because as natural gas prices move downward, running gas-fired electric generation capacity becomes more economic, increasing demand for natural gas, and can even begin displacing coal generation facilities.

## Caveats continued

- For example, the August 27, 2008 issue of Gas Daily cites a Raymond James analyst who projects that under current market conditions electric utilities will start switching from coal to natural gas-fired generation when natural gas prices reach approximately \$7.00 per million cubic feet. The resulting increase in demand for natural gas will tend to push prices back up.
- Apart from hydroelectric generation in certain instances, natural gas-fired generation is typically relied upon to accommodate changes in electricity demand with little or no notice, as they are more easily dispatchable than other generation sources such as coal and nuclear. To the extent solar resources rely on natural gas to firm up intermittent solar supplies, this could contribute to construction of and reliance on natural gas generation. In the specific case of Solana, it appears that the molten salt heat storage would significantly reduce the need for natural gas-fired generation to firm up the resource.

## Summary

- In summary, Staff believes that construction of the Solana project and similar facilities can play a positive role as part of a long term strategy to help address Arizona's growing reliance on natural gas-fired generation
- *However, due to a number of factors, Staff believes that in the short term, Solana and similar projects will have little or no impact on natural gas prices and supply availability*

# Proposed Condition

If the application in this case is approved, Staff recommends adoption of the following natural gas-related condition:

“Before commencing construction of Project facilities located parallel to and within 100 feet of any existing natural gas or hazardous liquid pipeline, the Applicant shall:

- (a) Perform the appropriate grounding and cathodic protection studies to show that the Project’s location parallel to and within 100 feet of such pipeline results in no material adverse impacts to the pipeline or to public safety when both the pipeline and the Project are in operation. If material adverse impacts are noted in the studies, Applicant shall take appropriate steps to ensure that such material adverse impacts are mitigated. Applicant shall provide to Commission Staff reports of studies performed; and
- (b) Perform a technical study simulating an outage of the Project that may be caused by the collocation of the Project parallel to and within 100 feet of the existing natural gas or hazardous liquid pipeline. This study should either: i) show that such outage does not result in customer outages; or ii) include operating plans to minimize any resulting customer outages. Applicant shall provide a copy of this study to Commission Staff.”

# **Arizona Corporation Commission**

**Docket No. L-00000GG-08-0407-00139**

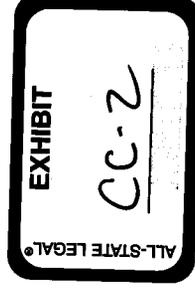
**Docket No. L-00000GG-08-0408-00140**

## **Arizona Solar One, LLC Solana Generating Station Project**

### **Presentation of Arizona Corporation Commission Staff Witness**

**Ray T. Williamson**

**October 14, 2008**



**ACC Staff Witness**

**Name:** Ray T. Williamson  
**Title:** Utilities Engineer  
**Employer:** Arizona Corporation Commission  
**Address:** Utilities Division  
1200 West Washington  
Phoenix, AZ 85007

## **Professional Background**

### **Education & Certification**

- **B.S. (Engineering): 1970**  
**U.S. Military Academy, West Point, NY**
- **M.P.S. (Public Administration): 1976**  
**Western Kentucky University, Bowling Green, KY**
- **M.B.A. (Finance): 1982**  
**Arizona State University, Tempe, Arizona**
- **Certified Energy Manager (C.E.M.) designation**  
**from the Association of Energy Engineers: 1984**

## **Professional Background (cont.)**

### **Work Experience**

- **1970 – 1976: U.S. Army**
- **1976 – 1980: Employed in the Solar Industry**
  - **Solaron Corporation**
  - **Ramada Energy Systems**
- **1980 – 1992:**
  - **Associate Director, AZ Solar Energy Commission**
  - **Energy Economic Analyst, AZ Energy Office**
  - **Manager, AZ Solar Energy Office**

## **Work Experience (cont.)**

- **1992 – 2008: Employed at AZ Corporation Commission**
  - **Economist**
  - **Senior Rate Analyst**
  - **Chief, Economics & Research Section**
  - **Acting Director, Utilities Division**
  - **Utilities Engineer**
- **2001 – 2005: Designee of the Chairman, ACC to the AZ Power Plant and Transmission Line Siting Committee**
  - **Participated in Case #109 through 127**

## **Other Solar-Related Experience**

- **Chairman, Solar Electricity Division, American Solar Energy Society, 1991 – 2004**
- **Member, Rating Methodology Committee, Solar Rating and Certification Corporation (SRCC), 1981 – 1984**
- **Member & Officer, SRCC Board of Directors, 1988-1991**
- **Member, Executive Committee, Interstate Solar Coordination Council, 1991-1992**
- **Member, Executive Committee, Interstate Renewable Energy Council, 1994-1995**
- **Member, National Photovoltaics for Utilities Steering Committee, 1994-1995**

## **Purpose of Testimony**

- **Establish Hearing Record for Commission Consideration of its Balancing Test**
- **Staff's Technical Assessment of the Solana Project**
  1. **Justification of Need**
  2. **Benefits of the Project**
  3. **System Reliability based on System Impact Studies**
  4. **Staff's Assessment and Conclusions**

**ACC Balance Test  
A.R.S. 40-360-07**

**Factors Considered:**

- **Adequacy**
- **Economics**
- **Reliability**
- **Environment**
- **Ecology**

# **Adequacy and Reliability**

**Reliability is comprised of two parts:**

**Adequacy – The ability of the electric systems to supply the aggregate electrical demand and energy requirements of their customers at all times, taking into account scheduled and reasonably expected unscheduled outages of system elements.**

**Security – The ability of the electric systems to withstand sudden disturbances such as electric short circuits or unanticipated loss of system elements.**

## **Project Description**

**On August 4, 2008, Arizona Solar One, L.L.C. filed an application with the Arizona Corporation Commission for a Certificate of Environmental Compatibility for the proposed construction of the Solana Generating Station and up to 21 miles of 230 kV transmission line and structures needed to connect the Solana Generating Station to the Panda substation.**

## **System Impact Studies**

### **Navigant Consulting Studies**

- **Abengoa Solar asked Navigant Consulting, Inc. to perform preliminary power flow and transient stability studies for Solana and for the Q31 project, a separate 102 MW photovoltaic project that will interconnect in the Gila Bend area.**
- **The studies looked at the Solana Project and the Q31 project connecting at either the Gila Bend 230 kV bus, or the Panda 230 kV bus, or at the Watermelon 500/230 kV substation.**
- **In certain situations, a second Gila Bend-Panda 230 kV line would need to be built.**

- Depending on where Solana and/or the Q31 project interconnect, anywhere from 11 to 58 miles of existing 69-kV lines would need upgrades.
- The power flow impacts on the system due to the Solana Project would vary depending on its interconnection point, on the status and interconnection point for the Q31 project, and on whether or not a second Gila Bend-Panda 230 kV line was built.
- If Solana was interconnected at Gila Bend, a new 230 kV switchyard would be required at Gila Bend.
- If a second Gila Bend-Panda line was built, additions would be required at the Panda 230 kV switchyard.

## **Arizona Public Service Company's System Impact Study**

- **On August 14, 2008, APS completed a Draft Report entitled "Gila Bend/Gila River Cluster Interconnection System Impact Study."**
- **The Short Circuit Study portion has not been completed.**
- **The Study did not address interconnection at the Panda 230 kV bus.**
- **The Study did address interconnection by both Project Q31 and Solana at the Gila Bend 230 kV bus.**
- **The study showed that, with both projects in service, there could be thermal overloads on various facilities and possible voltage collapse for selected N-1 contingencies.**

- **The transient stability analysis concluded that the WECC transmission system remained stable for all contingency simulations and there were no NERC/WECC criteria violations in the APS or WECC transmission system.**
- **The Study showed, with both projects in service, the need for upgrade requirements to include:**
  - **Replacement of two Gila Bend transformer banks.**
  - **Re-conductoring of various 69 kV lines.**
  - **Addition of a second Gila Bend-Panda 230 kV line.**

## **Need and Benefits of the Project**

- **Staff agrees with APS that the Solana Project is needed to meet the growing electricity demand of APS' customers as well as to meet the annual increases in Renewable Energy Standard & Tariff ("REST") Rule requirements for renewable generation.**
- **Staff believes that the Solana Project will provide clean, pollution-free electricity to APS' customers.**
- **Staff believes that the Solana Project, with its salt storage, will be the testing ground for the provision of "dispatchable" electricity during critical peak hours of electricity demand. The successful operation of Solana may establish a new economic paradigm for solar thermal electricity.**

## **Staff's Assessment and Conclusions**

**Based on the System Impact Studies completed by APS and Navigant Consulting, and Staff's assessment of those study results, Staff concludes:**

- That the Project is needed to meet the rapidly growing load in the Arizona Public Service Company's service territory.**
- That the Solana Project will help Arizona Public Service Company to meet its REST requirements.**
- That the project will provide safe and reliable electricity to the APS system as long as all required upgrades recommended in the System Impact Study are made.**

## **Staff's Recommendations**

**Staff's recommendations are based upon studies received by Staff as of October 6, 2008:**

**Staff recommends a new Condition:**

**“The Applicant shall file with Docket Control the final APS System Impact Study, to include the Short Circuit Study, within 10 days of receipt by the Applicant, showing the upgrades needed to provide safe, reliable electricity from the Project.”**

**Staff recommends an additional new Condition:**

**“The Applicant shall file with ACC Docket Control, confirmation of the completion of all required system upgrades at least thirty days before commercial operation of the plant and associated transmission lines.”**

**Staff recommends a third new Condition:**

**“The Applicant shall maintain appropriate distance between the new 230 kV line and other existing lines in the same corridor. This distance should be at a minimum equal to or greater than the height of the tallest tower in each span.”**

**Staff recommends approval of the Solana CEC, with the conditions recommended above.**

When recorded return to:

Jeffrey C. Zimmerman, Esq.  
Moyes Storey  
3003 N. Central Ave., Suite 1250  
Phoenix, Arizona 85012

226-128-1345974

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DECLARATION

(INCLUDING COVENANTS, RESTRICTIONS, AND ESTABLISHMENT OF EASEMENTS AND RIGHTS)

PALOMA RANCH INVESTMENTS, LLC, a Delaware limited liability company ("Paloma"), as the sole owner of all of the property described in Exhibits A, B and C hereto, and Gillespie Dam Investments, L.L.C., an Arizona limited liability company ("GDI"), as the sole owner of all of the property described in Exhibit D hereto, (the properties described in Exhibits A and B, collectively, the "Farm"; and the properties described in Exhibits C and D, as from time to time added to or deleted from, collectively, the "Irrigation District Property"), hereby declare that all of the Farm and all of the Irrigation District Property shall be subject to all of the covenants, conditions, restrictions, easements, rights and other provisions set forth in this Declaration ("Declaration").

1. PURPOSE AND DEFINITIONS.

1.1 Purpose. The purpose of this Declaration is to facilitate the efficient long-term operation and management of the Farm as Paloma Ranch is divided into separate parcels and sold to multiple Owners.

1.2 Definitions. For the purposes of this Declaration:

"Class A Land" means the property described in Exhibit A hereto. Class A Land also includes any Class B land that is annexed into the Irrigation District after the date this Declaration is recorded in Maricopa County, Arizona, but only from and after the date such annexed land first receives water deliveries from the Irrigation District.

"Class B Land" means the property described in Exhibit B hereto.

"Drainage Facilities" means all of the drainage ditches, drainage ways, drainage ponds, tailwater collection and pumpback facilities, electric and gas supply and other utility facilities related to any of same, and all other equipment, facilities, and appurtenances related to any of the foregoing from time to time owned, operated or otherwise controlled by the Irrigation District and used or useful for drainage purposes for the Farm.



"Irrigation District" means the Paloma Irrigation and Drainage District formed pursuant to Title 48 of the Arizona Revised Statutes to own and operate the Irrigation District Property. Until such time as the Irrigation District owns the Irrigation District Property, the term "Irrigation District" shall mean the owner of the Irrigation District Property.

"Owner" means the owner, from time to time, of the Farm or any portion thereof.

"Owner's Parcel" means all portions of the Farm owned by a particular Owner. The land included within an Owner's Parcel automatically changes from time to time if the Owner buys an additional portion of the Farm or sells a portion of the Owner's Parcel, and includes all land then owned by such Owner.

"Public Utilities" means public and private utilities and services of any kind, including without limitation overhead and underground electric, gas, water, sewer, telephone, cable television, and telecommunications facilities, and fire protection and trash pickup services, but excluding the Irrigation District and all of its facilities and services.

"Roads" means all roads and road-related improvements and facilities from time to time owned, maintained or otherwise controlled by the Irrigation District. The Irrigation District has the exclusive right under this Declaration to grant easements and licenses for Public Utilities in any Roads.

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"Water" means all water, from whatever source, from time to time in, on, or under the Farm or the Irrigation District Property or physically present in the Water Delivery Facilities.

"Water Delivery Facilities" means all of the diversion dams, canals, laterals, lift stations, ditches, pipelines, wells and wellsites, reservoirs, tailwater collection and pumpback facilities, electric and gas supply and other utility facilities related to any of same, and all other equipment, facilities, and appurtenances related to any of the foregoing, from time to time owned, operated or otherwise controlled by the Irrigation District and used or useful for diverting, producing, delivering or treating water to or for Farm non-domestic purposes.

Each capitalized term used in this Declaration shall have the meaning set forth herein for such term.

## 2. EASEMENTS ON FARM AND IRRIGATION DISTRICT PROPERTY.

2.1 Easements and Rights. There are hereby created for the benefit of, and use by, the following described persons all of the following permanent, nonexclusive easements and rights in, to, over, under, through and across the following described portions of the Farm and the Irrigation District Property for the following described purposes:

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(a) An easement in favor of the Irrigation District on portions of the Farm, which easement shall be appurtenant to the Irrigation District Property, for the existence, operation, maintenance, repair and replacement of any encroachments of any Drainage Facilities, Roads or Water Delivery Facilities existing on the Effective Date onto the Farm. The easement shall extend to the area covered by the encroachment and any additional adjacent areas reasonably needed in connection with the operation, maintenance, repair and replacement of any such facilities. Upon the request of any Owner affected by such an encroachment, the Irrigation District, at the Irrigation District's expense, shall prepare a legal description of the specific easement area and an appropriate grant of easement from the Owner to the Irrigation District, and upon the execution and recording of same it shall supersede the general easement provided in this paragraph.

(b) A blanket easement and right in favor of the Irrigation District over all of the Farm, which easement shall be appurtenant to the Irrigation District Property, for pedestrian and vehicular ingress, egress and access and the construction, installation, operation, maintenance, repair, replacement, use, and withdrawal and conveyance of Water from or through the existing Drainage Facilities, Roads and Water Delivery Facilities and such replacements or additions to any of same as may from time to time be reasonably required or desired by the Irrigation District in connection with the efficient and proper management or functioning of the Irrigation District or the Farm.

(c) An easement, which shall be appurtenant to each of the Owner's Parcels, on all of the Roads for pedestrian and vehicular <sup>Unofficial Document</sup> ingress, egress, and access to and from any Owner's Parcel. No Owner shall use this easement in any manner that interferes with the operation, maintenance, repair or replacement of any of the Water Delivery Facilities or Drainage Facilities or any other operations or facilities of the Irrigation District. The Irrigation District may restrict access to or on any Roads for safety or other reasons. Upon the request of any Owner and at no cost to the Irrigation District, the Irrigation District shall from time to time grant nonexclusive easements in the Roads as necessary or appropriate for the provision of one or more Public Utilities to such Owner's Parcel, upon terms and conditions reasonably satisfactory to the Irrigation District. The Irrigation District may require payment of a reasonable charge by the appropriate Public Utilities provider(s) for the easement. Only the owner of fee title to the land beneath a Road shall be entitled to dedicate the Road to the public, and nothing in this Declaration limits the right of such owner to do so at any time, subject to the easements and rights provided herein. In connection with any such dedication, the owner thereof may, but shall have no obligation to, improve any Road to standards acceptable to the governmental entity to which it is to be dedicated.

2.2 Narrowing of Blanket Easement. Upon the request of any Owner, the Irrigation District may agree that the easements and rights set forth in Section 2.1(b) may be confined to specific portions of the Owner's Parcel. The legal descriptions for the specific easements and rights shall be prepared by and at the expense of the Owner and the Owner shall reimburse the Irrigation District for any professional engineering, legal or other expenses of the Irrigation District incurred in connection with the review and approval of the request, regardless

of whether the Irrigation District approves the request in whole or in part. The form and substance of any instrument entered into pursuant to this Section shall be reasonably satisfactory to the Irrigation District. No narrowing of the easements and rights in favor of the Irrigation District shall be entered into unless the Irrigation District determines, in its sole discretion, that the narrowing will not interfere with any obligations or functions of the Irrigation District under this Declaration or applicable law.

2.3 Exercise of Certain Powers by Irrigation District. In connection with the construction and installation pursuant to Section 2.1(b) of any new or replacement Drainage Facilities, Roads or Water Delivery Facilities to be located on any Owner's Parcel, the Irrigation District shall take reasonable measures to prevent unreasonable damage to such Owner's Parcel as set forth in this Section. The work, and any facilities or equipment installed pursuant thereto, shall not unreasonably interfere with the Owner's use of the Owner's Parcel, including the reasonable and proper irrigation thereof. Except in an emergency, the Irrigation District shall give each affected Owner at least sixty (60) days advance written notice and opportunity to comment on the details of any such proposed work, and shall follow all reasonable requests of the Owner whose Owner's Parcel is affected with respect to the conduct of the work and the location and appearance of the facilities and equipment. Upon completion of the work, the Irrigation District shall promptly restore the surface of the Owner's Parcel to at least as good condition as it was in prior to the work, and shall indemnify the Owner against and reimburse the Owner for any injuries or damage arising from or related to the work, including without limitation any damage to growing crops; however, no payment to the Owner shall be required for the use of the Owner's Parcel. If the purpose of the work is to construct Water Delivery Facilities to provide Water to any Class B Land, the Owner of the Owner's Parcel to be irrigated by the work shall be responsible for paying all the costs associated with such work in advance or the Irrigation District may delegate to such Owner the responsibility to perform all such work subject to all the provisions of this Section. The Irrigation District shall endeavor not to unreasonably burden the property of an Owner as compared to the properties of other Owners and shall spread the burdens of new facilities constructed or installed pursuant to this Section and without payment for the use of the Owner's Parcel equitably among all Owners to the extent reasonably possible given the nature and purpose of the facilities.

2.4 No Obligation to Construct Drainage Facilities. Neither any Owner nor the Irrigation District shall have the obligation to any Owner to construct any new Drainage Facilities or upgrade any existing Drainage Facilities of any kind whatsoever, regardless of whether normal farming practices or stormwater flows on or across any Owner's Parcel or the Irrigation District Property result in waterlogging of soils or the surface discharge of excess water onto other properties.

### 3. WATER RIGHTS.

3.1 Water Rights. Each portion of the Farm and the Irrigation District Property has such water rights, if any, as are provided under applicable law.

3.2 Water Allocations. In times of physical shortage, the available water will be allocated on a nondiscriminatory pro rata basis to all Class A Land that has at any time received water from Irrigation District sources, subject to applicable law. In such a shortage, any Class A land that has never received water from Irrigation District sources, either before or after formation of the Irrigation District, will not have an allocation.

3.3 Special Irrigation District Rights. In addition to all other rights it has under applicable law or this Declaration, the Irrigation District is granted, and shall have, (i) the rights set forth herein with respect to regulating the drilling of wells and (ii) the right to divert, produce, withdraw, transport and deliver to the Farm all surface water, groundwater, effluent and other water used thereon.

#### 4. LIMITATIONS ON WELL DRILLING.

4.1 Limitation on Drilling of New Wells on Class A Land. The Irrigation District shall have the exclusive right to construct and pump all new wells on Class A Land as additional Water Delivery Facilities; however, any Owner of Class A Land may from time to time drill one or more wells thereon without the Irrigation District's consent, provided that each such well has a maximum capacity of 35 gallons per minute ("gpm") or less, no more than ten (10) acre feet of water is withdrawn from any such well in any calendar year, there is no more than one (1) such well drilled on each forty (40) acre parcel, and each well is used only for domestic, including stock watering, purposes. Notwithstanding the foregoing provisions of this Section, the Irrigation District may allow the drilling of new wells by an Owner of Class A Land for purposes that the Irrigation District determines it will not serve through the Water Delivery Facilities, provided that the Irrigation District determines that the drilling and use of such wells will not interfere with any of the functions or obligations of the Irrigation District and gives its prior written consent as to the location and purposes of use of water from such wells. The Irrigation District may also allow the drilling of wells by an Owner of Class A Land to provide a supplemental water supply for such land in the event of drought or other shortage. The drilling and use of any such new wells shall be subject to any well spacing, monitoring or other reasonable requirements and conditions determined by the Irrigation District, including a requirement that the Irrigation District shall be entitled to use any such well under conditions agreed to by the Owner and the Irrigation District. Except as specifically provided herein, no well shall be drilled on Class A Land without the Irrigation District's prior written consent, and no Owner shall drill or install a new or replacement well in violation of this Section.

4.2 Limited Restrictions on Class B Lands. An Owner of Class B Land may drill wells on such Owner's Class B Land, but only after obtaining the Irrigation District's prior written consent as to the location, depth, and spacing of such wells from other existing or planned wells, the location and purposes of use of water from such wells, and after complying with any other reasonable requirements and conditions determined by the Irrigation District; however, any Owner of Class B Land may from time to time drill one or more wells thereon without the Irrigation District's consent, provided that each such well has a maximum capacity of 35 gpm or less, no more than ten (10) acre feet of water is withdrawn from any such well in any

calendar year, there is no more than one (1) such well drilled on each forty (40) acre parcel, and each well is used only for domestic, including stock watering, purposes. The Irrigation District's consent shall not be unreasonably withheld or delayed. No Owner shall drill or install a new or replacement well in violation of this Section.

5. LAWS, PERMITS AND GILA RIVER ADJUDICATION.

Each Owner shall be solely responsible for compliance with all laws, permits, rules, court decrees, other governmental requirements, and agreements applicable to such Owner or such Owner's Parcel from time to time. Each Owner shall cooperate with the other Owners and the Irrigation District in connection with the water rights claims of the Owners in the Gila River Adjudication. The surface water rights of the Farm have not been finally adjudicated; therefore, each Owner shall cooperate with the Irrigation District, at the Irrigation District's request, in connection with any severance and transfer of surface water rights that may from time to time be necessary or appropriate to permit the efficient distribution and use of water on the Farm. None of the Owners or the Irrigation District shall be required under this Declaration to take any action in violation of applicable law.

6. COVENANT RUNNING WITH THE LAND / THIRD PARTY BENEFICIARY.

6.1 Covenant Running with the Land. This Declaration and all provisions hereof shall constitute covenants running with the land and shall be binding upon and inure to the benefit of the Farm and the Irrigation District Property and all persons from time to time having any interest in all or any portion of the Farm or the Irrigation District Property, however such interest may be acquired. The provisions of this Declaration shall be the personal obligation of each Owner as well as binding upon the Farm itself, and by accepting an interest in the Farm each Owner or holder of any other interest agrees to be bound by all of the provisions hereof.

6.2 Irrigation District as Third Party Beneficiary. The Irrigation District is hereby made an express third party beneficiary of each of the provisions of this Declaration that grants the Irrigation District a right or imposes a duty on the Irrigation District. The Irrigation District shall not have any of the rights and duties granted to or imposed on the Irrigation District under this Declaration, however, unless and until the Irrigation District executes and records in the records of Maricopa County, Arizona, concurrently with the recording of the conveyance of the initial Irrigation District Property to the Irrigation District, an instrument referring to this Declaration and stating that the Irrigation District irrevocably accepts the benefits and burdens hereof. Upon such recordation, the Irrigation District has all of the rights and duties set forth herein for the Irrigation District.

7. ENFORCEMENT.

Any provision of this Declaration that imposes any obligation or restriction upon an Owner or an Owner's Parcel may be enforced by any other Owner or the Irrigation District. Any provision of this Declaration relating to any Drainage Facilities, Roads, Water Delivery

Facilities, any other Irrigation District Property or the Irrigation District may be enforced by the Irrigation District. In the event of a default by any Owner with respect to any provision of this Declaration, each other Owner and the Irrigation District shall have all rights and remedies provided by this Declaration and applicable law, including without limitation the right to seek damages, injunctive relief or specific performance, and all such rights and remedies are cumulative and not exclusive.

8. LIMITATIONS ON ASSIGNMENT OR SALE.

No Owner shall assign its rights under this Declaration, in whole or in part, apart from the Owner's Parcel to which such rights are related. Any attempted assignment in violation of this Section shall be null and void and of no effect, and shall entitle the Irrigation District to terminate Water deliveries to the violating Owner and any purported transferee without any liability or responsibility to such Owner or transferee; provided, however, that the Irrigation District shall resume Water deliveries to the violating Owner after such Owner (or such Owner's lender holding a valid lien interest in such Owner's Parcel) provides assurances satisfactory to the Irrigation District that any violation of this Declaration that entitles the Irrigation District to terminate Water deliveries to such Owner's Parcel has been remedied and reimburses the Irrigation District for all expenses, damages, attorneys fees and other costs incurred by the District by reason of the violation or the termination or resumption of Water deliveries. Notwithstanding the foregoing, the consensual or nonconsensual sale or other transfer of all or any portion of the Owner's Parcel shall constitute a permitted assignment of the Owner's rights and obligations under this Declaration to the extent they relate to the property sold or otherwise transferred. In the event of such a sale or other transfer, the buyer / transferee has all of the rights and obligations provided by this Declaration with respect to the property acquired by such buyer / transferee from and after the transfer, and the transferring Owner remains responsible for any defaults of such Owner with respect to such property that occurred prior to the transfer but has no other ongoing obligations with respect to the property transferred. The transferring Owner shall notify the Irrigation District no later than the date of the transfer of the mailing address, telephone and facsimile numbers of the buyer / transferee, the legal description of the property sold or otherwise transferred, and such other reasonable information as the Irrigation District may request. A severance and transfer of water rights requested or approved by the Irrigation District pursuant to Section 5 hereof shall not be a violation of this Section.

9. TERM.

9.1 Initial Term. The term of this Declaration shall commence as of the date of its recording in the public records of Maricopa County, Arizona (the "Effective Date"), and shall expire upon the fiftieth anniversary of the Effective Date, unless the term is extended or shortened pursuant to the provisions hereof.

9.2 Automatic Extensions of Term. Upon the expiration of the initial fifty (50) year term, this Declaration shall be automatically renewed for successive additional terms of ten (10) years each until terminated pursuant to the provisions hereof.

9.3 Termination. This Declaration may be terminated at any time by an instrument executed by the Owners owning 100% of the total Class A Land area and by the Irrigation District. If at the time of the termination Paloma owns any portion of the Farm or the Irrigation District Property or owns or has any direct or contingent liability or responsibility under any lien on any portion of the Farm or the Irrigation District Property, then the amendment is void unless Paloma consents thereto in writing. Easements sufficient for the use of any Owners who are actually reliant upon any easements created or provided under this Declaration for the proper and efficient use of their respective Owner's Parcels shall be provided in connection with and as a condition of such termination. This Declaration shall not be terminated except in the manner specifically allowed herein, and any purported termination in violation of the provisions of this Section or Subsection 10.4 shall be void and of no effect. The termination instrument shall be recorded in the public records of Maricopa County, Arizona.

## 10. AMENDMENTS.

10.1 Amendments by Owners. This Declaration may be amended from time to time and at any time by an instrument executed by the Owners owning at least 75% of the total Class A Land area and by the Irrigation District. If at the time of the amendment Paloma owns any portion of the Farm or the Irrigation District Property or owns or has any direct or contingent liability or responsibility under any lien on any portion of the Farm or the Irrigation District Property, then the amendment is void unless Paloma consents thereto in writing; and provided further, that no such amendment shall materially interfere with the use of any Owner's Parcels for farming purposes nor unreasonably burden Class B Owners.

10.2 Amendments by Paloma. Paloma reserves the right to make, from time to time and at any time, any amendments it desires to this Declaration until such time as at least 75% of the Farm by area has been conveyed to other Owners. No such amendment shall materially and adversely affect any Owners, nor shall it affect the Irrigation District in any way without the Irrigation District's prior written consent. Prior to the tenth anniversary of the Effective Date, one or more annexation amendments by Paloma may add to the Farm all or any property owned by Paloma as of the Effective Date and located adjacent to or within five (5) miles of any portion of the Farm or the Irrigation District Property. The amendment shall specify, and shall control with respect to, the classification of the annexed property, but such classification in no way binds the Irrigation District with respect to whether the annexed property has any right or priority to Water.

10.3 General Amendment Provisions. Each amendment shall apply to the entire Farm unless the amendment instrument specifies that it applies only to a certain portion of the Farm as described therein. An amendment may make this Declaration more or less restrictive than it is prior to the amendment, and it may add provisions with respect to subject matter not

covered by this Declaration prior to the amendment. No amendment shall unfairly discriminate against any Owner or Owner's Parcel. This Declaration shall not be amended except in the manner specifically allowed herein, and any purported amendment in violation of the provisions of this Section shall be void and of no effect. Each amendment instrument shall be recorded in the public records of Maricopa County, Arizona.

10.4 Further Restriction on Amendment or Termination of Declaration and Dissolution of Irrigation District. No Owner shall take any action in connection with the amendment or termination of this Declaration or the dissolution of the Irrigation District that shall have the effect of impairing the access of any Class A Land to water from the Irrigation District Property on a fair and nondiscriminatory basis, including without limitation as to cost and amount. Easements in and to the Irrigation District Property and such other properties as may be necessary for each Owner of Class A Land to obtain water on a continuing, reliable and nondiscriminatory (including without limitation as to price and amount) basis for the proper and efficient use of their respective Owner's Parcels after the amendment or termination of this Declaration or the dissolution of the Irrigation District must be provided by the Owners approving such amendment, termination or dissolution in connection with and as a condition of any such amendment, termination or dissolution.

11. NO WARRANTIES; LIMITATION ON LIABILITY.

11.1 No Warranties. Neither Paloma nor GDI makes any representation or warranty of any kind or nature whatsoever concerning any Owner's Parcel, the Farm, the Irrigation District Property or their respective <sup>Unofficial Document</sup> condition, the quality or quantity of Water available to any Owner under this Declaration or from the Irrigation District or the operation, maintenance, repair and replacement of the Drainage Facilities, Roads, Water Delivery Facilities or other Irrigation District Property. Each Owner agrees to accept its Owner's Parcel on an "as is" basis, and all such Water from the Irrigation District on a "when available" basis, subject to all applicable laws and any conditions or limitations on service imposed by the Irrigation District or the laws governing the Irrigation District. Each Owner acknowledges that the Water is likely composed, in part, of sewage effluent, river flow, storm runoff, tailwater and groundwater and may be suitable only for limited agricultural purposes. Neither Paloma, GDI nor the Irrigation District shall have any responsibility or liability of any kind or nature whatsoever for the quantity or quality of water available for delivery, or delivered, by the Irrigation District; however, the Irrigation District shall be responsible for compliance with applicable laws governing water deliveries by it to the Owners. Each Owner acknowledges that the Irrigation District may shut off water deliveries to any Owner's Parcel, or portion thereof, from time to time, for the purposes of, without limitation, repairs to, or the maintenance or improvement of, the Water Delivery Facilities without any liability whatsoever to any Owner. If there is at any time a material and adverse condition existing or discovered or created on the Farm, or with respect to the operation, maintenance, repair and replacement of the Drainage Facilities, Roads or Water Delivery Facilities, or with respect to the quantity or quality of Water available from the Irrigation District for any reason whatsoever, the sole remedy of the then existing Owners is to resolve such conditions in cooperation with each other and the Irrigation District, and Paloma and GDI shall

have no liability whatsoever therefor; provided, however, that if Paloma or GDI is an Owner at the time such condition is remedied, then either of such entities that is an Owner shall be responsible for a proportionate share of the remedy on the same fair and equitable basis as all other Owners.

11.2 Limitation on Liability. Neither Paloma nor the Irrigation District shall be liable to any Owner for any act or failure to act, for any decision made by Paloma or the Irrigation District, or for any damages, injuries, losses, costs or expenses of any kind or nature whatsoever arising from or related to any of the obligations or rights of Paloma or the Irrigation District under this Declaration, and each Owner hereby waives any and all claims or causes of action against each of Paloma and the Irrigation District for all of same; provided, however, that nothing limits the liability of each such party for its own gross negligence or intentional misconduct. For purposes of this Section, "Irrigation District" and "Paloma" include those entities and all of their respective directors, officers, members, employees, agents, contractors and representatives.

## 12. DISPUTE RESOLUTION.

12.1 Amicable Resolution. The parties shall attempt to settle any dispute related to this Declaration between them amicably. To this end, senior management personnel for all parties shall consult and negotiate to try in good faith to reach a resolution. However, nothing in this clause shall preclude any party from commencing arbitration if said negotiations do not reach a resolution of the dispute within 60 days after written notice that the negotiations have commenced. The parties agree that any applicable statute of limitations will be tolled and extended during this period of attempted amicable resolution.

12.2 Mediation. If a dispute, controversy, or claim arises out of or relates to this Declaration or the breach, termination or invalidity hereof, and if the dispute cannot be settled through amicable resolution, the parties agree to try in good faith to settle the dispute by mediation before resorting to binding arbitration. The party seeking to have the dispute resolved shall propose at least five neutral mediators, each of whom shall be a lawyer experienced in mediation and licensed to practice by the State of Arizona for at least 15 years. The other party shall select the mediator from the proposed list. The parties shall split the cost of the mediator equally. The parties agree that no documents or testimony prepared for the mediation will thereby be discoverable in any subsequent arbitration or litigation between the parties. The parties further agree that any applicable statute of limitations will be tolled and extended during this period of mediation. The parties agree that nothing in this clause shall preclude any party from commencing arbitration if said mediation does not reach a resolution of the dispute within sixty (60) days after notice that the mediation period has been commenced.

12.3 Arbitration. Any dispute, controversy, or claim arising out of or relating to this Declaration, or the breach, termination or invalidity hereof, shall be finally resolved by binding arbitration administered by the American Arbitration Association pursuant to the Commercial Arbitration Rules as in force at the time the arbitration is commenced, except as

modified by the specific provisions of this Section. The party requesting arbitration shall deliver a written notice of request for arbitration (the "Request for Arbitration") to the other party(ies) in accordance with the notice provisions in this Declaration. The Request for Arbitration shall include a brief description of the basis of the dispute, the maximum monetary judgment (excluding attorneys' fees, arbitration fees and other professional fees and pre-judgment and post-judgment interest) requested, if applicable, and a list of six (6) arbitrators satisfying the requirements set forth herein and acceptable to such party.

12.4 Parties to Arbitration. The parties to any arbitration proceeding shall include the parties to the dispute. In addition, the Irrigation District shall have the right, but no obligation, to join in any arbitration relating to the interpretation of this Declaration.

12.5 Forum Selection. The parties agree that the courts located in the State of Arizona shall have exclusive jurisdiction over an action brought to enforce the rights and obligations created in or arising from this Section to arbitrate, and each of the parties hereto irrevocably submits to the jurisdiction of said courts. Notwithstanding the above, application may be made by a party to any court of competent jurisdiction wherever situated for enforcement of any judgment and the entry of whatever orders are necessary for such enforcement.

12.6 Appointment of Arbitrator(s). If the relief requested in the Request for Arbitration is a monetary judgment of \$500,000 or less (and the aggregate relief of all parties joined in the arbitration will be \$500,000 or less), the matter shall be resolved by one (1) arbitrator, provided that such arbitrator may not award damages (whether actual, foreseeable, speculative, punitive or otherwise) exceeding \$500,000 to any party, exclusive of attorneys' fees, arbitration fees and other professional fees and pre-judgment and post-judgment interest. If the relief requested in the Request for Arbitration is a monetary judgment of more than \$500,000 (or the aggregate relief of all parties joined in the arbitration could exceed \$500,000) or non-monetary relief is requested, the matter shall be resolved by a panel of three (3) arbitrators. Unless the parties are able to mutually agree upon an arbitrator or panel of three (3) arbitrators within 30 days of the filing of a Request for Arbitration, either party may request that the American Arbitration Association appoint the arbitrator(s) from the American Arbitration Association's Arizona Large, Complex Claims panel, or if needed, because of conflicts or the inability to serve under the schedule imposed by this Agreement, from the Arizona Commercial Arbitration panel of the American Arbitration Association. Each arbitrator selected shall have at least 10 years experience in the purchase, sale, lease or management of agricultural real estate.

12.7 Impartiality. It is the intent of the parties to avoid the appearance of impropriety due to bias or partiality on the part of any arbitrator(s). Prior to his or her formal appointment, the arbitrator(s) shall disclose to the parties any financial, fiduciary, kinship, social, professional, or other relationship between that arbitrator and any party or its counsel, or between that arbitrator and any individual or entity with any financial, fiduciary, kinship or other relationship with any party. "Appearance of impropriety" shall mean such relationship or behavior as would cause a reasonable person to believe that bias or partiality on the part of the

arbitrator(s) may exist in favor of, or against, any party. The arbitrator(s) shall sign the American Arbitration Association's Code of Ethics for Neutral Arbitrators as a condition of appointment.

12.8 Governing Substantive Law. The arbitrator(s) shall determine the rights and obligations of the parties according to the substantive laws of the State of Arizona (excluding conflicts of laws principles) as though acting as a court of the State of Arizona. The parties expressly prohibit the arbitrator(s) from reaching decisions as amiable compositeur.

12.9 Written Opinion. The arbitration award shall be based on and accompanied by a signed, written opinion containing findings of fact and conclusions of law.

12.10 Governing Arbitration Law. The law applicable to the validity of the arbitration clause, the conduct of the arbitration, including any resort to a court for provisional remedies, the enforcement of any award and any other question of arbitration law or procedure shall be the Federal Arbitration Act.

12.11 Provisional Relief. The parties expressly agree that prior to the appointment of the arbitrator(s), nothing in this Declaration shall prevent the parties from applying to a court that would otherwise have jurisdiction under this Declaration for provisional or interim measures, including temporary restraining orders. After the arbitration panel is empaneled, it shall have sole jurisdiction to hear such applications, except that the parties agree that any measures ordered by the arbitrator(s) may be immediately and specifically enforced by a court otherwise having jurisdiction over the parties.

12.12 Limitations and Laches. The arbitrator(s) are directed to consider any defense that all or part of the claim is not timely by reason of laches or statute of limitations as a preliminary issue and to render a signed, written award determining the merits of such claim before considering the substantive merits of the arbitration claim, unless the arbitrator(s) determine that the merits of such claim of laches or statute of limitations are so intertwined with the substantive merits of the arbitration claim as to make impractical the determination of the claim of laches or limitations as a preliminary matter.

12.13 Preliminary Issues of Law. The arbitrator(s) shall hear and determine any preliminary issue of law asserted by a party to be dispositive of any claim, in whole or part, in the manner of a court hearing a motion to dismiss for failure to state a claim or for summary judgment, pursuant to such terms and procedures as the arbitrator(s) deem appropriate.

12.14 Time of Proceedings. It is the intent of the parties that, barring extraordinary circumstances, any arbitration shall be concluded within 9 months of the date the Notice of Arbitration is received by the arbitrator(s). Unless the parties otherwise agree, once commenced, hearings shall be held four days a week, three weeks a month, with each hearing day to begin at 9:30 A.M. and to conclude at 4:45 P.M. The parties may upon agreement extend these time limits, or the arbitrator(s) may extend them if they determine that the interests of justice otherwise require. The arbitrator(s) shall use their best efforts to issue the final award or awards

within a period of 30 days after closure of the proceedings. However, failure to do so shall not be a basis for challenging the award.

12.15 Framing of Issues. The Notice of Arbitration shall contain a statement of any dispute in sufficient detail to apprise the other party of (i) the nature and scope of each dispute, (ii) the initiating party's position and (iii) the relief sought. Each other party shall, within 60 days after receipt of the Notice of Arbitration, or within such other period of time as the parties may agree, deliver its Answer to the initiating party, which shall contain its statement of the dispute, its positions and any counterclaims that it seeks. The initiating party shall then have 60 days, or such other period of time as the parties may agree upon, to deliver its Reply to any counterclaim raised in the Answer. No amendments to the Notice of Arbitration, Answer or Reply shall be permitted without the consent of the other parties or of the arbitrator(s).

12.16 Confidentiality. The parties and arbitrator(s) shall treat all aspects of the arbitration proceedings, including without limitation discovery, testimony and other evidence, briefs and the award, as strictly confidential, except for any findings of fact and conclusions of law relating to the interpretation of this Declaration and except as otherwise required by applicable law.

12.17 Place of Arbitration. The place of arbitration shall be Phoenix, Arizona and all proceedings shall be conducted in the English language.

12.18 Discovery. The parties agree that discovery shall be limited and shall be handled expeditiously. Discovery procedures available in litigation before the courts shall not apply in an arbitration conducted pursuant to this agreement. However, each party shall produce relevant and non-privileged documents or copies thereof requested by the other parties within the time limits set and to the extent required by order of the arbitrator(s). Additionally, each party shall be entitled to take the deposition of one representative of each other party. All disputes regarding discovery shall be promptly resolved by the arbitrator(s).

12.19 Affidavits. The parties may submit evidence in the form of sworn affidavits, provided that upon the request of another party, the party submitting the affidavit will make the affiant available for cross-examination. If the affiant is not made available for cross-examination, the affidavit shall not be considered as evidence by the arbitrator(s) except as to matters relating to authentication of documents or signatures and other such non-material facts and except that if the arbitrator(s) find that the affiant is beyond the control of the party offering the affidavit, the affiant is unavailable and the interests of justice require consideration of the evidence submitted by the affiant.

12.20 Direct Testimony by Affidavit. It is agreed that the direct testimony of an expert witness may be submitted by sworn affidavit, provided that such affiant be subject to cross-examination.

12.21 Evidence. Strict rules of evidence shall not apply in an arbitration conducted pursuant to this Declaration. The parties may offer such evidence as they desire and the arbitrator(s) shall accept such evidence as the arbitrator(s) deem relevant to the issues and accord it such weight as the arbitrator(s) deem appropriate.

12.22 Punitive Damages Prohibited. The parties hereby waive any claim to any damages in the nature of punitive, exemplary, or statutory damages in excess of compensatory damages, incidental or consequential damages, or any form of damages in excess of compensatory damages, and the arbitrator(s) are specifically divested of any power to award any damages in the nature of punitive, exemplary, or statutory damages in excess of compensatory damages, incidental or consequential damages, or any form of damages in excess of compensatory damages.

12.23 Costs. The party prevailing on substantially all of its claims shall be entitled to recover its costs, including the arbitrator(s)' fees, and its attorneys' fees for the arbitration proceedings, as well as for any ancillary proceeding, including a proceeding to compel or enjoin arbitration, to request interim measures or to confirm or set aside an award.

13. ACKNOWLEDGMENT OF JENKINS AGREEMENT; INDEMNIFICATION BY OWNERS.

13.1 Each Owner acknowledges that such Owner is aware of that certain Water and Water Rights Agreement recorded December 28, 1989, in Document No. 89 596373 in the official records of Maricopa County, Arizona, <sup>Unofficial Document</sup> a copy of which is attached as Exhibit E hereto (the "Jenkins Agreement") and prior litigation about the Jenkins Agreement. Copies of the Maricopa County Superior Court Judgment dated May 30, 1997, in Case No. CV 93-08075 and the Arizona Court of Appeals Decision reported at 194 Ariz. 133, 978 P.2<sup>nd</sup> 110 (Ariz. 1998) with respect to the Jenkins Agreement are attached as Exhibit F hereto. To the extent that the Jenkins Agreement is binding on any Owner or its Owner's Parcel, Owner accepts and assumes all responsibility under the Jenkins Agreement.

13.2 Each Owner agrees to indemnify, hold harmless and defend the Irrigation District and each other Owner and their respective officers, directors, members, agents, employees, representatives, successors and assigns from and against any and all claims, losses, damages, penalties, taxes and other costs and expenses of any kind whatsoever arising out of or related, directly or indirectly, to any of the following: (i) any breach of this Declaration or other failure by Owner to fulfill any obligation or responsibility of Owner under this Declaration; or (ii) Owner's property; or (iii) any act or failure to act by Owner which results in a claim that any payment is owed to any party pursuant to the Jenkins Agreement (and with respect to any claim related in any way to this subsection 13.2(iii), the indemnifying Owner shall be solely responsible for making any payment required under the Jenkins Agreement to the appropriate persons). An Owner's indemnity obligations with respect to a party claiming indemnification shall not extend to any matter to the extent caused by the active negligence or willful misconduct of the party claiming indemnification.

14. GENERAL.

Except to the extent inconsistent with the express language of the foregoing provisions of this Declaration, the following provisions shall govern the interpretation of this Declaration.

A. Notices. Any notice to any party under this Declaration shall be in writing and shall be effective on the earlier of (i) the date when delivered in care of the party's address, or (ii) the date which is three (3) days after mailing (postage prepaid) by certified or registered mail, return receipt requested, to the party's address, or (iii) the date on which sent by facsimile to the party's address with electronic confirmation of receipt thereof and with a copy sent on the same date to the party utilizing one of the other methods of notice specified in this section. Each Owner shall designate to the Irrigation District their address (including telephone and facsimile numbers) for notices and may change their address for notices at any time by giving notice in writing in accordance with the provisions of this paragraph. The Irrigation District shall make all current address information available to each other Owner. If an Owner does not designate their address, then any party may use any address for such Owner believed in good faith by such party to be an address of such Owner.

B. Severability; Further Negotiations. If any provision of this Declaration is declared void or unenforceable, such provision shall be deemed modified to the minimum extent necessary to make it enforceable, the Declaration shall otherwise remain in full force and effect, and Paloma and GDI shall have no liability or responsibility of any kind or nature whatsoever therefor. In the event applicable laws, including any future statutes or rules, prevent or interfere with the consummation of the transactions contemplated hereby in the manner so contemplated, or any provision of this Declaration is declared void or unenforceable, all Owners shall promptly negotiate in good faith to the end that they will agree upon an appropriate amendment of this Declaration to comply with applicable laws, in a manner that preserves and implements to the maximum extent possible the economic terms and conditions and the purposes of this Declaration.

C. Additional Acts and Documents. Each party hereto agrees to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of this Declaration.

D. Authority. Each of the Owners represents and warrants to each other party hereto that each instrument delivered hereunder by such Owner, when so delivered, will have been duly authorized by all necessary action, constitutes and will constitute a binding obligation of each such party, and has been duly and validly executed on behalf of such party.

E. Attorneys' Fees. In the event suit is brought (or arbitration instituted) or an attorney is retained by any party to this Declaration to enforce the terms of this Declaration or

to collect any monies due hereunder, or to collect money damages for breach hereof, the substantially prevailing party shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, arbitration and court costs, costs of investigation and other related expenses reasonably incurred in connection therewith.

F. Successors and Assigns. This Declaration shall be binding upon and inure to the benefit of the Owners, the Irrigation District, GDI and their respective successors in interest and permitted assigns.

G. Time. Time is of the essence of this Declaration and each and every provision hereof.

H. Governing Law. This Declaration shall be deemed to be made under, and shall be construed in accordance with and shall be governed by, the laws of the State of Arizona applicable to contracts executed within and wholly performable within such State, and (subject to any provision in this Declaration providing for mandatory mediation or arbitration) suit to enforce any provision of this Declaration or to obtain any remedy with respect hereto may be brought in Superior Court, Maricopa County, Arizona, and for this purpose each Owner and the Irrigation District hereby expressly and irrevocably consents to the jurisdiction of said court.

I. Remedies. Except as otherwise specifically provided herein, the Irrigation District and each Owner shall have all rights and remedies permitted by this Declaration or applicable law for a breach by any Owner of any provisions of this Declaration, including without limitation specific performance and/or injunctive relief.

J. Nonperpetuities Clause. Notwithstanding any other term or provision of this Declaration, if any right or interest created by or in connection with this Declaration would be invalid or unenforceable if not subject to the terms contained in this sentence, such interest or right shall terminate twenty (20) years after the date of death of the last to die of the following persons: all attorneys employed by Moyes Storey Ltd. at the time of creation of such right or interest and the children of such attorneys living at the time of creation of such right or interest.

K. No Joint Venture. No Owner shall be deemed to be a partner, joint venturer or agent with or of any other Owner or otherwise liable for the acts or omissions of any other Owner by reason of being an Owner under this Declaration.

L. Captions. Captions and paragraph headings used herein are for convenience only and are not a part of this Declaration and shall not be deemed to limit or alter any provisions hereof and shall not be deemed relevant in construing this Declaration.

M. Exhibits. Each Exhibit referred to in this Declaration is a part of this Declaration and is incorporated herein by this reference as if fully set forth herein.

EXECUTED as of the Effective Date above.

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PALOMA RANCH INVESTMENTS, LLC,  
a Delaware limited liability company

By: Colony PR, LLC, a Delaware limited  
liability company, its  
Manager/Member

By: [Signature]  
Printed Name: Ed Daulton  
Title: Vice President

Unofficial Document

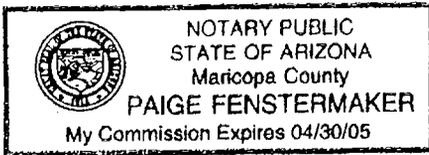




STATE OF ARIZONA            )  
  ) ss.  
County of Maricopa         )

On this, the 10<sup>th</sup> day of September, 2001, before me, the undersigned Notary Public, personally appeared Gary T. Smith, the member of Gillespie Dam Investments, L.L.C., an Arizona limited liability company, and acknowledged to me that he, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the company by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



*Paige Fenstermaker*  
\_\_\_\_\_  
Notary Public

My Commission Expires:

4/30/05

Unofficial Document

## CONSENT OF LIENHOLDER

Wells Fargo Bank, National Association ("Bank"), as the holder of the beneficial interest under that Deed of Trust, Assignment of Rents and Leases, and Financing Statement granted by Paloma, recorded on March 31, 1999, in Document No. 99-0310653, records of Maricopa County, Arizona, as thereafter amended (the "Deed of Trust"), hereby approves the foregoing Declaration and the recording of the Declaration on the subject property and agrees, subject to the provisions hereof, that the Declaration shall not be disturbed in the event that the Deed of Trust is foreclosed upon or otherwise enforced; provided, however, that:

(a) This Consent shall in no way operate to subordinate the lien of the Deed of Trust, as may hereafter be amended, to any lien rights arising under the Declaration.

(b) This Consent shall in no way operate to release from the Deed of Trust lien any of the property described in the Declaration.

(c) Paloma has collaterally assigned to Bank Paloma's rights under the Declaration. Bank's right to perform under the Declaration is solely for the purpose of enabling Bank, at its option, to protect its interest in the project described in the Declaration and no provisions of the Declaration shall be construed to create any personal liability or obligation on the part of Bank to pay or perform any obligations under the Declaration which accrued prior to the time Bank shall have obtained title to the relevant portion of the Property.

(d) Paloma's rights that are considered to have been collaterally assigned and encumbered pursuant to granting clause (g) on page 2 of the Deed of Trust include, without limitation, Paloma's rights as Owner to vote to elect and remove directors and officers of the Irrigation District, all other voting rights and powers of Owners in all Irrigation District matters, and any and all rights of Paloma to amend or terminate the Declaration as described in Sections 9.3, 10.1 and 10.2 thereof; the provisions of this subparagraph (d) shall be considered to clarify and specify the rights previously assigned to Lender pursuant to the Deed of Trust, and shall not be considered to create an additional lien instrument upon the Property.

(e) Bank shall have the right to consent to the construction or installation of any Drainage Facilities, Water Delivery Facilities or Roads that may from time to time be constructed by an Owner or the Irrigation District on property then remaining subject to the lien of the Deed of Trust.

(f) No provisions of Sections 2.4 and 11.2 or any other provision of the

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Declaration shall operate to relieve Paloma from liability to Bank if Paloma fails to comply with its obligations under the Deed of Trust and other loan documents secured thereby.

(g) In addition to and not in limitation of any other rights provided to Bank under the Deed of Trust and other loan documents, Bank shall have all the rights of a mortgagee or first mortgagee under the Declaration.

DATED this 28th day of August, 2001.

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: *John C. Smith*

STATE OF California )  
 ) ss.  
County of Kern )

On this, the 30 day of Aug., 2001, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, Unofficial Document of Wells Fargo Bank, National Association, a(n) \_\_\_\_\_, and acknowledged to me that he, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the company by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

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**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

}ss.

County of Kern

On 8-30-01, before me, Suzanne Manning, Notary Public,

personally appeared John C. Smith

personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed within the instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her /their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Unofficial Document  
WITNESS my hand and official seal.

*Suzanne Manning*



**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the Document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title of Type of Document:

\_\_\_\_\_

Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

EXHIBIT A

## CLASS "A" CORE FARMLAND

A parcel of land situated on portions of the following Townships: Township 5 South, Ranges 5, 6 and 7 West, Township 6 South, Ranges 5, 6, and 7 West, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

TOWNSHIP 5 SOUTH, RANGE 5 WEST

The West half of Section 31.

TOWNSHIP 5 SOUTH, RANGE 6 WEST

All of Sections 19, 20, 21, 28, 29, 30, 31, 32, 33, 34 and 35, the Southwest quarter and the West half of the Southeast quarter of Section 26, the South half of the South half and the Northwest quarter of the Southwest quarter of Section 36, and the South half of Section 27.

TOWNSHIP 5 SOUTH, RANGE 7 WEST

All of Sections 23, 24, 25, 26, 35, 36, the <sup>Unofficial Document</sup> South half of the Southwest quarter and the Southeast quarter of Section 28, except that portion of said Section 28 that lies Easterly of Painted Rock Road, the Southeast quarter of the Southeast quarter of Section 32, the South half and the Southeast quarter of the Northeast quarter of Section 34, all of Section 33 and that portion of said Section 28 described herein, except that parcel described as the Bull Durham Wash described as follows;

That portion of Sections 3, 10, 15, 22, 27, 28, 33 and 34, said portion of be 1,320.00 feet in width, lying 660.00 feet on each side of the following described centerline which covers the main course of the Bull Durham Wash across said Sections:

COMMENCING at the Northwest corner of said Section 34;

Thence along the West line of said Section 34, South 00°06'20" East a distance of 2,751.35 feet;

Thence departing said West line, North 71°16'08" West, a distance of 660.00 feet to a point on the centerline of said parcel.

Thence South 18°43'52" West, a distance of 2391.37 feet to the POINT OF BEGINNING.

Thence North 18°43'52" East, a distance of 7216.42 feet;

Thence North 07°26'55" East, a distance of 9,226.30 feet;

Thence North 14°02'50" West, a distance of 5,474.40 feet;

Thence North 42°37'40" East, a distance of 1,847.49 feet;

Thence North 14°31'02" East, a distance of 8,945.07 feet to a point on the North line of said Section 3, said point being the POINT OF TERMINATION.

The calculated Northeast corner of said Section 3 bears North 89°22'42" East, a distance of 800.00 feet from said POINT OF TERMINATION.

#### TOWNSHIP 6 SOUTH, RANGE 5 WEST

That portion of Sections 3, 4, and 5, lying South of the South right-of-way line of the Southern Pacific Railroad and North of the North right-of-way line of the Gila Bend Canal, that portion of Section 2 lying South of the South right-of-way lines of the Southern Pacific Railroad and Interstate Highway 8, and west of the Westerly right-of-way line of the Ajo Highway, and that portion of Section 6 lying North of the North right-of-way line of Interstate Highway 8, and West of the West right-of-way line of Citrus Valley Road.

#### TOWNSHIP 6 SOUTH, RANGE 6 WEST

All of Sections 3, 4, 5 and 6, that portion of Sections 1, 2, 7, 8, 9 and 10 lying North of the North right-of-way line of Interstate Highway 8, that portion of Section 12 lying South of the South right-of-way lines of the Gila Bend Canal and Southern Pacific Railroad, except the Easterly 990 feet, that portion of Sections 9, 10 and 11 lying South of the South right-of-way line of the Southern Pacific Railroad,

Except the following described parcel; commencing at the Northwest corner of said Section 10;

Thence South 0°09' East along the West line of Section 10, a distance of 1287.55 feet to a point on the Southerly right-of-way line of the Yuma-Casa Grande Highway;

Thence North 80°51' East along said Southerly right-of-way, said line being parallel with the North right-of-way line of the Southern Pacific Railroad, 1826.17 feet to the POINT OF BEGINNING of the parcel of land herein described and the Northwest corner thereof,

Thence North 80°51' East continuing along said Southerly right-of-way line of the Yuma-Casa Grande Highway, 1420.78 feet to the Northeast corner of the parcel herein described, from which a point on the East line of said Section 10, which bears South 0 degrees 16 minutes East, a distance of 434.16 feet from the Northeast corner of said Section 10, bears North 80 degrees 51 minutes East 2100.15 feet;

Thence South 9°09' East 250.00 feet to a point on the Northerly right-of-way line of the Southern Pacific Railroad;

Thence South 80°51' West 1420.75 feet along said Northerly right-of-way line being parallel with and 100.00 feet Northerly (measured at right angles) from the centerline of the main track of the Southern Pacific Railroad, to the Southwest corner of the parcel herein described;

Thence North 9°09' West, 250 feet to the POINT OF BEGINNING.

That portion of Sections 18 and 19 lying Northwesterly of the Northwest right-of-way line of Lateral "D", that portion of Section 7 and 8 lying South of the South right-of-way line of the Southern Pacific Railroad.

EXCEPT that portion of Section 8 known as Headquarters Parcel A and described as follows:

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A parcel of land situated on a portion of the Southeast quarter of Section 8, Township 6 South, Range 6 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at a point on the East line of said Section 8, from which the Northeast corner of said Section 8 bears North 00°21'37" East, a distance of 2,570.49 feet, said point also being on the Southerly right-of-way line of the Southern Pacific Railroad as shown on the map on file with the Bureau of Land Management as approved on December 19, 1879;

THENCE along said right-of-way line, South 81°33'01" West, a distance of 1,793.76 feet;

THENCE departing said right-of-way line, South 08°06'46" East, a distance of 135.63 feet to the POINT OF BEGINNING;

THENCE continuing South 08°06'46" East, a distance of 244.22 feet;

THENCE South 81°46'11" West, a distance of 27.87 feet;

THENCE South 09°12'07" East, a distance of 377.73 feet;



THENCE along said South right-of-way line, North 81°33'01" East, a distance of 377.29 feet;

THENCE departing said South right-of-way line, South 05°16'28" West, a distance of 71.73 feet;

THENCE South 25°36'51" East, a distance of 54.71 feet;

THENCE South 54°48'11" East, a distance of 46.51 feet;

THENCE South 71°05'01" East, a distance of 26.34 feet;

THENCE North 83°42'25" East, a distance of 91.32 feet;

THENCE South 07°15'20" East, a distance of 113.70 feet;

THENCE South 85°38'45" West, a distance of 753.70 feet;

THENCE South 09°10'33" East, a distance of 150.88 feet;

THENCE South 81°46'11" West, a distance of 121.35 feet;

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THENCE North 08°06'46" West, a distance of 244.22 feet to the POINT OF BEGINNING;

That portion of Section 17 described as follows:  
BEGINNING at the Northwest corner of Section 17;

Thence along the North line of said Section 17, North 89°41'39" East, a distance of 2,647.30 feet to the North quarter corner of said section 17;

Thence departing said North line, along the East line of the West half of said Section 17, South 00°37'53" East, a distance of 1,124.11 feet;

Thence South 44°42'19" West, a distance of 3,803.35 feet; to a point on the West line of said Section 17;

Thence along said West line North 00°36'22" East, a distance of 3,841.56 feet to the Point of BEGINNING.

TOWNSHIP 6 SOUTH, RANGE 7 WEST

All of Sections 1, 2, 3, 4, 9, 10, and 13, the East half of Sections 5 and 8, that portion of Sections 11, 12, and 15 lying North of the North right-of-way line of Interstate Highway 8, that portion of Sections 11 and 12 lying South of the South right-of-way line of the Southern Pacific Railroad, that portion of Section 14 lying South of the South right-of-way line of the Southern Pacific Railroad and East of the East right-of-way line of Lateral "D", that portion of Section 23 lying North and East of the North and East right-of-way lines of Lateral "D", that portion of Section 24 lying Northwest of the Northwest right-of-way line of Lateral "D". The East half and the East Half of the West half of Section 16 lying north of the North right-of-way line of Interstate Highway 8.

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EXHIBIT B

CLASS "B" LAND

PARCEL NO. 1:

The Southwest quarter; and

The South half of the Southeast quarter of Section 27;

EXCEPT a strip or piece of land 100 feet wide, described as follows:

COMMENCING at a point 260 feet South of the Southeast corner of the Northwest quarter of the Northeast quarter of Section 28, Township 2 South, Range 5 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

thence South 87 degrees East to the intersection of and parallel to the centerline of Gila Bend Canal and 150 feet distance from the same, in a Westerly direction;

thence following said parallel line as a centerline, in a Southeasterly direction to the point of intersection of the Old St. Louis Canal bed;

thence South 32 degrees East to the intersection of the Section line between Sections 27 and 28;

thence South 70 degrees East to the Southerly boundary of the Northeast quarter of the Southwest quarter of Section 27;

the Southeast quarter of the Northeast quarter;

the Northeast quarter of the Southeast quarter;

the Southeast quarter of the Southeast quarter;

the West half of the Northeast quarter; and

the East half of the Northwest quarter of Section 28;

EXCEPT a strip or piece of land 100 feet wide, described as follows:

COMMENCING at a point 260 feet South of the Southeast corner of the Northwest quarter of the Northeast quarter of Section 28, Township 2 South, Range 5 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

thence South 87 degrees East to the intersection of and parallel to the centerline of the Gila Bend Canal and 150 feet distant from the same, in the Westerly direction;

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thence following said parallel line as a center line, in a Southeasterly direction to the point of intersection of the Old St. Louis Canal bed;

thence South 32 degrees East to the intersection of the Section line between Sections 27 and 28;

thence South 70 degrees East to the Southerly boundary of the Northeast quarter of the Southwest quarter of Section 27; and

EXCEPT a parcel of land deeded to the Flood Control District of Maricopa County in 91-114439, of Official Records, records of Maricopa County, Arizona, which is that portion of the Northwest quarter of the Northeast quarter and the South half of the Northeast quarter of Section 28, Township 2 South, Range 5 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, lying within the following described property in the "Salt-Gila 1000 Foot Corridor": Said property lies between the North Section line and Gillespie Dam and lies between the two lines described as follows:

BEGINNING on the North line of said Section at a point 295 feet Easterly of the Northeast corner of said Northwest quarter of the Northeast quarter;

thence Southerly to the North line of said South half of the Northeast quarter at a point 325 feet Easterly of the Southeast corner of said Northwest quarter of the Northeast quarter;

thence continuing along said line to Gillespie Dam; also

BEGINNING on the North line of said Section at a point 710 feet Westerly of the Northeast corner of said Northwest quarter of the Northeast quarter;

thence Southerly to the North line of said South half of the Northeast quarter at a point 685 feet West of the Southeast corner of said Northwest quarter of the Northeast quarter;

thence continuing along said line to Gillespie Dam; and

EXCEPT that portion described as follows:

BEGINNING at a point on the North line of the Northwest quarter of the Northeast quarter of Section 28, Township 2 South, Range 5 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, said point being 710 feet Westerly of the Northeast corner of said Northwest quarter of the Northeast quarter;

thence Southerly to a point on the South line of the said Northwest quarter of the Northeast quarter, said point being 685 feet Westerly of the Southeast corner of said Northwest quarter of the Northeast quarter;

thence continuing Southerly to the North line of Gillespie Dam;

thence Easterly along the said North line of Gillespie Dam to a point; said point lying 385 feet East of the West line of the Southeast quarter of the Northeast quarter of said Section 28;

thence Southerly at a right angle to the North line of said Gillespie Dam, a distance of 200 feet;

thence Westerly along a line parallel with and 200 feet distant from the North line of said Gillespie Dam to a point on the East line of Old U.S. 80, the Phoenix/Yuma Hwy.;

thence Northerly along the said East line of the Phoenix/Yuma Hwy. to a point on the East line of the Northwest quarter of the Northwest quarter of said Section 28;

thence Northerly along the said East line of the Northwest quarter of the Northwest quarter to the North line of said Section 28;

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thence Easterly along said North line of Section 28 to the POINT OF BEGINNING.

All of Section 34;

EXCEPT the Southwest quarter of the Southwest quarter; and

All of Section 35, Except that portion of the East half of Section 35, conveyed by Deed recorded February 18, 2000 as 00-123974, of Official Records;

All in Township 2 South, Range 5 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

**PARCEL NO. 2:**

The West half of Section 6;

EXCEPT that portion conveyed by Deed recorded August 20, 1999 as 99-790173, of Official Records;

All of Section 17;

EXCEPT any portion lying South and West of Old U.S. Highway No. 80; and

EXCEPT that portion lying East of the East right of way line of the Gillespie Canal;

the West half; and

the South half of the Southeast quarter of Section 21, Except that portion conveyed by Deed recorded April 3, 2000 as 00-250460, of Official Records;

EXCEPT BEGINNING at a point located 334-1/2 feet West of the East boundary line and on the South boundary line of the Southwest quarter of said Section 21, said point being located on the East right of way line of the old Phoenix-Yuma Highway;

thence Northerly along the East right of way line of the said old Phoenix-Yuma Highway, a distance of 200 feet to a point;

thence Easterly at right angles to the East right of way line of the said Phoenix-Yuma Highway, a distance of 100 feet to a point;

thence Southerly along a line parallel to the East right of way line of the old Phoenix-Yuma Highway, a distance of 200 feet to a point;

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thence Westerly a distance of 100 feet to the POINT OF BEGINNING;

EXCEPT that part of the Northwest quarter and the North half of the Southwest quarter of Section 21 lying East of the East right of way line of the Gillespie Canal;

the Northeast quarter of Section 28;

the East half of the Southwest quarter of Section 29;

the Northeast quarter; and

the East half of the Northwest quarter of Section 33, Except that portion conveyed by Deed recorded May 28, 1999 as 99-516716, of Official Records;

EXCEPT the North 65 feet;

EXCEPT that part of the East half of the Northeast quarter of said Section 33 lying East of the Gillespie Canal; and

EXCEPT that part of the East half of the Northwest quarter of Section 33, particularly described as follows:

BEGINNING at the Northwest corner of the East half of the said Northwest quarter;

thence South 0 degrees 38 minutes 32 seconds West along the West line of the East half of the said Northwest quarter 2583.24 feet to the Southwest corner of the East half of the said Northwest quarter;

thence South 89 degrees 21 minutes 57 seconds East along the South line of the East half of the said Northwest quarter 167.00 feet to the Southerly prolongation of the East side of the existing concrete ditch;

thence North 0 degrees 33 minutes 22 seconds West along the East side of the said existing concrete ditch and the Southerly prolongation thereof 2579.38 feet to the North line of the East half of the said Northwest quarter;

thence North 88 degrees 05 minutes 57 seconds West along the said North line 171.0 feet to the POINT OF BEGINNING;

All in Township 3 South, Range 4 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

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**PARCEL NO. 3:**

The Northeast quarter of Section 4; and

That portion of the East half of Section 9 lying East of the center-line of Old Highway 80, also known as the old Yuma-Phoenix Highway, between Gila Bend and Buckeye, Arizona, as the same existed on December 1, 1983;

the West half of Section 10;

the East half; and

the East half of the Southwest quarter of Section 15;

the East half;

the West half of the Southwest quarter; and

the South half of the Southwest quarter of the Northwest quarter of Section 22;

the East half; and

the West half of the West half of Section 27;

EXCEPT BEGINNING at the Southwest corner of the Southwest quarter of said Section 27;

thence North 00 degrees 11 minutes 00 seconds West, along the West line of the said Southwest quarter, 2485.66 feet;

thence North 89 degrees 44 minutes 02 seconds East, parallel with the North line of the said Southwest quarter, 1300.20 feet, to the East line of the West half of said Southwest quarter;

thence South 00 degrees 24 minutes 56 seconds East, along the East line of the said West half, 2492.70 feet to the Southeast corner of the said West half;

thence North 89 degrees 57 minutes 30 seconds West, along the South line of the said Southwest quarter 1310.32 feet to the POINT OF BEGINNING;

All of Section 34;

EXCEPT that portion conveyed by Deed recorded June 21, 1999 as 99-588878, of Official Records;

EXCEPT that portion of the Northwest quarter of Section 34, Township 4 South, Range 4 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

BEGINNING at the Northwest corner of said Section 34;

thence South 89 degrees 57 minutes 30 seconds East, along the North line of the said Northwest quarter, 1403.39 feet;

thence South 00 degrees 01 minutes 58 seconds East, 1284.31 feet;

thence South 89 degrees 59 minutes 30 seconds West, 1402.66 feet to the West line of the said Northwest quarter;

thence North 00 degrees 03 minutes 54 seconds West, along the said West line 1285.54 feet to the POINT OF BEGINNING;

All in Township 4 South, Range 4 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

**PARCEL NO. 4A:**

The West half; and

That portion of the West half of the Southeast quarter of Section 3 lying West of Gillespie Canal (also known as the Gila Bend Canal);

The West half of the South half of the South half of the Southwest quarter of Section 8;

All of Section 9;

EXCEPT the Northwest quarter of the Northwest quarter; and

EXCEPT that portion lying within the following:

BEGINNING at the Northeast corner of Section 4, of said Township and Range;

thence South 00 degrees 13 minutes 40 seconds West, along the East line of said Section 4, of the North half of said Section 9, a distance of 5409.84 feet;

thence North 88 degrees 21 minutes 57 seconds West, 2992.95 feet;

thence North 66 degrees 26 minutes 31 seconds West, 65.79 feet to the South line of said Section 4;

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thence North 89 degrees 27 minutes 31 seconds West, along the South line of said Section 4, a distance of 913.57 feet to the Southwest corner of the East half of the West half of said Section 4;

thence North 00 degrees 09 minutes 08 seconds West, along the West line of the East half of the West half of said Section 4, a distance of 5294.69 feet to the North line of said Section 4;

thence South 89 degrees 55 minutes 34 seconds East, along the said North line 4001.15 feet to the POINT OF BEGINNING;

the West half of Section 10;

the West half of Section 21;

EXCEPT that portion of the Southwest quarter of the Southwest quarter and of the South half of the South half of the Northwest quarter of the Southwest quarter lying West of the Gillespie Canal (also known as the Gila Bend Canal);

the East half;

the East half of the Southwest quarter; and

the Southwest quarter of the Southwest quarter of Section 29;

EXCEPT that portion conveyed by Deed recorded November 9, 1999 as 99-1030451, of Official Records;

EXCEPT BEGINNING at Station 102+42.2 of the Gila Bend Gillespie Dam Highway;

thence North 41 degrees 42 minutes East along the center line of said Highway 1164.5 feet to Station 114+06.7, the beginning of a 3 degrees curve to the left whose central angle is 9 degrees 26 minutes;

thence along said curve 314.5 feet to a point;

thence North 89 degrees 50 minutes West 979.25 feet to the Northwest corner of the herein described parcel;

thence South 0 degrees 45 minutes East 660.0 feet to the center of said Section 29;

thence South 0 degrees 45 minutes East 464.02 feet to the PLACE OF BEGINNING, being the parcel of land conveyed to E.W. Fields by Deed recorded April 1, 1941 in Book 356 of Deeds, Page 301, records of Maricopa County, Arizona; and

EXCEPT BEGINNING at the Northwest corner of said Section 29;

thence traverse East (assumed bearing) a distance of 3651.00 feet along the North line of said Section 29;

thence South a distance of 40.00 feet to the TRUE POINT OF BEGINNING;

thence East a distance of 497.16 feet along a line parallel with and 40 feet South of the North line of said Section 29 to a point 50 feet Westerly from the center-line of Old U.S. 80;

thence Southerly 311.66 feet along the arc of a non-tangent curve concave to the East, said arc being 50 feet Westerly from Old U.S. 80, through a central angle of 06 degrees 07 minutes 33 seconds, having a radius of 2915.00 feet and a radial bearing from the aforementioned point of South 69 degrees 40 minutes 35 seconds East;

thence South 14 degrees 11 minutes 52 seconds West a distance of 235.72 feet along a line parallel with and 50 feet Westerly from the centerline of Old U.S. 80;

thence West a distance of 346.92 feet;

thence North a distance of 526.00 feet to the TRUE POINT OF BEGINNING;

All in Township 5 South, Range 4 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

**PARCEL NO. 4B:**

**DELETED INTENTIONALLY**

**PARCEL NO. 4C:**

**DELETED INTENTIONALLY**

**PARCEL NO. 5A:**

That portion of the Southeast quarter of Section 19, <sup>Unofficial Document</sup> Township 5 South, Range 5 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, lying Easterly of the East right-of-way line of CITRUS VALLEY ROAD described as follows:

BEGINNING at the Southeast corner of said Section 19;

thence South 89 degrees 35 minutes 02 seconds West along the South line of said Section 19 a distance of 238.58 feet to a point on a non-tangent concave curve to right having a radius of 5679.58 feet, a Delta of 03 degrees 38 minutes 11 seconds, a length of 360.48 feet and a Chord bearing North 07 degrees 42 minutes 13 seconds East, 360.42 feet;

thence along the East right-of-way of said curve a distance of 360.48 feet;

thence North 09 degrees 31 minutes 19 seconds East along said East right-of-way a distance of 944.60 feet to a tangent concave curve to the left having a Delta of 02 degrees 04 minutes 11 seconds, a radius of 5779.58 feet, a length of 208.77 feet, and a chord bearing North 08 degrees 34 minutes 00 seconds East 208.76 feet;

thence along said curve and East right-of-way a distance of 208.77 feet to a point on the East line of said Section 19;

thence South 00 degrees 06 minutes 41 seconds East along the East line of said Section 19 a distance of 1493.45 feet to the Southeast corner of said Section 19 and the POINT OF BEGINNING;

All of Section 20;

All of Section 27;

All of Section 28;

All of Section 29;

All of Section 30;

All of Section 31; except the west half of said section;

All of Section 32;

All of Section 33;

All of Section 34;

EXCEPT that part lying within the following:

BEGINNING at a point on the East line of Section 2, Township 6 South, Range 5 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, which point bears South 0 degrees 07 minutes 10 seconds East 480.73 feet from the <sup>Unofficial Document</sup> Northeast corner thereof;

thence North 60 degrees 34 minutes 13 seconds West 398.86 feet to a point on the Easterly right of way line of existing State Highway 85, 100 feet Easterly of and right angles to the L.A. line of said existing highway at Highway Engineer Station P.O.T. 2164+00;

thence Westerly 400 feet to a point on the Westerly right of way line of said existing highway, 300 feet Westerly of and at right angles to said L.A. Line at Highway Engineer Station P.O.T. 2163+93.70;

thence North 71 degrees 46 minutes 40 seconds West 1473.73 feet to the Southerly right of way line of existing U.S. Highway 80, said right of way line being coincident with the Northerly right of way line of the Southern Pacific Company's railroad;

thence North 78 degrees 13 minutes 50 seconds East along said coincident right of way line, a distance of 1273.07 feet;

thence North 11 degrees 46 minutes 10 seconds West 250 feet to the Northerly right of way line of said existing U.S. Highway 80;

thence North 54 degrees 02 minutes 35 seconds West 6.76 feet;

thence North 89 degrees 46 minutes 21 seconds West 817.86 feet;

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thence South 11 degrees 46 minutes 10 seconds East 130 feet;

thence South 78 degrees 13 minutes 50 seconds West 500.00 feet;

thence North 84 degrees 03 minutes 34 seconds West 586.21 feet;

thence North 75 degrees 01 minutes 43 seconds West 634.19 feet;

thence North 86 degrees 47 minutes 15 seconds West 533.16 feet;

thence South 86 degrees 55 minutes 00 seconds West 634.22 feet;

thence South 78 degrees 20 minutes 43 seconds West 316.26 feet;

thence South 75 degrees 38 minutes 54 seconds West 314.61 feet;

thence South 71 degrees 08 minutes 37 seconds West 313.82 feet;

thence South 68 degrees 05 minutes 36 seconds West 365.45 feet;

thence South 61 degrees 16 minutes 32 seconds West 365.13 feet;

thence South 56 degrees 39 minutes 04 seconds West 354.76 feet;

thence South 57 degrees 14 minutes 20 seconds West 86.44 feet;

thence South 57 degrees 59 minutes 51 seconds West 300.41 feet;

thence from a local tangent bearing of South 59 degrees 33 minutes 13.86 seconds West along the arc of a curve to the right having a radius of 3669.72 feet, a distance of 250.31 feet;

thence North 26 degrees 32 minutes 17 seconds West 15 feet;

thence South 64 degrees 35 minutes 12.6 seconds West 143.51 feet;

thence South 24 degrees 17 minutes 17 seconds East 15 feet;

thence from a local tangent bearing of South 65 degrees 42 minutes 43 seconds West along the arc of a curve to the right having a radius of 3669.72 feet, a distance of 653.52 feet;

thence South 77 degrees 28 minutes 19 seconds West 300.41 feet to the Northerly right of way line of existing Interstate Highway 8 (I-8-2(2)107-Piedra-Gila Bend Section);

thence South 77 degrees 58 minutes 00 seconds West along said existing Northerly Interstate Highway right of way line, a distance of 138.27 feet;

thence North 78 degrees 50 minutes 14 seconds West 282.31 feet;

thence South 77 degrees 58 minutes 00 seconds West 115 feet;

thence South 12 degrees 02 minutes 00 seconds East 421 feet to the aforesaid coincident right of way line of U.S. Highway 80 and the Southern Pacific Company's railroad;

thence North 77 degrees 58 minutes 00 seconds East along said coincident right of way line, a distance of 513.27 feet to a bearing equation point, said point being South 77 degrees 58 minutes 00 seconds West, Bk=North 78 degrees 13 minutes 50 seconds East; And

thence North 78 degrees 13 minutes 50 seconds East continuing along said coincident right of way line, a distance of 2675.54 feet;

thence North 11 degrees 46 minutes 10 seconds West 610.31 feet;

thence from a local tangent bearing of North 69 degrees 13 minutes 06 seconds East along the arc of a curve to the right having a radius of 3669.72 feet, a distance of 2316.21 feet to the aforesaid existing Northerly right of way line of U.S. Highway 80;

thence South 72 degrees 20 minutes 23 seconds East 510.98 feet to the aforesaid coincident right of way line of U.S. Highway 80 and the Southern Pacific Company's railroad;

thence South 71 degrees 46 minutes 40 seconds East 400 feet to the Southerly right of way line of said railroad;

thence South 78 degrees 13 minutes 50 seconds West along said Southerly railroad right of way line, a distance of 70 feet;

thence South 75 degrees 13 minutes 47 seconds East 581.29 feet;

thence South 71 degrees 46 minutes 40 seconds East 1246.93 feet to the aforesaid existing Westerly right of way line of State Highway 85;

thence South 11 degrees 46 minutes 40 seconds East along said existing Westerly highway right of way line, a distance of 367.81 feet;

thence South 71 degrees 46 minutes 40 seconds East continuing along said existing Westerly highway right of way line a distance of 230.94 feet;

thence North 78 degrees 13 minutes 20 seconds East 200 feet to the aforesaid existing Easterly right of way line of State Highway 85;

thence South 71 degrees 46 minutes 40 seconds East 187.58 feet to the aforesaid East line of Section 2;

thence North 0 degrees 07 minutes 10 seconds West along said East Section line, a distance of 681.07 feet to the POINT OF BEGINNING;

All of Section 35, Except the Northeast quarter; And

EXCEPT the Northwest quarter and Except that part of the South half conveyed by Deed recorded January 28, 2000 as 00-70569, of Official Records;

EXCEPT that part lying within the following:

BEGINNING at a point on the East line of Section 2, Township 6 South, Range 5 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, which point bears South 0 degrees 07 minutes 10 seconds East 480.73 feet from the Northeast corner thereof;

thence North 60 degrees 34 minutes 13 seconds West 398.86 feet to a point on the Easterly right of way line of existing State Highway 85, 100 feet Easterly of and right angles to the L.A. line of said existing highway at Highway Engineer Station P.O.T. 2164+00;

thence Westerly 400 feet to a point on the Westerly right of way line of said existing highway, 300 feet Westerly of and at right angles to said L.A. Line at Highway Engineer Station P.O.T. 2163+93.70;

thence North 71 degrees 46 minutes 40 seconds <sup>Unofficial Document</sup> West 1473.73 feet to the Southerly right of way line of existing U.S. Highway 80, said right of way line being coincident with the Northerly right of way line of the Southern Pacific Company's railroad;

thence North 78 degrees 13 minutes 50 seconds East along said coincident right of way line, a distance of 1273.07 feet;

thence North 11 degrees 46 minutes 10 seconds West 250 feet to the Northerly right of way line of said existing U.S. Highway 80;

thence North 54 degrees 02 minutes 35 seconds West 6.76 feet;

thence North 89 degrees 46 minutes 21 seconds West 817.86 feet;

thence South 11 degrees 46 minutes 10 seconds East 130 feet;

thence South 78 degrees 13 minutes 50 seconds West 500.00 feet;

thence North 84 degrees 03 minutes 34 seconds West 586.21 feet;

thence North 75 degrees 01 minutes 43 seconds West 634.19 feet;

thence North 86 degrees 47 minutes 15 seconds West 533.16 feet;

thence South 86 degrees 55 minutes 00 seconds West 634.22 feet;

thence South 78 degrees 20 minutes 43 seconds West 316.26 feet;

thence South 75 degrees 38 minutes 54 seconds West 314.61 feet;

thence South 71 degrees 08 minutes 37 seconds West 313.82 feet;

thence South 68 degrees 05 minutes 36 seconds West 365.45 feet;

thence South 61 degrees 16 minutes 32 seconds West 365.13 feet;

thence South 56 degrees 39 minutes 04 seconds West 354.76 feet;

thence South 57 degrees 14 minutes 20 seconds West 86.44 feet;

thence South 57 degrees 59 minutes 51 seconds West 300.41 feet;

thence from a local tangent bearing of South 59 degrees 33 minutes 13.86 seconds West along the arc of a curve to the right having a radius of 3669.72 feet, a distance of 250.31 feet;

thence North 26 degrees 32 minutes 17 seconds West 15 feet;

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thence South 64 degrees 35 minutes 12.6 seconds West 143.51 feet;

thence South 24 degrees 17 minutes 17 seconds East 15 feet;

thence from a local tangent bearing of South 65 degrees 42 minutes 43 seconds West along the arc of a curve to the right having a radius of 3669.72 feet, a distance of 653.52 feet;

thence South 77 degrees 28 minutes 19 seconds West 300.41 feet to the Northerly right of way line of existing Interstate Highway 8 (I-8-2(2)107-Piedra-Gila Bend Section);

thence South 77 degrees 58 minutes 00 seconds West along said existing Northerly Interstate Highway right of way line, a distance of 138.27 feet;

thence North 78 degrees 50 minutes 14 seconds West 282.31 feet;

thence South 77 degrees 58 minutes 00 seconds West 115 feet;

thence South 12 degrees 02 minutes 00 seconds East 421 feet to the aforesaid coincident right of way line of U.S. Highway 80 and the Southern Pacific Company's railroad;

thence North 77 degrees 58 minutes 00 seconds East along said coincident right of way line, a distance of 513.27 feet to a bearing equation point, said point being South 77 degrees 58 minutes 00

seconds West Bk=North 78 degrees 13 minutes 50 seconds East;And

thence North 78 degrees 13 minutes 50 seconds East continuing along said coincident right of way line, a distance of 2675.54 feet;

thence North 11 degrees 46 minutes 10 seconds West 610.31 feet;

thence from a local tangent bearing of North 69 degrees 13 minutes 06 seconds East along the arc of a curve to the right having a radius of 3669.72 feet, a distance of 2316.21 feet to the aforesaid existing Northerly right of way line of U.S. Highway 80;

thence South 72 degrees 20 minutes 23 seconds East 510.98 feet to the aforesaid coincident right of way line of U.S. Highway 80 and the Southern Pacific Company's railroad;

thence South 71 degrees 46 minutes 40 seconds East 400 feet to the Southerly right of way line of said railroad;

thence South 78 degrees 13 minutes 50 seconds West along said Southerly railroad right of way line, a distance of 70 feet;

thence South 75 degrees 13 minutes 47 seconds East 581.29 feet;

thence South 71 degrees 46 minutes 40 seconds East 1246.93 feet to the aforesaid existing Westerly right of way line of State Highway 85;

thence South 11 degrees 46 minutes 40 seconds East along said existing Westerly highway right of way line, a distance of 367.81 feet;

thence South 71 degrees 46 minutes 40 seconds East continuing along said existing Westerly highway right of way line a distance of 230.94 feet;

thence North 78 degrees 13 minutes 20 seconds East 200 feet to the aforesaid existing Easterly right of way line of State Highway 85;

thence South 71 degrees 46 minutes 40 seconds East 187.58 feet to the said East line of Section 2;

thence North 0 degrees 07 minutes 10 seconds West along said East Section line, a distance of 681.07 feet to the POINT OF BEGINNING; and

EXCEPT that portion of the South half of the Southeast quarter described as follows:

COMMENCING at a point on the East line of Section 2, Township 6 South, Range 5 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, which point bears South 0 degrees 07 minutes 10 seconds East 773.53 feet from the Northeast corner thereof;

thence North 71 degrees 46 minutes 40 seconds West 2770.19 feet;

thence North 78 degrees 13 minutes 50 seconds East 950.39 feet;

thence North 11 degrees 46 minutes 10 seconds West 190.00 feet to the POINT OF BEGINNING;

thence continuing North 11 degrees 46 minutes 10 seconds West 20.00 feet;

thence South 78 degrees 13 minutes 50 seconds West 565.00 feet;

thence South 84 degrees 03 minutes 34 seconds East 65.75 feet;

thence North 78 degrees 13 minutes 50 seconds East 500.00 feet (recorded) to the POINT OF BEGINNING; and

EXCEPT COMMENCING at the Northeast corner of the Southeast quarter of said Section 35;

thence South 0 degrees 10 minutes 30 seconds West (assumed bearing) along the East line of the said Southeast quarter 1618.31 feet to a point on the North right of way line of U.S. Route 85, said point being on the arc of a circle, the center of which bears South 57 degrees 38 minutes 59 seconds East 563.22 feet;

thence Southwesterly through a central angle of 2 degrees 38 minutes 16 seconds a distance of 25.93 feet to the POINT OF BEGINNING;

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thence continuing along the arc of said circle, and said right of way line, through a central angle of 39 degrees 57 minutes 06 seconds a distance of 392.72 feet to a point on the North right of way line of U.S. Highway 80;

thence South 78 degrees 08 minutes 01 seconds West along said North right of way line 236.65 feet (recorded measurement South 78 degrees 13 minutes 20 seconds West 239.29 feet);

thence North 53 degrees 32 minutes 44 seconds West 6.96 feet (recorded measurement North 54 degrees 02 minutes 35 seconds West 6.76 feet) along said North right of way line;

thence North 89 degrees 46 minutes 21 seconds West along said North right of way line 310.0 feet;

thence North 0 degrees 13 minutes 39 seconds East 425.0 feet;

thence South 89 degrees 46 minutes 21 seconds East 610.59 feet to the POINT OF BEGINNING;

All in Township 5 South, Range 5 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

**PARCEL NO. 5B:**

**DELETED INTENTIONALLY**

**PARCEL NO. 6:**

The South half of Section 5;

the South half;

the South half of the Northwest quarter; and

the Southwest quarter of the Northeast quarter of Section 6;

All of Section 7;

All of Section 8;

the South half; and

the Northwest quarter of Section 9;

the South half of Section 10;

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the West half of the Southwest quarter of Section 11;

the South half;

the South half of the Northwest quarter; and

the Northwest quarter of the Northwest quarter of Section 13;

EXCEPT the South 40 feet; and

EXCEPT that portion lying 40 feet each side of the following described center line:

BEGINNING at the Southwest corner of Section 13;

thence North 00 degrees 21 minutes East along the West line of said Section 889.2 feet;

thence along a 3 degree curve to the left with a deflection angle of 13 degrees 26 minutes for a distance of 447.78 feet;

thence North 13 degrees 5 minutes West 49.17 feet;

thence along a curve to the right 3 degrees, with a deflection angle of 26 degrees 52 minutes for a distance of 895.56 feet;

thence North 13 degrees 47 minutes East 29.0 feet;

thence along a 3 degree curve to the left, with a deflection angle of 15 degrees 08 minutes, for a distance of 504.44 feet, to a point on the West line of Section 13;

thence North 1 degrees 21 minutes East 2566.2 feet to the Northwest corner of Section 13;

All of Section 14;

EXCEPT the South 40 feet; and

EXCEPT that portion lying 40 feet each side of the following described center line;

BEGINNING at the Southwest corner of Section 13 of said Township and Range;

thence North 00 degrees 21 minutes East along the West line of said Section 13, a distance of 889.2 feet;

thence along a 3 degree curve to the left with a deflection angle of 13 degrees 26 minutes for a distance of 447.78 feet;

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thence North 13 degrees 5 minutes West 49.17 feet;

thence along a curve to the right 3 degrees, with a deflection angle of 26 degrees 52 minutes for a distance of 895.56 feet;

thence North 13 degrees 47 minutes East 29.0 feet;

thence along a 3 degree curve to left, with a deflection angle of 15 degrees 08 minutes, for a distance of 504.44 feet, to a point on the West line of Section 13;

thence North 1 degree 21 minutes East 2566.2 feet to the Northwest corner of said Section 13;

All of Section 15;

All of Section 16;

All of Section 17;

All of Section 18;

All of Section 22;

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All of Section 23;

EXCEPT the North 40 feet;

All of Section 24;

EXCEPT the North 40 feet;

All of Section 25;

All of Section 26; except the Southwest quarter and the West half of the Southeast quarter of said section;

All of Section 27; except the South half of said section;

All of Section 36; except the South Half of the South half and the Northwest quarter of the Southwest quarter of said section;

All in Township 5 South, Range 6 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

**PARCEL NO. 7:**

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The South half; and

The South half of the North half of Section 1;

All of Section 2;

All of Section 3;

All of Section 4;

All of Section 9;

All of Section 10;

All of Section 11;

All of Section 12;

All of Section 13;

All of Section 14;

All of Section 15;

All of Section 16;

All of Section 21;

All of Section 22;

All of Section 27;

The North half and the North half of the Southwest quarter and that portion lying Easterly of Painted Rock Road of Section 28;

All of Section 29;

All of Section 32; except the Southeast quarter of the Southeast quarter of said section;

All of Section 34; except the South half and the Southeast quarter of the Northeast quarter of said section;

Also that portion of Sections 3, 10, 15, 22, 27, 28, 33 and 34, said portion to be 1,320.00 feet in width, lying 660.00 feet on each side of the following described centerline which covers the main course of the Bull Durham Wash across said Sections;

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COMMENCING at the Northwest corner of said Section 34;

thence along the West line of said Section 34, South 00 degrees 06 minutes 20 seconds East, a distance of 2,751.35 feet;

thence departing said West line, North 71 degrees 16 minutes 08 seconds West, a distance of 660.00 feet to a point on the centerline of said parcel.

thence South 18 degrees 43 minutes 52 seconds West, a distance of 2391.37 feet to the POINT OF BEGINNING.

thence North 18 degrees 43 minutes 52 seconds East, a distance of 7216.42 feet;

thence North 07 degrees 26 minutes 55 seconds East, a distance of 9,226.30 feet;

thence North 14 degrees 02 minutes 50 seconds West, a distance of 5,474.40 feet;

thence North 42 degrees 37 minutes 40 seconds East, a distance of 1,847.49 feet;

thence North 14 degrees 31 minutes 02 seconds East, a distance of 8,945.07 feet to a point on the North line of said Section 3, said point being the POINT OF TERMINATION.

The calculated Northeast corner of said Section 3 bears North 89 degrees 22 minutes 42 seconds East, a distance of 800.00 feet from said POINT OF TERMINATION.

All in Township 5 South, Range 7 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

**PARCEL NO. 8:**

All of Section 2;

EXCEPT that portion of Lot 1 of said Section lying East of that property described in Docket 6862, Page 515, and lying North of that property described in Docket 6150, Page 431; and

EXCEPT that part lying within the following:

BEGINNING at a point on the East line of Section 2, Township 6 South, Range 5 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, which point bears South 0 degrees 07 minutes 10 seconds East 480.73 feet from the Northeast corner thereof;

thence North 60 degrees 34 minutes 13 seconds West 398.86 feet to a point on the Easterly right of way line of existing State Highway 85, 100 feet Easterly of and right angles to the L.A. Line of said existing highway at Highway Engineer Station P.O.T. 2164+00;

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thence Westerly 400 feet to a point on the Westerly right of way line of said existing highway, 300 feet Westerly of and at right angles to said L.A. Line at Highway Engineer Station P.O.T. 2163+93.70;

thence North 71 degrees 46 minutes 40 seconds West 1473.73 feet to the Southerly right of way line of existing U.S. Highway 80, said right of way being coincident with the North Northerly right of way line of the Southern Pacific Company's railroad;

thence North 78 degrees 13 minutes 50 seconds East along said coincident right of way line, a distance of 1273.07 feet;

thence North 11 degrees 46 minutes 10 seconds West 250 feet to the Northerly right of way line of said existing U.S. Highway 80;

thence North 54 degrees 02 minutes 35 seconds West 6.76 feet;

thence North 89 degrees 46 minutes 21 seconds West 817.86 feet;

thence South 11 degrees 46 minutes 10 seconds East 130 feet;

thence South 78 degrees 13 minutes 50 seconds West 500.00 feet;

thence North 84 degrees 03 minutes 34 seconds West 586.21 feet;

thence North 75 degrees 02 minutes 43 seconds West 634.19 feet;

thence North 86 degrees 47 minutes 15 seconds West 533.16 feet;

thence South 86 degrees 55 minutes 00 seconds West 634.22 feet;

thence South 78 degrees 20 minutes 43 seconds West 316.26 feet;

thence South 75 degrees 38 minutes 54 seconds West 314.61 feet;

thence South 71 degrees 08 minutes 37 seconds West 313.82 feet;

thence South 68 degrees 05 minutes 36 seconds West 365.45 feet;

thence South 61 degrees 16 minutes 32 seconds West 365.13 feet;

thence South 56 degrees 39 minutes 04 seconds West 354.76 feet;

thence South 57 degrees 14 minutes 20 seconds West 86.44 feet;

thence South 57 degrees 59 minutes 51 seconds West 300.41 feet;

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thence from a local tangent bearing of South 59 degrees 33 minutes 13.86 seconds West along the arc of a curve to the right having a radius of 3669.72 feet, a distance of 250.31 feet;

thence North 26 degrees 32 minutes 17 seconds West 15 feet;

thence South 64 degrees 35 minutes 12.6 seconds West 143.51 feet;

thence South 24 degrees 17 minutes 17 seconds East 15 feet;

thence from a local tangent bearing of South 65 degrees 42 minutes 43 seconds West along the arc of a curve to the right having a radius of 3669.72 feet, a distance of 653.52 feet;

thence South 77 degrees 28 minutes 19 seconds West 300.41 feet to the Northerly right of way line of existing Interstate Highway 8 (I-8-2(2)107-Piedra-Gila Bend Section);

thence South 77 degrees 58 minutes 00 seconds West along said existing Northerly Interstate Highway right of way line, a distance of 138.27 feet;

thence North 78 degrees 50 minutes 14 seconds West 282.31 feet;

thence South 77 degrees 58 minutes 00 seconds West 115 feet;

thence South 12 degrees 02 minutes 00 seconds East 421 feet to the aforesaid coincident right of way line of U.S. Highway 80 and the Southern Pacific Company's railroad;

thence North 77 degrees 58 minutes 00 seconds East along said coincident right of way line, a distance of 513.27 feet to a bearing equation point, said point being South 77 degrees 58 minutes 00 seconds West BK=North 78 degrees 13 minutes 50 seconds East; And

thence North 78 degrees 13 minutes 50 seconds East continuing along said coincident right of way line, a distance of 2675.54 feet;

thence North 11 degrees 46 minutes 10 seconds West 610.31 feet;

thence from a local tangent bearing of North 69 degrees 13 minutes 06 seconds East along the arc of a curve to the right having a radius of 3669.72 feet, a distance of 2316.21 feet to the aforesaid existing Northerly right of way line of U.S. Highway 80;

thence South 72 degrees 20 minutes 23 seconds East 510.98 feet to the aforesaid coincident right of way line of U.S. Highway 80 and the Southern Pacific Company's railroad;

thence South 71 degrees 46 minutes 40 seconds East 400 feet to the Southerly right of way line of said railroad;

thence South 78 degrees 13 minutes 50 seconds West along said Southerly railroad right of way line, a distance of 70 feet;

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thence South 75 degrees 13 minutes 47 seconds East 581.29 feet;

thence South 71 degrees 46 minutes 40 seconds East 1246.93 feet to the aforesaid existing Westerly right of way line of State Highway 85;

thence South 11 degrees 46 minutes 40 seconds East along said existing Westerly highway right of way line, a distance of 367.81 feet;

thence South 71 degrees 46 minutes 40 seconds East continuing along said existing Westerly highway right of way line a distance of 230.94 feet;

thence North 78 degrees 13 minutes 20 seconds East 200 feet to the aforesaid existing Easterly right of way line of State Highway 85;

thence South 71 degrees 46 minutes 40 seconds East 187.58 feet to the aforesaid East line of Section 2;

thence North 0 degrees 07 minutes 10 seconds West along said East Section line, a distance of 681.07 feet to the POINT OF BEGINNING; and

EXCEPT that portion conveyed by Deed recorded May 18, 1999 as 99-0471406, of Official Records;

EXCEPT that portion of Section 2 lying South of the South right-of-way lines of the Southern Pacific Railroad and Interstate Highway 8, and west of the Westerly right-of-way line of the Ajo Highway, and that portion of Section 6 lying North of the North right-of-way line of Interstate Highway 8;

EXCEPT that portion of Section 2 lying South of the South right-of-way lines of the Southern Pacific Railroad and Interstate Highway 8, and west of the Westerly right-of-way line of the Ajo Highway, and that portion of Section 6 lying North of the North right-of-way line of Interstate Highway 8.

All of Section 3;

EXCEPT BEGINNING at the Northeast corner of the Northwest quarter of said Section 3;

thence Southerly along the East line of said Northwest quarter, 560.70 feet to the TRUE POINT OF BEGINNING of the land herein described;

thence Westerly parallel to the North line of said Northwest quarter, 240 feet;

thence Southerly parallel to the East line of the said Northwest quarter, 248.4 feet to a point on the North right of way of U.S. Highway 80;

thence Northeasterly along said right of way line, 245.04 feet to a point on the East line of the said Northwest quarter;

thence Northerly along the said East line 200 feet to the TRUE POINT OF BEGINNING;

EXCEPT COMMENCING at the North quarter of Section 3 and the TRUE POINT OF BEGINNING of the parcel herein described;

thence South 0 degrees 4 minutes 10 seconds East a distance of 560.74 feet;

thence South 89 degrees 39 minutes 20 seconds West a distance of 240 feet;

thence South 0 degrees 04 minutes 10 seconds East a distance of 248.49 feet to a point on the North right of way line of Interstate Highway 8;

thence South 78 degrees 13 minutes 50 seconds West along said Highway right of way line, a distance of 11.00 feet;

thence North 78 degrees 50 minutes 14 seconds West along said Highway right of way line, a distance of 254.15 feet;

thence North 0 degrees 04 minutes 10 seconds West a distance of 760.73 feet;

thence North 89 degrees 39 minutes 20 seconds East a distance of 500 feet to the TRUE POINT OF BEGINNING;

EXCEPT COMMENCING at a point on the East line of Section 2, Township 6 South, Range 5 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, which point bears South 0 degrees 07 minutes 10 seconds East 773.53 feet from the Northeast corner thereof;

thence North 71 degrees 46 minutes 40 seconds West 2997.62 feet;

thence along a spiral curve to the left having an "a" $=1/2$  a distance of 300.00 feet;

thence from a local tangent bearing of North 74 degrees 01 minutes 40 seconds West along the arc of a curve to the left having a radius of 3819.72 feet, a distance of 3098.89 feet;

thence from a local tangent bearing of South 59 degrees 29 minutes 20 seconds West along a spiral curve to the left having an "a" $=1/2$ , a distance of 300.00 feet;

thence South 57 degrees 14 minutes 20 seconds West 86.50 feet;

thence along a spiral curve to the right having an "a" $=1/2$ , a distance of 300.00 feet;

thence from a local tangent bearing of South <sup>Unofficial Document</sup>59 degrees 29 minutes 20 seconds West along the arc of a curve to the right having a radius of 3819.72 feet, a distance of 4.30 feet;

thence North 30 degrees 26 minutes 48 seconds West 150.00 feet to the POINT OF BEGINNING;

thence continuing North 30 degrees 26 minutes 48 seconds West 15.00 feet;

thence from a local tangent bearing of South 59 degrees 33 minutes 12 seconds West along the arc of curve to the right having a radius of 3654.72 feet, a distance of 249.31 feet;

thence South 26 degrees 32 minutes 17 seconds East 15.00 feet;

thence from a local tangent bearing of North 63 degrees 27 minutes 43 seconds East along the arc of a curve to the left having a radius of 3669.72 feet, a distance of 250.34 feet to the POINT OF BEGINNING; And

EXCEPT that part lying within the following:

BEGINNING at a point on the East line of Section 2, Township 6 South, Range 5 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, which point bears South 0 degrees 07 minutes 10 seconds East 480.73 feet from the Northeast corner thereof;

thence North 60 degrees 34 minutes 13 seconds West 398.86 feet to a point on the Easterly right of way line of existing State Highway 85, 100 feet Easterly of and right angles to the L.A. Line of said existing highway at Highway Engineer Station P.O.T. 2164+00;

thence Westerly 400 feet to a point on the Westerly right of way line of said existing highway, 300 feet Westerly of and at right angles to said L.A. Line at Highway Engineer Station P.O.T. 2163+93.70;

thence North 71 degrees 46 minutes 40 seconds West 1473.73 feet to the Southerly right of way line of existing U.S. Highway 80, said right of way line being coincident with the Northerly right of way line of the Southern Pacific Company's railroad;

thence North 78 degrees 13 minutes 50 seconds East along said coincident right of way line, a distance of 1273.07 feet;

thence North 11 degrees 46 minutes 10 seconds West 250 feet to the Northerly right of way line of said existing U.S. Highway 80;

thence North 54 degrees 02 minutes 35 seconds West 6.76 feet;

thence North 89 degrees 46 minutes 21 seconds West 817.86 feet;

thence South 11 degrees 46 minutes 10 seconds East 130 feet;

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thence South 78 degrees 13 minutes 50 seconds West 500.00 feet;

thence North 84 degrees 03 minutes 34 seconds West 586.21 feet;

thence North 75 degrees 01 minutes 43 seconds West 634.19 feet;

thence North 86 degrees 47 minutes 15 seconds West 533.16 feet;

thence South 86 degrees 55 minutes 00 seconds West 634.22 feet;

thence South 78 degrees 20 minutes 43 seconds West 316.26 feet;

thence South 75 degrees 38 minutes 54 seconds West 314.61 feet;

thence South 71 degrees 08 minutes 37 seconds West 313.82 feet;

thence South 68 degrees 05 minutes 36 seconds West 365.45 feet;

thence South 61 degrees 16 minutes 32 seconds West 365.13 feet;

thence South 56 degrees 39 minutes 04 seconds West 354.76 feet;

thence South 57 degrees 14 minutes 20 seconds West 86.44 feet;

thence South 57 degrees 59 minutes 51 seconds West 300.41 feet;

thence from a local tangent bearing of South 59 degrees 33 minutes 13.86 seconds West along the arc of a curve to the right having a radius of 3669.72 feet, a distance of 250.31 feet;

thence North 26 degrees 32 minutes 17 seconds West 15 feet;

thence South 64 degrees 35 minutes 12.6 seconds West 143.51 feet;

thence South 24 degrees 17 minutes 17 seconds East 15 feet;

thence from a local tangent bearing of South 65 degrees 42 minutes 43 seconds West along the arc of a curve to the right having a radius of 3669.72 feet, a distance of 653.52 feet;

thence South 77 degrees 28 minutes 19 seconds West 300.41 feet to the Northerly right of way line of existing Interstate Highway 8 (I-8-2(2)107-Piedra-Gila Bend Section);

thence South 77 degrees 58 minutes 00 seconds West along said existing Northerly Interstate Highway right of way line, a distance of 138.27 feet;

thence North 78 degrees 50 minutes 14 seconds West 282.31 feet;

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thence South 77 degrees 58 minutes 00 seconds West 115 feet;

thence South 12 degrees 02 minutes 00 seconds East 421 feet to the aforesaid coincident right of way line of U.S. Highway 80 and the Southern Pacific Company's railroad;

thence North 77 degrees 58 minutes 00 seconds East along said coincident right of way line, a distance of 513.27 feet to a bearing equation point, said point being South 77 degrees 58 minutes 00 seconds West Bk=North 78 degrees 13 minutes 50 seconds East; And

thence North 78 degrees 13 minutes 50 seconds East continuing along said coincident right of way line, a distance of 2675.54 feet;

thence North 11 degrees 46 minutes 10 seconds West 610.31 feet;

thence from a local tangent bearing of North 69 degrees 13 minutes 06 seconds East along the arc of a curve to the right having a radius of 3669.72 feet, a distance of 2316.21 feet to the aforesaid existing Northerly right of way line of U.S. Highway 80;

thence South 72 degrees 20 minutes 23 seconds East 510.98 feet to the aforesaid coincident right of way line of U.S. Highway 80 and the Southern Pacific Company's railroad;

thence South 71 degrees 46 minutes 40 seconds East 400 feet to the Southerly right of way line of said railroad;

thence South 78 degrees 13 minutes 50 seconds West along said Southerly railroad right of way line, a distance of 70 feet;

thence South 75 degrees 13 minutes 47 seconds East 581.29 feet;

thence South 71 degrees 46 minutes 40 seconds East 1246.93 feet to the aforesaid existing Westerly right of way line of State Highway 85;

thence South 11 degrees 46 minutes 40 seconds East along said existing Westerly highway right of way line, a distance of 367.81 feet;

thence South 71 degrees 46 minutes 40 seconds East continuing along said existing Westerly highway right of way line a distance of 230.94 feet;

thence North 78 degrees 13 minutes 20 seconds East 200 feet to the aforesaid existing Easterly right of way line of State Highway 85;

thence South 71 degrees 46 minutes 40 seconds East 187.58 feet to the aforesaid East line of Section 02;

thence North 0 degrees 07 minutes 10 seconds <sup>Unofficial Document</sup> West along said East Section line, a distance of 681.07 feet to the POINT OF BEGINNING;

EXCEPT that portion of Section 3, lying south of the South right-of-way line of the Southern Pacific Railroad and North of the North right-of-way line of the Gila Bend Canal.

the West half;

the West half of the East half;

the East half of the Southeast quarter;

that portion of the East half of the Northeast quarter lying Southerly of the Southern Pacific Railroad, 200 feet wide;

And that portion of the East half of the Northeast quarter lying North of the right of way of the Southern Pacific Railroad Company, 200 feet wide, all in Section 4;

EXCEPT that portion of Section 4, lying South of the South right-of-way line of the Southern Pacific Railroad and North of the North right-of-way line of the Gila Bend Canal;

All of Section 5;

EXCEPT that portion of Section 5, lying South of the South right-of-way line of the Southern Pacific Railroad and North of the North right-of-way line of the Gila Bend Canal.

All in Township 6 South, Range 5 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

**PARCEL NO. 9:**

That portion of Section 8 known as Headquarters Parcel A and described as follows:

A parcel of land situated on a portion of the Southeast quarter of Section 8, Township 6 South, Range 6 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at a point on the East line of said Section 8, from which the Northeast corner of said Section 8 bears North 00 degrees 21 minutes 37 seconds East, a distance of 2,570.49 feet, said point also being on the Southerly right-of-way line of the Southern Pacific Railroad as shown on the map on file with the Bureau of Land Management as approved on December 19, 1879;

thence along said right-of-way line, South 81 degrees 33 minutes 01 seconds West, a distance of 1,793.76 feet;

thence departing said right-of-way line, South 08 degrees 06 minutes 46 seconds East, a distance of 135.63 feet to the POINT OF BEGINNING;

thence continuing South 08 degrees 06 minutes 46 seconds East, a distance of 244.22 feet;

thence South 81 degrees 46 minutes 11 seconds West, a distance of 27.87 feet;

thence South 09 degrees 12 minutes 07 seconds East, a distance of 377.73 feet;

thence South 78 degrees 02 minutes 04 seconds West, a distance of 198.45 feet;

thence North 09 degrees 09 minutes 04 seconds West, a distance of 543.10 feet;

thence South 80 degrees 46 minutes 50 seconds West, a distance of 134.02 feet;

thence North 08 degrees 36 minutes 56 seconds West, a distance of 228.34 feet to a point on the South right-of-way line of said Southern Pacific Railroad;

thence along said South right-of-way line, North 81 degrees 33 minutes 01 seconds East, a distance of 173.69 feet;

thence departing said South right-of-way line, South 08 degrees 57 minutes 10 seconds East, a distance of 45.87 feet;

thence South 72 degrees 03 minutes 07 seconds East, a distance of 195.75 feet;

thence South 87 degrees 38 minutes 07 seconds East, a distance of 14.57 feet to the POINT OF BEGINNING; And

Also that portion of Section 8 known as Headquarters Parcel B and described as follows:

A parcel of land situated on a portion of the Southeast quarter of Section 8, Township 6 South, Range 6 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at a point on the East line of said Section 8, from which the Northeast corner of said Section 8 bears North 00 degrees 21 minutes 37 seconds East a distance of 2,570.49 feet, said point also being on the Southerly right-of-way line of the Southern Pacific Railroad as shown on the map on file with the Bureau of Land Management as approved on December 19, 1879;

thence along said right-of-way line, South 81 degrees 33 minutes 01 seconds West, a distance of 1,793.76 feet;

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thence departing said right-of-way line, South 08 degrees 06 minutes 46 seconds East, a distance of 135.63 feet to the POINT OF BEGINNING;

thence South 87 degrees 38 minutes 07 seconds East, a distance of 340.97 feet;

thence North 04 degrees 52 minutes 05 seconds West, a distance 200.00 feet to a point on the South right-of-way line of the Southern Pacific Railroad;

thence along said South right-of-way line, North 81 degrees 33 minutes 01 seconds East, a distance of 377.29 feet;

thence departing said South right-of-way line, South 05 degrees 16 minutes 28 seconds West, a distance of 71.73 feet;

thence South 25 degrees 36 minutes 51 seconds East, a distance of 54.71 feet;

thence South 54 degrees 48 minutes 11 seconds East, a distance of 46.51 feet;

thence South 71 degrees 05 minutes 01 seconds East, a distance of 26.34 feet;

thence North 83 degrees 42 minutes 25 seconds East, a distance of 91.32 feet;

thence South 07 degrees 15 minutes 20 seconds East, a distance of 113.70 feet;

thence South 85 degrees 38 minutes 45 seconds West, a distance of 753.70 feet;

thence South 09 degrees 10 minutes 33 seconds East, a distance of 150.88 feet;

thence South 81 degrees 46 minutes 11 seconds West, a distance of 121.35 feet;

thence North 08 degrees 06 minutes 46 seconds West, a distance of 244.22 feet to the POINT OF BEGINNING;

the West half of Section 17; except portion lying Northwesterly of a line 1000 feet and parallel to the South right of way line of lateral "D"; And

EXCEPT the South half of the Southeast quarter of the Southwest quarter;

All of Section 18; except that portion of said section lying Northwesterly of the Northwest right of way line of lateral "D";

All in Township 6 South, Range 6 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

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**PARCEL NO. 10**

All of Section 14; except that portion of said section lying South of the South right-of-way line of the Southern Pacific Railroad and East right-of-way line of Lateral "D";

All in Township 6 South, Range 7 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

**PARCEL NO. 11:**

Lots 3, 4, 16, 17 and 18, Block 34, of GILA BEND, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 1 of Maps, Page 57.

EXHIBIT "C"  
Water Production and Delivery System

**PARCEL NO. 1:**

The irrigation system and dams, reservoirs, canals, canal gates, laterals, siphons, ditches, irrigation wells and other installations known as The Gila Bend Canal, formerly known as The Gillespie Canal, as shown in an unrecorded survey completed by Brady-Aulerich & Associates, Inc., dated October 2000 and revised July 12, 2001 and generally described as follows:

Starting in Township 2 South, Range 5 West, from a point at the headgates on the East side of the aforesaid Gillespie Dam and the East side of the Gila River, in a Southeasterly direction from said point across the East half of Section 28; the South half of Section 27; the South half of Section 26; the North half of Section 35; and Southeasterly through Section 36;

thence continuing through Township 3 South, Range 4 West, in a Southeasterly direction across Section 6; the Northeast quarter of Section 7; Section 8; the East half of Section 17; the Southwest quarter of Section 16; Section 21; Section 28; the East half of Section 33; and the Southwest quarter of Section 34;

thence continuing through Township 4 South, Range 4 West, in a Southerly direction across the West half of Section 3; the West half of Section 10; Section 15; the Southwest quarter of Section 14; the West half of Section 23; the East half of Section 22; the East half of Section 27; the West half of Section 26; the East half of Section 27; and the East half of Section 34;

thence continuing through Township 5 South, Range 4 West, in a Southwesterly direction across Sections 3 and 10; through the Northwest <sup>Unofficial Document</sup> quarter of Section 15; the East half of Section 16; Section 21; the Northwest quarter of Section 28; Section 29; across the Northwest quarter of Section 32; and in a Westerly direction across the South half of Section 31;

thence continuing through Township 5 South, Range 5 West, in a Westerly direction across the Southeast quarter of Section 36;

thence continuing through Township 6 South, Range 5 West, in a Westerly direction across the North half of Section 1; Section 2; Section 3; the South half of Section 4; the South half of Section 5; the North half of Section 8; the Southwest quarter of Section 5; the Southeast quarter of Section 6; and the North half of Section 7;

thence continuing through Township 6 South, Range 6 West, in a Westerly direction across the North half of Section 12; Northwesterly across the Northeast quarter of Section 11; Section 2; Southwesterly across Section 3; Section 4; Section 9; the South half of Section 8; Section 17; Section 18; and the West half of Section 19;

thence continuing through Township 6 South, Range 7 West, in a Southwesterly direction across Section 24; through the Northwest quarter of Section 26; Northwesterly across Section 23; through the Southwest quarter of Section 14; and Northerly across the West half of Section 15, Gila and Salt River Base and Meridian, Maricopa County, Arizona;

Continued . . . .

EXHIBIT "C"  
Water Production and Delivery System

EXCEPT all minerals as reserved in the Patent recorded in Book 415 of Deeds, Page 581, records of Maricopa County, Arizona, as to the Southeast quarter of the Southeast quarter of Section 28, Township 2 South, Range 5 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; and

EXCEPT all minerals, gas, oil, petroleum, hydrocarbons, rare metals and fissionable materials, in, on, under or that may produced from the above land, as reserved in Deed recorded as Docket 2260, Page 346, records of Maricopa County, Arizona, as to Sections 7 and 28, Township 3 South, Range 4 West; Sections 22 and 34, Township 4 South, Range 4 West; Section 3, Township 6 South, Range 6 West and Section 23, Township 6 South, Range 7 West Gila and Salt River Base and Meridian, Maricopa County, Arizona; and

EXCEPT an undivided one-half interest in all oil, gas, petroleum, casinghead gas, all liquid and gaseous hydrocarbon substances, all other substances of a gaseous nature, and geothermal resources as reserved in Deed recorded in Docket 13940, Page 289, records of Maricopa County, Arizona; and

EXCEPT an undivided one-half interest in all minerals, fuels, substances, asphaltic minerals, helium, hydrogen, sulfide, nitrogen, sulphur, coal, lignite, carboniferous deposits (including, without limitation, non-liquid and non-gaseous hydrocarbon substances), bauxite, shale, fossils, phosphate, nitrate, potash, uranium, thorium, materials used in the production of fissionable materials, radioactive substances or source materials, copper, gold, silver, rare metals, materials of every kind and character used in the production of energy, and all other metallic and nonmetallic or organic and inorganic minerals, ores, or deposits, whether or not of commercial value, and without restriction to such enumerated minerals all other minerals whether similar or dissimilar to those particular specified therein, as reserved in Deed recorded in Docket 13940, Page 289, records of Maricopa County, Arizona.

**PARCEL NO. 2:**

A parcel of land situated on a portion of the Southeast quarter of Section 8, Township 6 South, Range 6 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularlay described as follows:

COMMENCING at a point on the East line of said Section 8, from which the Northeast corner of said Section 8 bears North 00 degrees 14 minutes 51 seconds West, a distance of 2,570.49 feet, said point also being on the Southerly right-of-way line of the Southern Pacific Railroad as shown on the map on file with the Bureau of Land Management as approved on December 19, 1879;

thence along said right-of-way line, South 80 degrees 56 minutes 53 seconds West, a distance of 1,793.84 feet;

thence departing said right-of-way line, South 08 degrees 42 minutes 54 seconds East, a distance of 136.10 feet to the POINT OF BEGINNING;

Continued . . . .

EXHIBIT "C"  
Water Production and Delivery System

thence continuing South 08 degrees 42 minutes 54 seconds East a distance of 467.97 feet;

thence South 83 degrees 24 minutes 33 seconds West, a distance of 22.15 feet;

thence South 09 degrees 47 minutes 30 seconds East, a distance of 155.03 feet;

thence South 77 degrees 26 minutes 41 seconds West, a distance of 198.45 feet;

thence North 09 degrees 44 minutes 27 seconds West, a distance of 543.10 feet;

thence South 80 degrees 11 minutes 27 seconds West, a distance of 134.02 feet;

thence North 09 degrees 12 minutes 19 seconds West, a distance of 228.96 feet to a point on the South right-of-way line of said Southern Pacific Railroad;

thence along said South right-of-way line, North 80 degrees 56 minutes 53 seconds East, a distance of 173.69 feet;

thence departing said South right-of-way line, South 09 degrees 32 minutes 33 seconds East, a distance of 46.59 feet;

thence South 72 degrees 38 minutes 30 seconds East, a distance of 195.75 feet;

thence South 88 degrees 11 minutes 10 seconds East, a distance of 12.94 feet to the POINT OF BEGINNING.

EXCEPT an undivided one-half interest in all oil, gas, petroleum, casinghead gas, all liquid and gaseous hydrocarbon substances, all other substances of a gaseous nature, and geothermal resources as reserved in Deed recorded in Docket 13940, Page 289, records of Maricopa County, Arizona; and

EXCEPT an undivided one-half interest in all minerals, fuels, substances, asphaltic minerals, helium, hydrogen, sulfide, nitrogen, sulphur, coal, lignite, carboniferous deposits (including, without limitation, non-liquid and non-gaseous hydrocarbon substances), bauxite, shale, fossils, phosphate, nitrate, potash, uranium, thorium, materials used in the production of fissionable materials, radioactive substances or source materials, copper, gold, silver, rare metals, materials of every kind and character used in the production of energy, and all other metallic and nonmetallic or organic and inorganic minerals, ores, or deposits, whether or not of commercial value, and without restriction to such enumerated minerals all other minerals whether similar or dissimilar to those particular specified therein, as reserved in Deed recorded in Docket 13940, Page 289, records of Maricopa County, Arizona.

EXHIBIT "D"  
GDI Property

PARCEL NO. 1:

That part of Section 28, Township 2 South, Range 5 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

BEGINNING at a point on the North line of the Northwest quarter of the Northeast quarter of Section 28, Township 2 South, Range 5 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, said point being 710 feet Westerly of the Northeast corner of said Northwest quarter of the Northeast quarter;

thence Southerly to a point on the South line of the said Northwest quarter of the Northeast quarter, said point being 685 feet Westerly of the Southeast corner of said Northwest quarter of the Northeast quarter;

thence continuing Southerly to the North line of Gillespie Dam;

thence Easterly along the said North line of Gillespie Dam to a point; said point lying 385 feet East of the West line of the Southeast quarter of the Northeast quarter of said Section 28;

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thence Southerly at a right angle to the North line of said Gillespie Dam, a distance of 200 feet;

thence Westerly along a line parallel with and 200 feet distant from the North line of said Gillespie Dam to a point on the East line of Old U.S. 80, the Phoenix/Yuma Hwy.;

thence Northerly along the said East line of the Phoenix/Yuma Hwy. to a point on the East line of the Northwest quarter of the Northwest quarter of said Section 28;

thence Northerly along the said East line of the Northwest quarter of the Northwest quarter to the North line of said Section 28;

thence Easterly along said North line of Section 28 to the POINT OF BEGINNING;

EXCEPT a strip or piece of land 100 feet wide, described as follows:

COMMENCING at a point 260 feet South of the Southeast corner of the Northwest quarter of the Northeast quarter of Section 28, Township 2 South, Range 5 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXHIBIT "D"  
GDI Property

thence South 87 degrees East to the intersection of and parallel to the center line of Gila Bend Canal and 150 feet distance from the same, in a Westerly direction;

thence following said parallel line as a center line, in a Southeasterly direction to the point of intersection of the Old St. Louis Canal bed;

thence South 32 degrees East to the intersection of the Section line between Sections 27 and 28;

thence South 70 degrees East to the Southerly boundary of the Northeast quarter of the Southwest quarter of Section 27.

EXCEPT an undivided one-half interest in all oil, gas, petroleum, casinghead gas, all liquid and gaseous hydrocarbon substances, all other substances of a gaseous nature, and geothermal resources as reserved in Deed recorded in Docket 13940, Page 289, records of Maricopa County, Arizona; and

EXCEPT an undivided one-half interest in all minerals, fuels, substances, asphaltic minerals, helium, hydrogen, sulfide, nitrogen, sulphur, coal, lignite, carboniferous deposits (including, without limitation, non-liquid and non-gaseous hydrocarbon substances), bauxite, shale, fossils, <sup>Unofficial Document</sup> nitrate, potash, uranium, thorium, materials used in the production of fissionable materials, radioactive substances or source materials, copper, gold, silver, rare metals, materials of every kind and character used in the production of energy, and all other metallic and nonmetallic or organic and inorganic minerals, ores, or deposits, whether or not of commercial value, and without restriction to such enumerated minerals all other minerals whether similar or dissimilar to those particular specified therein, as reserved in Deed recorded in Docket 13940, Page 289, records of Maricopa County, Arizona.

EXHIBIT E

WHEN RECORDED MAIL TO: DONALD D. MEYERS, ESQ.  
3003 North Central Avenue  
Suite 2110  
Phoenix, Arizona 85012

RECORDED IN OFFICIAL RECORDS  
OF MARICOPA COUNTY, ARIZONA  
DEC 28 1989 4 22  
HELEN PURCELL, County Recorder  
FEE 92- POS 87 CA

CONTRACTY AGREEMENT  
NO TITLE LIABILITY

AGREEMENT (XG)  
WATER AND WATER RIGHTS AGREEMENT  
89 596373

This Water and Water Rights Agreement ("Agreement") is made, entered into and deemed to be effective this 28th day of December, 1989 by and among J.S. Stephens & Sons, Inc., an Arizona corporation ("Stephens") and W.K. Jenkins and Robert E. Jenkins (collectively referred to herein as "Jenkins").

Recitals:

A. Jenkins and Stephens have concurrently with the execution of this Agreement entered into an Assignment of all of Jenkins' right, title, and interest in and to that certain Real Estate Purchase and Sale Agreement and Escrow Instructions dated November 10, 1989 among Jenkins, The Prudential Insurance Company of America, a New Jersey corporation ("Prudential") and Transamerica Title Insurance Company, designated therein as the Escrow Holder, under escrow #75006411-0, (referred to in the Assignment and herein as the "Paloma Ranch Agreement").

B. Stephens, pursuant to the Assignment, has assumed all of the rights, responsibilities and obligations of Jenkins as set forth in the Paloma Ranch Agreement.

C. The Assignment contains in Paragraph 5(A) through (F) provisions which in substance provide for Jenkins' entitlement to twenty percent (20%) of all of the net proceeds from the sale, lease or transfer of water or water rights by Stephens, his successors or assigns, and that

*W.K. Jenkins*

EXHIBIT D

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Stephens and Jenkins shall, effective December 19, 1989, enter into this Agreement.

NOW, THEREFORE, for and in consideration of the aforementioned recitals, the terms and conditions of that certain Assignment dated December 18, 1989 by and among the parties hereto, and the terms and conditions hereinafter set forth to be kept and performed by the parties hereto, it is agreed as follows:

1. Stephens hereby assigns, transfers, and sets over to Jenkins twenty percent (20%) of all net proceeds from the sale, lease, or transfer of water or water rights by Stephens, his successors or assigns, that are acquired by Stephens either now or at any time hereafter as a result of the acquisition of the real property and water rights referred to in the Paloma Ranch Agreement. Net proceeds from the sale, lease or transfer of water or water rights is for the purposes of this Agreement defined as the gross sale, lease or assignment Unofficial Document less all direct costs related to the sale, lease or transfer, commissions and closing costs. (For example, if Stephens sells, leases or assigns two thousand five hundred (2,500) acre feet of water for One Thousand One Hundred Dollars (\$1,100.00) per acre foot, and the direct costs related to the sale, lease or transfer equal One Hundred Dollars (\$100.00) per acre foot, the amount of the net proceeds from the sale would be One Thousand Dollars (\$1,000.00) per acre foot or a total of Two Million Five Hundred Thousand Dollars (\$2,500,000.00). In this example,

*RE J. [Signature]*

EXHIBIT D

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Jenkins would receive as his percentage of the net proceeds the sum of Five Hundred Thousand Dollars (\$500,000.00) which would be paid at the time of the closing of the sale, lease or transfer. The twenty percent (20%) of all net proceeds that Jenkins is entitled to from the sale, lease or transfer of water or water rights by Stephens, his successors or assigns, as provided for above, shall be paid to Jenkins at the time of and concurrently with the sale, lease or transfer of any water or water rights by Stephens, his successors or assigns, pro rata as such payments are received by Stephens.

2. Stephens agrees that no water or water rights shall be sold, leased or transferred in increments of less than two thousand five hundred (2,500) acre feet and that the net selling price per acre foot for the sale, lease or transfer of water or water rights shall be not less than One Thousand Dollars (\$1,000.00). The minimum net selling price per acre foot shall be at the pumping level or point of diversion on the real property described in Exhibit A at which the water or water rights are sold, leased or transferred. The minimum net selling price per acre foot for each acre foot of water or water rights sold, leased or transferred shall be adjusted annually by the Consumer Price Index (CPI) each year beginning January, 1991. The CPI means all urban consumers (U.S. City Averages; all items for 1989 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, the base year to be used by the parties shall be 1989. If the CPI is not available for 1989 or cannot be

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converted to a 1989 base, the CPI adjustment under this paragraph shall be made with the use of such appropriate conversion factor, formula or table for converting the Consumer Price Index as may be published by the Bureau of Labor Statistics or any successor organization or bureau that determines the Consumer Price Index annually. If the Consumer Price Index is at any time hereafter no longer published, a comparable Consumer Price Index generally accepted and employed by the real estate profession shall be used.

3. Stephens' assignment and transfer of twenty percent (20%) of all net proceeds from the sale, lease or transfer of water or water rights by Stephens, his successors or assigns, and Jenkins entitlement to twenty percent (20%) of such sale proceeds as provided for above shall apply to all water or water rights sold, leased or transferred by Stephens, his successors or assigns, except for water or water rights sold, leased or transferred by Stephens, his successors or assigns to persons or entities using the same for farm irrigation purposes only, and Unofficial Document the property described in the Paloma Ranch Agreement, the legal description of which is attached hereto as Exhibit A and by this reference made a part hereof.

4. If at any time after the date of the execution of this Agreement Jenkins produces a buyer, lessee or transferee for the aforesaid water or water rights at a net price of not less than One Thousand Dollars (\$1,000.00) per acre foot, as

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REJ  
*[Signature]*

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adjusted by the CPI pursuant to Paragraph 2 above and for quantities in a minimum amount of Two Thousand Five Hundred (2,500) acre feet or more, Stephens, his successors or assigns shall be obligated to sell, lease or transfer such water or water rights and pay twenty percent (20%) of the net proceeds from such sale, lease or transfer to Jenkins. Beginning January 1, 1995 and thereafter, if Jenkins produces a buyer, lessee or transferee for the aforesaid water or water rights on the terms and conditions set forth herein and if Stephens, his successors or assigns elects not to sell, lease or transfer the aforesaid water or water rights to a buyer, lessee or transferee produced by Jenkins, then and in that event, Stephens, his successor or assigns shall immediately pay to Jenkins twenty percent (20%) of the price to be paid by the buyer, lessee or transferee for the aforesaid water or water rights.

5. This Agreement to assign, transfer and set over to Jenkins twenty percent (20%) of the net proceeds of the sale, lease or transfer of all water or water rights and Jenkins' entitlement to twenty percent (20%) of the net proceeds from the sale, lease or transfer of all water or water rights as provided for above, shall be a covenant that runs with the land described in the Paloma Ranch Agreement and as described in Exhibit A attached hereto, shall be specifically enforceable by Jenkins, his assigns and personal representatives and shall be recorded by the parties hereto in the Office of the Maricopa County Recorder.

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*Handwritten initials and signature*  
 R.L.G. *[Signature]*

EXHIBIT D

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Stephens and Jenkins acknowledge and agree that the rights and obligations as provided for in this Agreement are subordinate to Prudential's purchase money loan to Stephens or the Buyer as provided for in the Paloma Ranch Agreement. Subject to the terms and conditions of Prudential's purchase money loan to Stephens or the Buyer as provided for in the Paloma Ranch Agreement, Jenkins shall, for the purpose of curing a default by Stephens or to effectuate the release of Stephens' water or water rights from Prudential's purchase money loan, have the right at any time on and after the date of this Assignment to pay and discharge Prudential's purchase money loan to Stephens or the Buyer, and concurrently therewith Stephens shall execute a Promissory Note for the remaining principal balance of the purchase money loan at that time, together with the accrued interest thereon; a First Deed of Trust and such other loan documents as may be necessary and appropriate to and for the benefit of Jenkins, all of which shall be on the same terms and conditions as Prudential's purchase money loan to Stephens.

7. Stephens, <sup>Unofficial Document</sup> his successors and assigns shall not intentionally or imprudently fail or refuse in a timely manner to defend or preserve the water and water rights described and referred to herein, and Jenkins' entitlement to twenty percent (20%) of the net proceeds from the sale, lease or transfer of such water or water rights.

8. Stephens shall, within seven (7) business days following the receipt of notice of any claimed default by

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*Stephens*  
*Red Jenkins*

Prudential under the Paloma Ranch Agreement, give Jenkins notice of such default and also provide Jenkins with a reasonable opportunity to cure such default.

9. The parties hereto agree to cooperate fully and completely with each other in the execution of any and all documents that may be necessary to carry out the purposes and objectives of this Agreement.

10. J.S. Stephens represents that J.S. Stephens & Sons, Inc. is a corporation in good standing in the State of Arizona, that he is the President of the corporation and has been authorized to execute this Agreement for and on behalf of the corporation. Stephens shall, concurrently with the execution of this Agreement, provide to Jenkins a certified copy of a corporate resolution authorizing and directing J.S. Stephens to execute this Agreement for and on behalf of the corporation.

11. Jenkins and Stephens confirm and acknowledge to each other that it is not their intention or purpose in executing this Agreement to create a partnership or joint venture. Jenkins is <sup>Unofficial Document</sup> not authorized to act as an agent or representative of Stephens and Jenkins is not authorized to represent to any person or other entity on behalf of Stephens what the quality or quantity of the water or water rights are which are the subject matter of this Agreement.

12. Stephens represents to Jenkins that as of the date of the execution of this Agreement it has not assigned, transferred, sold, conveyed, encumbered or pledged, either in

*R.S. Stephens*  
*J.S. Jenkins*

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whole or in part, any of the rights, title or interest of Stephens under the Assignment. Stephens further represents and covenants to Jenkins that when and if Stephens assigns, sells, transfers, conveys, pledges or encumbers, in whole or in part, Stephens' right, title and interest under the Assignment or to the property which is the subject matter of the Paloma Ranch Agreement, Stephens shall cause the assignee to accept in writing all of the obligations and responsibilities of Stephens as set forth in this Agreement.

13. Miscellaneous.

A. In the event there is any disagreement between the parties hereto and it is necessary for one of the parties to employ an attorney to enforce the terms and conditions of this Agreement, the prevailing party in any such action shall be awarded, in addition to any damages, injunctive or other relief, its costs, expenses and attorneys' fees.

B. This Agreement constitutes the entire agreement between the parties and no prior agreements or understandings pertaining to any matters shall be effective for any purpose unless expressly set forth herein. No provisions of this Agreement may be amended or modified in any manner whatsoever, except by an agreement in writing signed by the party to be bound thereby.

C. Either Stephens or Jenkins may assign, in whole or in part, their rights, interest, title, responsibilities or obligations under this Agreement, provided however, the assignee thereof accepts in writing such assignment subject

*RDJ*  
*JH*

EXHIBIT D

89 596373

to all of the terms and conditions of this Agreement and gives written notice thereof pursuant to Paragraph G hereof. Such assignment shall not have any legal force or effect until the same has been accepted in writing by the assignee and notice thereof has been given pursuant to Paragraph G of this Agreement. This Agreement shall be binding on the parties hereto, their successors, assigns, and personal representatives.

D. This Agreement shall be governed by the laws of the State of Arizona and any questions arising hereunder shall be construed or determined according to such laws. Jenkins is informed and believes that the water and water rights which are the subject matter of this Agreement involve more than four hundred thousand (400,000) acre feet of ground and surface water and Stephens does not have sufficient knowledge or information to form a belief as to the quantity of ground or surface water which is the subject matter of this Agreement, and therefore is not at this time able to estimate the quantity of the same. The parties hereto recognize and acknowledge that the water and water rights which are the subject matter of this Agreement are subject to the laws of the State of Arizona and the rules and regulations of the Arizona Department of Water Resources, and that such laws and rules and regulations may hereafter be changed or modified. It is the intention of the parties hereto that this Agreement at all times be construed and interpreted under the laws of the State of Arizona; the rules

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EXHIBIT D

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and regulations of the Department of Water Resources for the State of Arizona, and by the courts of the State of Arizona and the United States of America in such a manner as to give effect to the expressed purposes and intentions of the parties to this Agreement that is, that Jenkins, his assigns and personal representatives at all times and under all conditions receive twenty percent (20%) of the net proceeds from the sale, lease or transfer of water or water rights by Stephens, his successors or assigns.

E. This Agreement and each of the terms and conditions set forth herein shall survive the Closing of the transaction contemplated by the Paloma Ranch Agreement and shall remain a binding contract between the parties hereto.

F. Time is declared to be of the essence of this Agreement and it is understood that each date set forth herein and the obligations of the parties to be satisfied by such date have been the subject matter of specific negotiations by the parties.

G. Unofficial Document ~~has~~ under this Agreement shall be effective upon personal delivery or three (3) business days after deposit in the United States Mail, by certified mail, postage fully prepaid, and addressed to the respective parties as follows:

TO JENKINS:

W.K. Jenkins  
Adrian, Missouri 64720

*REP. INT JJK*

89 596373

WITH A COPY TO:

Donald D. Meyers, Esq.  
MEYERS & WEHRLI, P.C.  
3003 N. Central, Suite 2110  
Phoenix, Arizona 85012

TO STEPHENS:

J.S. Stephens & Sons, Inc.  
Post Office Box 1050  
Litchfield Park, Arizona 85140

WITH A COPY TO:

Wayne Smith, Esq.  
ROBBINS & GREEN, P.C.  
3300 N. Central, Suite 1100  
Phoenix, Arizona 85012-2578

The names and addresses of the parties to whom notices shall be given may be changed by the parties at any time by providing the notice set forth above.

IN WITNESS WHEREOF, the parties hereto have executed four (4) original counterparts of this Agreement with the same to be effective as of the date and year first hereinabove set forth.

*W.K. Jenkins*  
W.K. Jenkins  
*Robert E. Jenkins*  
Robert E. Jenkins

Unofficial Document

J.S. STEPHENS & SONS, INC.,  
an Arizona corporation

By *J.S. Stephens*  
J.S. Stephens, President

RFJ  
*J.S.*

89 596373

STATE OF Arizona ) ss.  
COUNTY OF Maricopa )

SUBSCRIBED AND SWORN TO before me this <sup>26th</sup> day of December, 1989, by W.K. Jenkins and Robert E. Jenkins.

Lawrence V. Vito  
Notary Public

My Commission Expires:

9-20-92

STATE OF ARIZONA ) ss.  
COUNTY OF MARICOPA )

SUBSCRIBED AND SWORN TO before me this <sup>27th</sup> day of December, 1989, by J.S. Stephens & Sons, Inc., an Arizona corporation, who acknowledged that he is the President of J.S. Stephens & Sons, Inc., and further acknowledged that he was authorized and empowered on behalf of the corporation to execute the foregoing instrument and does so for the purposes therein contained.

Walter D. Dreyfus  
Notary Public

My Commission Expires:

August 11, 1990

Unofficial Document

*RF. J.E.*

Exhibit A

Please refer to the original recorded Water and Water Rights Agreement for the Exhibit A Legal Description.

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EXHIBIT "F"

Copies of The Maricopa County Superior Court Judgment and Court of Appeals Decision With  
Respect to The Jenkins Agreement

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Unofficial Document

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*HSC*  
EXHIBIT "F"  
Copies of The Maricopa County Superior Court Judgment  
When recorded mail to: Respect to The Jenkins

OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
97-0833717 11/26/97 02:23  
TDNY 1 OF 2

**CAPTION HEADING:** \_\_\_\_\_

**DO NOT REMOVE**

This is part of Unofficial Document the official document.

EXHIBIT "F"  
Copies of The Maricopa County Superior Court Judgment and Court of Appeals Decision With  
Respect to The Jenkins Agreement

6-4-97 FILED  
JUDITH ALLEN, Clerk  
1:30pm  
Deputy

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

PALOMA INVESTMENT LIMITED )  
PARTNERSHIP, an Arizona limited partnership, )  
Plaintiff, )  
v. )  
W.K. JENKINS, et al. )  
Defendants. )  
Unofficial Document

No. CV 93-08075

JUDGMENT

(Assigned to the Hon.  
Frank T. Galati)

Having considered the various motions and cross-motions for summary judgment filed  
by plaintiff Paloma Investment Limited Partnership ("PILP") and defendants W.K. Jenkins and  
Mrs. W.K. Jenkins, Robert E. Jenkins and Mrs. Robert E. Jenkins, Karl M Jenkins and Barbara  
Jenkins, Hugh C. Jenkins and Mrs. Hugh C. Jenkins, M. Earlene Jenkins and Mr. John Doe  
Jenkins, Karla Jenkins Wilson and Mr. John Doe Wilson (said defendants hereinafter being  
referred to collectively as "the Jenkinases"),

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EXHIBIT "F"

Copies of The Maricopa County Superior Court Judgment and Court of Appeals Decision With Respect to The Jenkins Agreement

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

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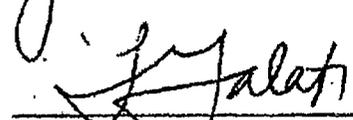
1. The Water and Water Rights Agreement (the "Water Agreement"), dated December 26, 1989, which was recorded on December 28, 1989, at Recorder's No. 89-596373, records of Maricopa County, Arizona (a copy of which is attached hereto), constitutes a valid mortgage, equitable mortgage and/or lien by the Jenkins on the water rights in the Paloma Ranch. (The Paloma Ranch is that real property more fully described in Exhibit A to the Water Agreement). The Water Agreement is a covenant that was intended to run with the land, and it binds PILP.

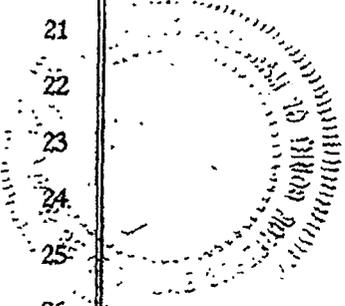
2. Count 7 is dismissed because the parties agree that the provisions of the Water Agreement providing that the Jenkinases are entitled to 20% of all net proceeds from the sale, lease, or transfer of water or water rights, and requiring that no water or water rights shall be sold leased or transferred in increments of less than 2,500 acre feet and that the net selling price per acre foot for the sale, lease or transfer of water or water rights shall not be less than \$1,000, apply only to sales, leases or transfers of water or water rights for use outside the boundaries of the Paloma Ranch.

3. Counts 2, 3, 4 and 5 are dismissed because they are moot.

4. Count 6 is dismissed because plaintiff has stipulated to its dismissal.

Dated this 30 day of May, 1997.

  
\_\_\_\_\_  
Judge of the Superior Court



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The foregoing instrument is a full, true and correct copy of the original document.

Attest

9-9 19 97  
JUDITH ALLEN, Clerk of the Superior Court of the State of Arizona, in and for the County of Maricopa.

By

Deputy

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**PALOMA INVESTMENT LIMITED PARTNERSHIP, an Arizona  
limited partnership; PALOMA RANCH INVESTMENTS, L.L.C.,  
a Delaware limited liability company, Plaintiff-Appellee,  
Cross-Appellant, v. W. K. JENKINS and MRS. W. K.  
JENKINS; ROBERT E. JENKINS and MRS. ROBERT E.  
JENKINS; KARL M. JENKINS and BARBARA JENKINS;  
HUGH C. JENKINS and MRS. HUGH C. JENKINS; M.  
EARLENE JENKINS and MR. JOHN DOE JENKINS; KARLA  
JENKINS WILSON and MR. JOHN WILSON, Defendants-  
Appellants, Cross-Appellees.**

1 CA-CV 97-0402, 1 CA-CV 98-0170, (Consolidated)

COURT OF APPEALS OF ARIZONA, DIVISION ONE,  
DEPARTMENT E

*194 Ariz. 133; 978 P.2d 110; 1998 Ariz. App. LEXIS 181;  
280 Ariz. Adv. Rep. 3*

October 13, 1998, Filed

Unofficial Document

**SUBSEQUENT HISTORY:**

[\*\*\*1] Petition for Review DENIED on May 25, 1999 by Arizona Supreme Court CV 98-0581-PR.

**PRIOR HISTORY:**

Appeal from the Superior Court of Maricopa County. Cause No. CV 93-08075. The Honorable Thomas O'Toole, Judge. The Honorable Frank T. Galati, Judge. The Honorable William J. Schafer, III, Judge.

**DISPOSITION:**

AFFIRMED.

**COUNSEL:**

OSBORN MALEDON P.A. by Thomas L. Hudson, Andrew D. Hurwitz, Helen Perry-Grimwood, Attorneys for Plaintiff-Appellee/Cross-Appellant, Phoenix.

T. MICHAEL DAGGETT, P.C. by T. Michael Daggett, Phoenix and PROPER & KIRKORSKY by Jeffrey M. Proper, Attorneys for Defendants-Appellants/Cross-Appellees, Phoenix.

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**JUDGES:**

JEFFERSON L. LANKFORD, Judge. CONCURRING: MICHAEL D. RYAN, Presiding Judge, CECIL B. PATTERSON, JR., Judge.

**OPINIONBY:**

JEFFERSON L. LANKFORD

**OPINION:**

[\*135] [\*\*112] OPINION

LANKFORD, Judge

**P1** At issue in this action is the final judgment on a seven count amended complaint filed by Paloma Investment Limited Partnership ("Paloma") against W. K. Jenkins and his family (collectively "Jenkins") regarding a Water Rights Agreement ("WRA"). The [\*\*\*2] WRA gave Jenkins a right to a portion of all proceeds gained through the sale, lease or transfer of all water or water rights on Paloma's property, Paloma Ranch ("the Ranch").

**P2** After both parties moved for summary judgment, the trial court found for Jenkins on the first count and dismissed the remaining six counts. Jenkins' appeal challenges the inclusion of certain language in the order dismissing the seventh count. Paloma cross-appeals from the judgment for Jenkins on the first count. Both parties also appeal from the partial award of attorneys' fees to Jenkins. We consolidated the appeals and exercise jurisdiction pursuant to Arizona Revised Statutes Annotated ("A.R.S.") section 12-2101(B) (1994).

**P3** The issue raised by Jenkins on appeal is:

Did the trial court err when it found that the parties agreed that the WRA applied only to water for use outside of the boundaries of the Ranch?

**P4** The issue raised by Paloma's cross-appeal is:

Did the trial court err when it found that the WRA was a real property interest binding upon Paloma?

**P5** The issue raised by both parties is:

Did the trial court err when it [\*\*\*3] awarded a portion of Jenkins' requested attorneys' fees?

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P6 The pertinent facts are as follows. W. K. Jenkins and his son, Robert E. Jenkins, agreed to buy the Ranch, a 67,800 acre parcel of land near Gila Bend in Maricopa County, from Prudential Insurance Company. Jenkins subsequently agreed to assign his interest in the contract to J.S. Stephens and Sons, Inc. ("Stephens"). Stephens was to pay Jenkins \$ 250,000 and enter into a "definitive <sup>Unofficial Document</sup> <sup>[\*\*113]</sup> <sup>[\*136]</sup> agreement" including the WRA. This agreement was subsequently executed by these parties.

P7 The WRA allowed either Jenkins or Stephens and any successors and assigns to sell, lease or transfer the water or water rights of the Ranch and entitled Jenkins to twenty percent of all net proceeds from the sale, lease or transfer of the Ranch's water or water rights. The only expressed exception to this agreement was for water or water rights sold, leased or transferred to parties "for farm irrigation purposes only, and only on [the Ranch]."

P8 Stephens subsequently assigned his rights as buyer to Maricopa Land Company ("Maricopa"). Prudential, Jenkins, Stephens and Maricopa executed an amendment to the Prudential-Jenkins <sup>[\*\*\*4]</sup> sale agreement, recognizing the assignment from Jenkins to Stephens and the subsequent assignment from Stephens to Maricopa. Maricopa agreed to adopt all the previous terms and conditions of the Prudential-Jenkins sale agreement and of the Jenkins-Stephens WRA. The seller, Prudential, and the new buyer, Maricopa, agreed to complete the transfer of all water rights within thirty days of sale. Prudential also conveyed the Ranch by special warranty deed and the water and water rights by quit claim deed to Maricopa. These deeds and the WRA were recorded at the Maricopa County Recorder's Office on the same day.

P9 Three months later, Maricopa sold the Ranch to Paloma pursuant to a special warranty deed. A quit claim deed recorded later shows that Paloma also purchased the water and water rights. Although Paloma did not participate in the negotiations and agreements among Prudential, Jenkins, Stephens and Maricopa, and though there was no mention of the WRA in the deeds from Maricopa to Paloma, Paloma acknowledged for purposes of its summary judgment motion that it knew of the WRA.

P10 Paloma initiated this action by filing a three count complaint against Jenkins <sup>[\*\*\*5]</sup> and Transamerica Title Company. The first count, the only claim against Jenkins, was to quiet title and challenged the validity of the WRA. Paloma moved for summary judgment against Jenkins on that count only. Jenkins also moved for summary judgment, alleging that the WRA was valid as a deed, mortgage, equitable mortgage, lien or covenant running with the land. Jenkins also asserted that the WRA was binding on Paloma because Paloma had already admitted that it had had notice of the WRA when it purchased the Ranch.

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P11 Judge Thomas O'Toole issued a minute entry order denying Paloma's motion and granting Jenkins' motion. He found that though the WRA was not a deed, it was binding upon Paloma. He determined that the documents from Prudential, Jenkins, Stephens and Maricopa clearly evidenced an intention to create a covenant running with the land. He decided that Paloma had had constructive notice of the recorded WRA and was bound by it. He concluded that the WRA was a "valid, mortgage, equitable mortgage, and/or lien on the water rights in Paloma Ranch." He explained that the WRA was a mortgage because it "constituted a valid transfer of an existing interest in real property [\*\*\*6] and was also security for performance of certain conduct," that is, the WRA established a lien on the water and water rights to enforce the payment provision. Judge O'Toole's ruling was later incorporated into the final judgment entered by Judge Frank T. Galati at the conclusion of the case.

P12 After Judge O'Toole issued his order, Paloma filed an objection to the entry of judgment due to the presence of other parties and its pending motion for leave to amend its complaint. Jenkins moved to enter judgment and objected to the amendment. The trial court declined to enter judgment at that time and granted Paloma leave to file an amended complaint. The new complaint added parties and claims. Litigation concerning other parties to the action ensued and ultimately a settlement was reached.

P13 Paloma then filed a motion for leave to amend a second time. The trial court granted that motion as well and Paloma Unofficial Document filed a second amended complaint, lodged solely against Jenkins. The complaint had seven counts. The first count sought to quiet title, as did the original complaint. The six new counts were: Count Two: breach of contract; [\*\*114] [\*137] Count Three: failure to release property [\*\*\*7] according to contract; Count Four: unreasonable restraint on alienation; Count Five: reformation of the contract; Count Six: commercial frustration; and Count Seven: declaratory relief regarding a minimum sale/minimum price provision in the WRA.

P14 Responding to the first count, Judge Galati adopted Judge O'Toole's earlier interlocutory ruling that the WRA bound Paloma as a valid mortgage, equitable mortgage, or lien, and a covenant running with the land. Counts Two, Three, Four, and Five were dismissed apparently because Judge Galati found that Jenkins had stipulated that the WRA had only limited scope. The court expressly used that stipulation to dismiss Count Seven. Count Six was dismissed pursuant to stipulation by Paloma.

P15 The dismissal is best understood within the framework of Paloma's Count Seven. Count Seven asked for declaratory relief interpreting a minimum sale/minimum price provision of the WRA. Specifically, Paloma alleged that Jenkins claimed that the WRA prohibited (1) the sale, lease or transfer of any portion of the Ranch along with its appurtenant water rights for less than 2500 acre feet of water and (2) the sale, lease or transfer of [\*\*\*8] water rights appurtenant to any portion of the property for less than \$ 1000 per acre foot, adjusted annually to the Consumer Price Index. This issue had

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arisen because of a proposed sale of land and water rights to a third party by Paloma for less than the minimums set by the WRA. The court dismissed Count Seven when it found that the parties agreed that the WRA applied "only to the sale, lease or transfer of water or water rights for use outside the boundaries of the Ranch." Because the proposed buyer would use the water within the boundaries of the Ranch, the issue was declared moot.

**P16** Jenkins' appeal centers on the court's finding that he had agreed that the WRA was limited to transfers of water for use off the Ranch. In his response memorandum, Jenkins had stated, "Mr. Jenkins testified, as the Water Rights Agreement provides, that the Water Rights Agreement applies only when water is used off the Ranch." In its reply memorandum, Paloma characterized this statement as a concession by Jenkins. Using similar language, the trial court characterized the statement as a stipulation and used it to resolve Count Seven.

**P17** Jenkins now contends that the statement [\*\*\*9] was made in error. However, Jenkins never objected to the use of the statement even though Paloma's reply memorandum expressly relied on the statement. In oral argument on appeal, Jenkins' counsel admitted that no objection was made. New arguments may not be raised for the first time on appeal. *ABC Supply, Inc. v. Edwards*, 191 Ariz. 48, 50, 952 P.2d 286, 288 (App. 1996). We will not consider issues not properly presented to the trial court. *Premier Fin. Servs. v. Citibank*, 185 Ariz. <sup>Unofficial Document</sup> 36, 912 P.2d 1309, 1315 (App. 1995). Because Jenkins failed to preserve the alleged error, we affirm the trial court's ruling on Count Seven.

**P18** We now address the issue raised by Paloma's cross-appeal. Paloma contends that the trial court erred in finding that the WRA bound Paloma. It argues that because no real property interest was transferred to Jenkins in the WRA, Jenkins has no rights against the successor owners of the Ranch. Specifically, Paloma states that the WRA was not a mortgage, equitable mortgage or lien as the trial court found. Even if the WRA were a real property interest, Paloma argues, the WRA is not a covenant that runs with the land because it fails to "touch [\*\*\*10] and concern" the land and because there is no privity. See *Choisser v. Eyman*, 22 Ariz. App. 587, 589, 529 P.2d 741, 743 (1974) (listing requirements for a covenant to run with the land and bind future owners).

**P19** We agree that the WRA was not a mortgage, an equitable mortgage or a lien. A mortgage secures the creditor's right to payment. *Johnson v. Home State Bank*, 501 U.S. 78, 82, 115 L. Ed. 2d 66, 111 S. Ct. 2150 (1991); Restatement (Third) of Property § 1.1 (1997). An equitable mortgage and a lien give the same type of security for performance. See 53 C.J.S. *Liens* § 3(b) (1987); 59 C.J.S. *Mortgages* § 12 (1998). The WRA did not convey an interest as security for [\*\*115] [\*138] payment: It conveyed the interest outright. No type of mortgage or lien was involved.

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**P20** We also agree that the WRA is not a covenant. A covenant involves a promise that burdens the landowner. See Restatement of Property § 530 (1944). The WRA contained no covenant by the landowner to pump water or to sell water; it merely gave Jenkins the right to receive a share of the proceeds *if* the water were sold.

**P21** Our agreement that the WRA is neither a security [\*\*\*11] interest nor a covenant does not mean that it is not a real property right, however. Those do not exhaust the categories of interests in land. **P**

**22** In general, water rights n1 are property rights. *In the Matter of the Rights to the Use of the Gila River*, 171 Ariz. 230, 235, 830 P.2d 442, 447 (1992). Those rights are interests in real property. See 93 C.J.S. *Waters* § 1 (1956). Specifically, the right to percolating groundwater is a hereditament, *Neal v. Hunt*, 112 Ariz. 307, 311-12, 541 P.2d 559, 562-63 (1975), and in Arizona, hereditaments are real property interests. A.R.S. § 1-215(30) (Supp. 1997); *Norwest Bank Ariz. v. Maricopa County Super. Ct.*, 192 Ariz. 240, 963 P.2d 319, 1998 Ariz. App. LEXIS 25, 263 Ariz. Adv. Rep. 21, 23 (1998).

n1 We recognize that the right is not to the water itself; instead, it is a right to the usufruct of the water. *Town of Chino Valley v. City of Prescott*, 131 Ariz. 78, 82, 638 P.2d 1324, 1328 (1981). A usufruct is the right to use and enjoy the profits of property that belongs to another. *Black's Law Dictionary* 1544 (6th ed. 1990).

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[\*\*\*12]

**P23** The transfer of water rights is a conveyance. See Restatement of Property § 11 (1936) (defining "conveyance"). See also 1 R. Beck (ed.), *Waters and Water Rights* § 7.04(a)(2), at 290 (1991) ("Subsequent buyers are bound by the earlier reservation [of riparian rights] not as a covenant running with the land, but simply because any subsequent grantor has no riparian rights to convey."). The WRA is a conveyance, not a covenant.

**P24** We recognize that Jenkins' interest is not to use the water itself, the ordinary form of water rights. Instead, he obtained the right to receive a share of the proceeds upon sale of the water. The parties have not correctly defined this form of property interest.

**P25** Jenkins received a royalty interest. This is a common type of interest in natural resources, such as coal, oil, gas, timber and minerals. The right to unaccrued royalties can be an interest in real property when the parties so intend. See *Callahan v. Martin*, 3 Cal. 2d 110, 43 P.2d 788, 792 (Cal. 1935); *Luckel v. White*, 819 S.W.2d 459, 463 (Tex. 1991); 6 D. Thomas (ed.), *Thompson on Real Property* § 48.07(b) (1994); Martin J. McMahon, [\*\*\*13] Annotation, *Oil and Gas Royalty as Real or Personal Property*, 56 A.L.R. 4th 539, 546 (1987).

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**P26** Accordingly, we hold that the trial court correctly decided that Jenkins received a real property interest that binds Paloma as a successor owner of the land. Although that interest is a royalty and not a mortgage, the judgment is correct.

**P27** The final issue is the award of attorneys' fees. Both parties have appealed the trial court's partial award of attorneys' fees to Jenkins in the amount of \$ 3142. Jenkins appeals because he contends the amount should have been greater. Paloma appeals because it believes Jenkins is not entitled to any fee award. In his original request for \$ 64,052 in attorneys' fees, Jenkins claimed to be the "prevailing" party, entitled to fees under Paragraph 13(A) of the WRA n2 and under A.R.S. section 12-341.01 (1992). n3 Judge Schafer determined that Jenkins was the "successful and prevailing" party based [\*\*116] [\*139] on Judge O'Toole's ruling on the first summary judgment, but did not prevail in the proceedings after that ruling. Exercising his discretion under A.R.S. section 12-341.01, Judge Schafer awarded only those fees incurred prior to Judge [\*\*\*14] O'Toole's ruling.

n2 Paragraph 13(A) of the WRA states:

In the event there is any disagreement between the parties thereto and it is necessary for one of the parties to employ an attorney to enforce the terms and conditions of this Agreement, the prevailing party in any such action shall be awarded, in addition to any damages, injunctive or other relief, its costs, expenses and attorneys' fees.

n3 A.R.S. Section 12-341.01(A) provides:

In any contested action arising out of a contract, express or implied, the court may award the successful party reasonable attorney's fees. This section shall in no manner be construed as altering, prohibiting or restricting present or future contracts or statutes that may provide for attorney's fees.

**P28** Paloma argues that Jenkins' award should be vacated if Paloma prevails on the appeal or cross-appeal. Paloma also argues that the court should not award fees against it because it was not a party to the WRA.

**P29** We first briefly [\*\*\*15] address any award of fees under Paragraph 13(A) of the WRA, noting that Judge Schafer specifically said that he was awarding fees in his discretion under A.R.S. section 12-341.01. Paloma argues that attorneys' fees should not be awarded under the contractual provision because the WRA did not bind it. Paloma is partially correct. Although Paloma is bound by the essential terms of the WRA, the attorneys' fees provision is a covenant that does not meet the four-part test for a covenant running with the land. *See Choisser, 22 Ariz. App. at 589, 529 P.2d at 743.* The attorneys' fee provision does not touch and concern the land; it does not "affect the use, value, or enjoyment of the land itself." *See Flying Diamond Ranch Oil*

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*Corp. v. Newton Sheep Co.*, 776 P.2d 618, 624 (Utah 1989). Therefore, the attorneys' fee provision is not binding upon Paloma and the trial court correctly declined to award fees pursuant to it.

**P30** However, the parties do not dispute that the trial court could award fees under A.R.S. section 12-341.01 as an action arising out of a contract, the WRA. Because the parties agree that the statute applies, we assume without deciding that it does. The trial [\*\*\*16] court's discretion under the statute is broad and we will not reverse such an award if there is any reasonable basis for the exercise of such discretion. *Associated Indem. Corp. v. Warner*, 143 Ariz. 567, 570, 694 P.2d 1181, 1184 (1985).

**P31** The court correctly determined that Jenkins was the successful party eligible for a fee award. *See Henry v. Cook*, 189 Ariz. 42, 43-44, 938 P.2d 91, 92-93 (App. 1996). However, the court was not required to award all of the fees incurred by the prevailing party, or indeed any of those fees. *Associated Indem. Corp.*, 143 Ariz. at 570-71, 694 P.2d at 1184-85. The court properly considered the limited nature of Jenkins' success. *See 143 Ariz. at 570, 694 P.2d at 1184*. While Jenkins established that the WRA bound Paloma, the court determined that the scope of the WRA was narrower than Jenkins had asserted.

**P32** Jenkins requests fees on his appeal and Paloma requests fees on its cross-appeal. However, because this case involves an appeal and a cross-appeal, and we are affirming the trial court's judgment, we deem neither party to be successful. *See Pioneer Roofing Co. v. Mardian Constr. Co.*, 152 Ariz. 455, 467, 733 [\*\*\*17] P.2d 652, 664 (App. 1986) (court has discretion to determine which party is successful in multiple party litigation); *Bank One, Ariz. v. Rouse*, 181 Ariz. 36, 41, 887 P.2d 566, 571 (App. 1994) (court has discretion to determine that no party was successful where verdict was for one party in part and for the other in part and thus there was no "clear successful party"). We deny any award of attorneys' fees. *See General Cable Corp. v. Citizens Utils. Co.*, 27 Ariz. App. 381, 385, 555 P.2d 350, 354 (1976) (affirming trial court's denial of both parties award of costs where claim and counterclaim had been dismissed).

**P33** The judgments of the superior court are affirmed.

JEFFERSON L. LANKFORD, Judge

CONCURRING:

MICHAEL D. RYAN, Presiding Judge

CECIL B. PATTERSON, JR., Judge