

LEWIS
AND
ROCA
LLP
LAWYERS



Arizona Corporation Commission
DOCKETED

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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE APPLICATION
OF H2O, INC., FOR AN EXTENSION
OF ITS EXISTING CERTIFICATE OF
CONVENIENCE AND NECESSITY

Docket No: WS-02234A-00-0371

IN THE MATTER OF THE APPLICATION
OF JOHNSON UTILITIES, L.L.C. DBA
JOHNSON UTILITIES COMPANY FOR AN
EXTENSION FOR ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY TO
PROVIDE WATER AND WASTEWATER
SERVICE TO THE PUBLIC IN THE
DESCRIBED AREA IN PINAL COUNTY,
ARIZONA

Docket No: WS-02987A-99-0583

**PREFILED REBUTTAL TESTIMONY
OF MIKE A. JOHNSON**

1 **Q. Please state your name for the record.**

2 **A.** Mike A. Johnson.

3
4 **Q. What is your current employment and responsibilities?**

5 **A.** I am a member of and employed by QC Pecan Ranch LLC, an Arizona limited
6 liability company, the developer of the Pecan Ranch.

7 **Q. Can you describe the Pecan Ranch development?**

8
9 **A.** QC Pecan Ranch has entered into a contract to purchase the Pecan Ranch property
10 from Pecan Ranch Partnership. That sale is scheduled to close on December 21. A
11 copy of the contract is attached as Exhibit 1. Contrary to the staff report, Queen
12 Creek 880 and DCS Contracting Company have no interest in this property. In
13 early 2001, our company will begin development of a residential and commercial
14 complex on these 880 acres. As part of that development, it is important that we
15 have quality water and wastewater service.
16

17 **Q. Have you reviewed any filings in this proceeding?**

18 **A.** Yes. I have reviewed the staff report and the Johnson and H2O applications.
19

20 **Q. Did you send a letter to the Commission in this proceeding?**

21 **A.** Yes. Attached as Exhibit 2 is the letter QC Pecan Ranch sent to the Commission
22 explaining why our company prefers Johnson Utilities to H2O.
23

24 **Q. Can you explain why the Designation of Assured Water Supply is important to**
25 **you?**
26

1 A. Yes. As a result of the Designation of Assured Water Supply, our company is able
2 to provide the Real Estate Department and other government agencies with the
3 necessary assurances that there is adequate water for our proposed development.
4 This expedites our development and saves us substantial money. Without this
5 designation, it would be necessary for the company to apply for a Certificate of
6 Assured Water Supply that would take significant time and money due to
7 hydrology reports and other regulatory requirements. It is imperative to our
8 customers and clients that we have an assured water supply.
9
10

11 Q. Can you explain why having both a wastewater and water system from a single
12 provider is important?

13 A. Yes. The integration of the water and wastewater system is more efficient and
14 desirable than separately operated systems. Without Johnson Utilities providing
15 wastewater, the residents or homeowners' association will bear the burden of
16 arranging, building and maintaining the sewer service. An integrated water and
17 wastewater system is preferred by builders and homeowners so the lack of such a
18 system will hurt our investment and marketing opportunities.
19
20 In addition, it is more convenient to deal with one company on both water and
21 wastewater. Dealing with separate water and wastewater providers is an additional
22 expenditure of money and time that we would prefer not to incur.
23

24 Q. Why is Johnson's financial strength important for your company?
25
26

1 A. Our company has made and will make substantial investments in the planning and
2 development of this property. It is important that the facilities necessary will be
3 built in a timely manner. We are comfortable with Johnson Utilities' financial
4 commitment to this project. For instance, Johnson Utilities is willing to post a
5 performance bond to guarantee construction by specific dates.
6

7 **Q. How does the Johnson Utilities financing differ from the H2O financing?**

8 A. It is my understanding based on negotiations with Johnson Utilities that Johnson
9 Utilities will invest a substantial amount of its own resources in the planned
10 facilities.
11

12 **Q. Did QC Pecan Ranch negotiate with H2O to discuss development of a water
13 system for Pecan Ranch?**

14 A. Yes.

15 **Q. What happened in those negotiations?**

16 A. H2O's proposal was unreasonable. H2O wanted Pecan Ranch to fund up front a
17 disproportionate share of the cost of common facilities that others will benefit from
18 in the future. In other words, Pecan Ranch would have to pay more than its fair
19 share under H2O's plan.
20
21

22 **Q. Is the northern portion of Pecan Ranch within the current H2O certificated
23 area?**
24
25
26

1 A. Yes, but H2O has never provided service to our property and, for the reasons
2 mentioned above, Johnson Utilities will provide service on better terms, including
3 firmer time commitments.
4

5 Q. Do you have any other comments on the staff report?

6 A. We were surprised that our preference for Johnson Utilities was not mentioned and,
7 instead, a dated, no longer valid request from the Queen Creek 880 and DCS
8 Contracting was mentioned.
9

10 Q. Have you reviewed the Diversified Water Utilities (“Diversified”) application
11 to serve Pecan Ranch?

12 A. Yes.

13 Q. What is your reaction to Diversified’s application?
14

15 A. Pecan Ranch would prefer Johnson Utilities over Diversified for the same reasons
16 set forth above relating to H2O.

17 R. Does that conclude your testimony?

18 A. Yes.
19
20
21
22
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26

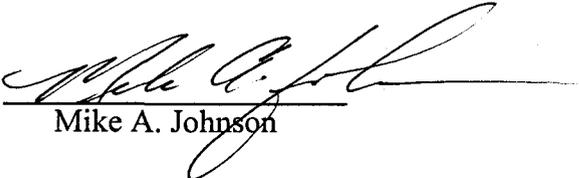
VERIFICATION

STATE OF ARIZONA)
County of Maricopa) ss.

Mike A. Johnson, of lawful age being first duly sworn, deposes and states:

1. My name is Mike A. Johnson.
2. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

DATED this 9th day of October, 2000.

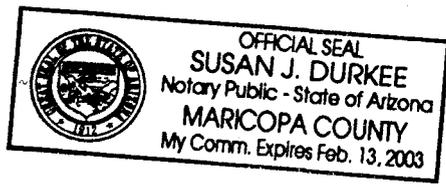
By 
Mike A. Johnson

SUBSCRIBED AND SWORN to before me this 9th day of

October, 2000.

Notary Public 

My Commission Expires:



Exhibit

1

PURCHASE AGREEMENT

between

PECAN RANCH PARTNERSHIP,
an Arizona general partnership, as Seller

and

QC PECAN RANCH, L.L.C.,
an Arizona limited liability company, as Buyer

Pecan Ranch

PURCHASE AGREEMENT

Pecan Ranch
Security Title Agency Escrow No. _____

This Purchase Agreement ("*Agreement*") is entered into as of the Effective Date (as defined below), by and between the Buyer and the Seller identified below.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

The following terms used in this Agreement shall have the respective meanings set forth below:

- Date of Agreement: 6-12, 2000 (for reference only)
- Seller: Pecan Ranch Partnership, an Arizona general partnership
- Buyer: QC Pecan Ranch, L.L.C., an Arizona limited liability company
- Escrow Agent: Security Title Agency
- County: County of Pinal, Arizona
- Property: Approximately eight hundred eighty-one (881) acres of real property located in Pinal County, Arizona known as Pecan Ranch. The legal description of the Property is attached hereto as Exhibit A.
- Effective Date: The date on which the last (second) party signs this Agreement, as indicated by the dates appearing below the signatures of Buyer and Seller at the end of this Agreement.
- Opening of Escrow: The date on which this Agreement, executed by Buyer and Seller, is delivered to and accepted by Escrow Agent, which date shall be inserted by Escrow Agent below its signature at the end of this Agreement. Escrow Agent shall give Buyer and Seller prompt written notice of the date of Opening of Escrow.
- Feasibility Termination
- Date: June 26, 2000
- Closing Date: Five (5) business days after the Conditions to Closing (as defined in Paragraph 8 have been satisfied, but in no event later than five (5) business days after the Final Approvals Date (as defined in Paragraph 10.1.2), as extended pursuant to Paragraph 10.5.

Notice Addresses:

For Seller (for notices delivered between May 15 and October 31): Pecan Ranch Partnership
c/o Ralph Thomas
919 Northshore Drive
Detroit Lakes, Minnesota 56501

For Seller (for notices delivered between November 1 and May 14): Pecan Ranch Partnership
c/o Ralph Thomas
6600 N. 64th Place
Paradise Valley, Arizona 85253

with required copy to:

Laurie B. Craig, Esq.
Beus Gilbert, PLLC
3200 N. Central Avenue, Suite 100
Phoenix, Arizona 85012
Facsimile: (602) 234-5893

For Buyer: QC Pecan Ranch, L.L.C.
7600 E. Doubletree Ranch Road, Suite 150
Scottsdale, Arizona 85258
Attention: Michael Johnson, Manager
Facsimile: (480) 367-8341

with required copy to:

Gary A. Drummond, Esq.
Sallquist & Drummond, P.C.
2525 E. Arizona Biltmore Circle, Suite 117
Phoenix, Arizona 85016
Facsimile: (602) 224-9366

For Escrow Agent: Security Title Agency
4645 N. 32nd Street, Suite A-100
Phoenix, Arizona 85018
Attention: Christy Turley
Facsimile: (602) 381-1145

The above addresses shall be subject to change in accordance with the provisions of Paragraph 25 below.

1. **Agreement of Purchase and Sale.** Subject to the terms and conditions of this Agreement, Seller agrees to sell and Buyer agrees to purchase the Property.

2. **Purchase Price.**

2.1 **Purchase Price.** The base purchase price to be paid by Buyer for the Property ("*Purchase Price*") shall be an amount equal to Nineteen Million Eight Hundred Twenty-Two Thousand Five Hundred and 00/100 Dollars (\$19,822,500.00). The Purchase Price shall be payable as follows:

2.1.1 **Initial Deposit.** On or before five (5) days after the date of the Opening of Escrow, Buyer shall deposit with Escrow Agent an earnest money deposit in an amount equal to Fifty Thousand and 00/100 Dollars (\$50,000.00), in the form of cash, cashier's check or wire transfer.

2.1.2 **Additional Deposit.** On or before the earlier to occur of: (i) five (5) days after the date of the Preliminary Plat Approval (as hereinafter defined); or (ii) five (5) days prior to the due date imposed by Pinal County, Arizona for the payment of the Vineyard Road assessment, Buyer shall deposit with Escrow Agent an additional earnest money deposit in an amount equal to the difference between the amount of the Vineyard Road assessment and Fifty Thousand and 00/100 Dollars (\$50,000.00), which earnest money deposit shall be in the form of cash, cashier's check or wire transfer. Seller agrees that Buyer shall have the right to obtain the consent of Pinal County, Arizona to permit a delay in the payment of the Vineyard Road assessment provided such delay is without imposition of any additional assessment or penalty. The earnest money deposits described in Paragraph 2.1.1 and this Paragraph 2.1.2, together with all interest earned thereon while held by Escrow Agent, are collectively referred to herein as the "*Earnest Money*."

2.1.3 **Down Payment at Closing.** On or before the Closing Date, Buyer shall deposit with Escrow Agent a down payment of Three Million Two Hundred Ten Thousand Two Hundred Fifty and 00/100 Dollars (\$3,210,250.00), reduced by the Earnest Money and any interest earned thereon, and increased or reduced by such funds as are required to take into account the prorations and adjustments required by this Agreement, in the form of cash or funds immediately available in Phoenix, Arizona. The down payment described in this Paragraph 2.1.3 is referred to as the "Down Payment".

2.1.4 **Deferred Balance.** The deferred balance of the Purchase Price shall be evidenced by a Promissory Note in the form attached hereto as Exhibit B ("Note"), and secured by a Deed of Trust and Assignment of Rents in the form attached hereto as Exhibit C ("Deed of Trust"). The Note shall provide for payment of the deferred balance of the Purchase Price, together with interest on the unpaid principal balance thereof, at the rate of eight and one-half percent (8.5%) per annum as follows:

- 2.1.4.1 Principal and interest shall be due and payable in equal quarterly installments reflecting a six (6) year amortization, commencing on the first (1st) day of the fourth (4th) full calendar month following the date of Closing and continuing to be due and payable on the first (1st) day of each third (3rd) calendar month thereafter;
- 2.1.4.2 If not sooner paid, the entire outstanding principal balance and all accrued and unpaid interest shall be due and payable in full on or before six (6) years following the date of Close of Escrow; and
- 2.1.4.3 Notwithstanding the foregoing, in the event of a Recession (as hereinafter defined) during the term of the Note, Seller, at the request of Buyer, shall declare a moratorium on quarterly payments of principal and interest under the Note until the earlier of (i) the end of the Recession; or (ii) twenty-four (24) months after the date the moratorium was declared. For the purposes hereof, a Recession shall be deemed to be in existence at such time as any three (3) of the four (4) largest commercial banks headquartered in Maricopa County, Arizona have publicly announced a prime lending rate of eleven percent (11%) per annum or higher, and shall be deemed to continue to exist until three (3) of the four (4) largest commercial banks headquartered in Maricopa County, Arizona have publicly announced a prime lending rate of ten and three-fourths percent (10.75%) per annum or less. During such moratorium, no quarterly payments of principal or interest shall be required, but interest shall continue to accrue and shall be added to the unpaid principal balance of the Note and shall thereafter bear interest at the rate of interest then applicable to the Note. The declaration of a moratorium shall not, however, excuse Buyer from its obligation to make any release price payments required by the terms of the Note to the extent that Buyer requests one or more releases during such moratorium. Upon the expiration of any moratorium in accordance with the foregoing, Seller shall notify Buyer in writing of the expiration of the moratorium and the basis therefore, and, thereafter, quarterly payments of principal and interest shall be reinstated with respect to the Note in the amounts specified in the Note, commencing on the first day of the third month after the date of such notice. Upon the maturity of the Note (which shall not be extended due to the moratorium), the full unpaid principal balance, plus all accrued but unpaid interest and any other amounts then due and payable in connection with the Note shall be fully due and payable. If at anytime during a moratorium Buyer determines to end the same voluntarily, it may do so by written notice to Seller stating that Buyer is voluntarily ending the moratorium whereupon the moratorium of quarterly

payments of principal and interest shall be lifted and quarterly payments of principal and interest shall recommence in the amounts specified in the Note on the first day of the third month after the date of such notice. Buyer shall be entitled to no more than one (1) moratorium during the term of the Note in accordance with the foregoing.

2.1.5 **Earnest Money Provisions.** The Earnest Money shall be non-refundable to Buyer, except as provided in Paragraphs 6, 7, 15.13.3, 19.1, and 21. The Earnest Money shall be released by Escrow Agent to Pinal County, Arizona on the due date imposed by Pinal County, Arizona, to pay the Vineyard Road assessment, as may be postponed by Pinal County, Arizona from time to time, in the event Buyer does not previously terminate this Agreement. In the event of Close of Escrow, the Earnest Money shall be applied against the Down Payment. Until the Earnest Money is released to Pinal County, Arizona as provided in this Paragraph, Escrow Agent is authorized and instructed to deposit the Earnest Money promptly after it is received by Escrow Agent in a federally insured money market account, subject to immediate withdrawal without penalty, in a commercial bank doing business in Phoenix, Arizona. In the event that different or additional authorizations or directions are required by Escrow Agent prior to deposit of the Earnest Money as provided above, Escrow Agent shall obtain such authorizations or directions promptly and with diligence.

2.2 **Releases.** At Closing, Buyer shall be entitled to a release of the real property more particularly described on Exhibit "D" hereto (which contains no more than fifty (50) acres) on the basis of the Down Payment, without the imposition of any other release price or payment. No other release shall be attributed to or based upon the Down Payment. Thereafter, Buyer will be entitled to releases of portions of the Property from time to time encumbered by the Deed of Trust in accordance with the terms of the Deed of Trust and the following limitations and restrictions: (i) all state, county, municipal or other requirements regarding the subdivision of the Property shall have been satisfied and evidence thereof provided to Seller; (ii) each release parcel shall contain a minimum of twenty (20) acres; (iii) Buyer may release parcels within any development parcel contained in the recorded Final Plat for the Property provided (a) releases within a development parcel are contiguous to parcels previously released within such development parcel; and (b) Buyer has obtained the prior written approval of Seller of the development parcels from which separate releases shall be available and the release pattern in each of the development parcels, which approval shall not be unreasonably withheld; (iv) Seller shall have received an endorsement to its policy of title insurance insuring the lien of its Deed of Trust as Seller may require, including, without limitation, an L.T.A.A. Endorsement No. 9; (v) to the extent that any easement is required across any portion of the parcel being

released to provide vehicular and pedestrian ingress, egress and utilities to any portion of the Property remaining subject to the Deed of Trust, such easement shall be granted by Buyer in the form of a recordable document which Seller any record contemporaneously with the release; (vi) Seller shall have received a written request for the partial release together with such documents and information as Seller may reasonably require to verify that the conditions for such release have been satisfied; (vii) all costs and expense of Seller relating to a release shall be paid by Buyer, including but not limited to reconveyance fees, title fees, recording fees and legal expenses; (viii) a release price of Thirty-Five Thousand and 00/100 Dollars (\$35,000.00) per net acre released shall be due and payable upon the recordation of the release, except for those portions of the Property which are being released for inclusion into a golf course and related golf course amenities and facilities as reflected on the recorded Final Plat of the Property, which shall be subject to a release price of Twenty-Two Thousand Five Hundred and 00/100 Dollars (\$22,500.00) per net acre ("Golf Course Parcel"). The Golf Course Parcel shall be limited and restricted in size to that portion of the Property reasonably required for the development of an eighteen (18) hole course, together with golf course related amenities and facilities. When the Golf Course Parcel is released, it shall not be required that such parcel be adjacent to other parcels which have been previously released.

3. **Escrow Instructions.** This Agreement shall constitute joint escrow instructions by Buyer and Seller to Escrow Agent. Buyer and Seller hereby agree to the terms of the printed escrow instructions attached hereto as Exhibit D ("*Printed Instructions*"); provided, however, that in the event of a conflict between the terms of this Agreement and the terms of the Printed Instructions, the terms of this Agreement shall prevail.
4. **Close of Escrow.** The escrow established hereunder ("*Escrow*") shall be deemed to close ("*Close of Escrow*") when the Deed (as hereinafter defined) is recorded by Escrow Agent. The Close of Escrow shall occur on or before the Closing Date. The Close of Escrow shall occur at the office of Escrow Agent or at such other location as the parties may mutually specify in writing.
 - 4.1 **Action at Close of Escrow by Seller.** At the Close of Escrow, Seller shall deliver or cause to be delivered to Escrow Agent (if not otherwise delivered prior thereto) all of the following, and with respect to any instruments or documents referred to below, all such items shall be dated as of the Close of Escrow, fully executed by Seller and, if appropriate, acknowledged:
 - 4.1.1 A Special Warranty Deed in the form attached hereto as Exhibit E ("*Deed*"), conveying title to the Property to Buyer;
 - 4.1.2 Affidavit of Value for the Property;
 - 4.1.3 Non-Foreign Affidavit in the form attached hereto as Exhibit F; and

4.1.4 Such other funds, instruments, or documents as may be reasonably necessary to fulfill the covenants and obligations to be performed by Seller pursuant to this Agreement.

4.2 **Action at Close of Escrow by Buyer.** At the Close of Escrow, Buyer shall deliver or cause to be delivered to Escrow Agent (if not otherwise delivered prior thereto) all of the following, and with respect to any instruments or documents referred to below, all such items shall be dated as of the Close of Escrow, fully executed by Buyer and, if appropriate, acknowledged:

4.2.1 The Down Payment as provided in Paragraph 2.1.3;

4.2.2 Note, as provided in Paragraph 2.1.4;

4.2.3 Deed of Trust, as provided in Paragraph 2.1.4;

4.2.4 Affidavit of Value for the Property; and

4.2.5 Such other funds, instruments, or documents as are reasonably necessary to fulfill the covenants and obligations to be performed by Buyer pursuant to this Agreement.

5. **Entry on Property; Delivery of Information.**

5.1 **Property Information.** Prior to execution of this Agreement by the parties, Seller has delivered to Buyer, and Buyer acknowledges receipt of, all of the information and materials described in Exhibit G attached hereto (collectively, the "*Property Information*"). Prior to the Close of Escrow, Seller shall make available to Buyer for examination and copying at Seller's office all of Seller's other files and written materials relating to the Property.

5.2 **Right of Entry.** Buyer, its agents and designees shall have the right to enter upon the Property at all times prior to the Close of Escrow for the purpose of performing any engineering, surveying or related work, and conducting geological, soil, drainage, engineering, archaeological, and environmental tests and such other studies and investigations as Buyer deems necessary or appropriate. Buyer shall defend, indemnify and hold Seller harmless for, from and against all claims, demands, actions, liabilities and obligations (including, but not limited to, mechanics' and materialmen's liens) arising from any exercise by Buyer of the rights granted under this Paragraph, which indemnification obligation shall survive the Close of Escrow or the termination or cancellation of this Agreement. Buyer shall promptly restore the Property to its condition existing immediately prior to any entry upon the Property pursuant to this Paragraph.

6. **Feasibility Period.** Seller hereby acknowledges that there are several material contingencies to Buyer's acquisition of the Property including, but not limited to,

Buyer's determination of the economic feasibility and general suitability of the development of the Property as a mixed use development, and Buyer's review and approval of the Property Information. Seller further acknowledges that Buyer may invest substantial time, effort and resources in investigating the feasibility and other matters including, but not limited to, expenditure of funds on engineering fees, architectural fees, soils and environmental analysis, research of relevant codes, ordinances, regulations and other issues during its investigation of the Property. Accordingly, notwithstanding anything to the contrary contained in this Agreement, at any time on or before the Feasibility Termination Date, Buyer shall have the right to terminate this Agreement if Buyer determines in its sole discretion that development of the Property is not feasible or the Property does not meet Buyer's purchase criteria, and the initial Earnest Money deposit shall thereupon be refunded to Buyer.

7. **Title Review Contingency.**

7.1 **Delivery of Title Commitment and Survey.** On or before ten (10) days after the Opening of Escrow, Escrow Agent shall deliver to Buyer and Seller a current commitment for title insurance for the Property, leading to the issuance of an extended coverage owner's policy of title insurance for the Property, together with legible copies of all Schedule B items and all other recorded items referred to therein (collectively, the "*Title Commitment*"). On or before ten (10) days after the Opening of Escrow, Seller shall deliver to Buyer and Escrow Agent the existing ALTA/ACSM Land Title Survey prepared by Standage & Associates, Ltd, dated September 1, 1999, Job No. 990300, in Seller's possession for the Property ("*Survey*").

7.2 **Objection by Buyer; Amendments.** Buyer shall be entitled to object to any matters disclosed by the Title Commitment or the Survey by delivering written notice of objection ("*Objection Notice*") to Seller and to Escrow Agent on or before ten (10) days after Buyer's receipt of the Title Commitment (or receipt of the Survey, whichever is later). Any Objection Notice delivered by Buyer pursuant to this Paragraph shall specify in reasonable detail any matter to which Buyer objects. If Escrow Agent subsequently issues any amendment to the Title Commitment showing any additional exception to title, other than the Permitted Exceptions, Buyer shall be entitled to object to any such additional exception by delivering an Objection Notice to Seller and to Escrow Agent on or before five (5) days after Buyer's receipt of the amendment to the Title Commitment. If Buyer fails to deliver an Objection Notice objecting to any matter set forth in the Survey, the Title Commitment, or any subsequent amendment thereto within the relevant time period prescribed above, Buyer shall be conclusively deemed to have approved such matters. Notwithstanding any contrary provision contained in this Agreement, in no event shall any financial liens or encumbrances securing payment of private debts be deemed to be Permitted Exceptions, and any such

financial liens and encumbrances securing payment of private debts affecting the Property shall be released at Seller's expense, at or prior to the Close of Escrow. Except as provided in the preceding sentence, Seller shall have no obligation to cure or remove any title matter objected to by Buyer.

7.3 **Cure by Seller.** If Buyer timely delivers any Objection Notice pursuant to Paragraph 7.2 above or is deemed to have done so, Seller shall deliver a written notice ("*Response*") to Buyer and to Escrow Agent within five (5) days after receipt of such Objection Notice, which Response shall state any actions which Seller intends to take and their anticipated effect on the matters to which Buyer has objected. If Seller delivers a Response which indicates that Seller will remove all or part of the matter(s) objected to by Buyer, Seller shall have an affirmative obligation to remove such matter(s). If Seller fails to deliver a Response within such five (5) day period, then Seller shall be deemed to have delivered a Response indicating that it will not remove any of the matter(s) objected to by Buyer. If the Response does not state an intention to fully remove each matter to which Buyer has objected, Buyer shall deliver to Seller and Escrow Agent within five (5) days after Buyer receives (or is deemed to have received) the Response a written notice ("*Reply*") stating Buyer's election either (i) to terminate this Agreement, whereupon the Earnest Money shall be refunded to Buyer by Escrow Agent (or by Seller, if it has then been released to [insert identity of taxing authority]), or (ii) to waive Buyer's objections (on the condition that Seller accomplishes any objectives described by Seller in the Response). If Buyer fails to make a timely election pursuant to the preceding sentence, Buyer shall be deemed conclusively to have elected to proceed according to clause (i) of the preceding sentence. If Buyer has conditionally waived an objection, and the condition is not satisfied by the Close of Escrow, Buyer shall have the right, as its sole remedy therefor, either to (i) terminate this Agreement, whereupon the Earnest Money shall be refunded to Buyer by Escrow Agent (or by Seller, if it has then been released to [insert identity of taxing authority]), or (ii) proceed with this transaction and waive such objection. In the event that Buyer waives an objection, Buyer shall be deemed to have approved the item with respect to which the objection was made and such exception shall be part of the "Permitted Exceptions" hereunder.

7.4 **Amendment to Title Commitment Issued Shortly Before Closing.** In the event that an amendment to the Title Commitment is issued shortly before Close of Escrow, and the amendment reveals an additional exception (other than the Permitted Exceptions), the Close of Escrow shall be extended if (and to the minimum extent) necessary: (a) to provide Buyer the period contemplated by Paragraph 7.2 hereof to deliver an Objection Notice; (b) to provide Seller the period contemplated by Paragraph 7.3 hereof to deliver a Response, if Buyer delivers an Objection Notice; and (c) to provide Buyer the period contemplated by Paragraph 7.3 hereof to deliver a Reply, if Seller delivers (or is deemed to have delivered) a Response which does not include a commitment to remove all of the matters to which Buyer has objected.

- 7.5 **Permitted Exceptions.** As used in this Agreement, the term "*Permitted Exceptions*" collectively shall mean (i) the exceptions to title reflected in the Title Commitment, all amendment(s) to the Title Commitment and/or the Survey, which are approved (or deemed approved) by Buyer pursuant to this Paragraph 7; (ii) any matters created by or arising from the act of Buyer, its affiliates, employees, agents, contractors, subcontractors or representatives; (iii) the Final Plat referred to in Paragraph 10 and all matters reflected therein; (iv) any unpaid taxes and assessments which Buyer is required to pay under Paragraph 22; and (v) any other matters approved by Buyer under or in connection with this Agreement.
- 7.6 **Title Insurance.** Upon and as a condition to Buyer's obligation to close Escrow, Escrow Agent shall be unconditionally committed to issue to Buyer an extended coverage owner's policy of title insurance in the full amount of the Purchase Price (provided that Buyer shall at its expense satisfy any survey requirements relating to the issuance of extended coverage), insuring title to the Property in Buyer subject only to the Permitted Exceptions and to the usual exceptions, conditions and stipulations appearing in Escrow Agent's standard printed form of policy. Seller shall pay an amount equal to the premium for a standard coverage owner's policy for Buyer, and Buyer shall pay the remainder of the premium for the extended coverage owner's policy for Buyer and for any endorsements requested by Buyer.
8. **Conditions to Closing.** In addition to the performance by Seller hereunder, the obligation of Buyer to purchase the Property is subject to the satisfaction as of the Closing Date of the following conditions ("*Conditions to Closing*"), any of which may be waived in whole or in part by Buyer in writing at or prior to the applicable deadline set forth in this Agreement (or, if this Agreement does not state a specific deadline, at or prior to the Close of Escrow).
- 8.1 **Representations, Warranties and Covenants.** The representations and warranties of Seller set forth herein shall be true on and as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of the Closing Date. In addition, all covenants required to be performed by Seller shall have been performed pursuant to the terms of this Agreement.
- 8.2 **Final Approvals.** The Final Approvals shall have occurred (or Buyer shall have waived the Final Approvals condition) in accordance with the provisions of Paragraph 10.
- 8.3 **Title Policy.** Escrow Agent shall be unconditionally committed to issue to Buyer the owner's policy of title insurance described in Paragraph 7.6.
- 8.4 **Utility Services Agreement.** Buyer shall have obtained the Utility Services Agreement described in Paragraph 9.

If the Close of Escrow fails to occur on or prior to the Closing Date because a Condition to Closing is not satisfied, then Buyer may either (i) elect in writing to waive all unsatisfied Condition(s) to Closing and proceed with the Close of Escrow, or (ii) terminate this Agreement and provided such Condition(s) to Closing relates to the Conditions to Closing described in Paragraphs 8.1 or 8.3, obtain a refund of the Earnest Money. Notwithstanding the foregoing, if the failure of a Condition to Closing is caused by a default by either party, the non-defaulting party shall have the right to exercise the remedies described in Paragraphs 18 or 19 below, as applicable.

9. **Utility Services Agreement.** Seller hereby acknowledges that a material contingency to Buyer's acquisition of the Property includes Buyer obtaining from the pertinent utility provider(s) a Utility Services Agreement ("Utility Services Agreement"), in form acceptable to Buyer, to provide water and wastewater services within the Property. Such Utility Services Agreement shall include, but not be limited to, the engineering, design and construction management services relative to on-site and off-site water and wastewater facilities, the construction of all water and wastewater on-site and off-site facilities, and the approval by all relevant regulatory authorities of the design and construction of the on-site and off-site water and wastewater facilities. Buyer shall have the responsibility to pursue the Utility Services Agreement at its sole cost and expense, with Seller having no responsibility therefor other than to cooperate with Buyer as Buyer may request from time to time, but without any duty or obligation to expend Seller's funds or to incur any cost or expense incident thereto. Buyer's failure to obtain the Utility Services Agreement shall excuse Buyer from any obligation to close the purchase of the Property contemplated hereby, but Buyer's failure to obtain the Utility Services Agreement shall not entitle Buyer to a refund of its Earnest Money deposit if Buyer terminates this Agreement on the basis of its failure to obtain same.
10. **Final Approvals.**
 - 10.1 **Plat Approvals.** The obligation of Buyer to purchase the Property is subject to the satisfaction of the following approvals ("Final Approvals").
 - 10.1.1 **Preliminary Plat and Stipulations.** On or before twenty-five (25) days prior to the Feasibility Termination Date, Buyer shall prepare and deliver to Seller a preliminary subdivision plat for the Property. Seller shall be entitled to approve or reasonably disapprove the preliminary subdivision plat by delivering written notice to Buyer on or before fifteen (15) days after Seller's receipt thereof. Any such notice of disapproval delivered by Seller pursuant to this Paragraph shall specify in reasonable detail any matter to which Seller objects. If no written approval or disapproval is delivered to Buyer within such fifteen (15) day period, Seller shall be conclusively deemed to have approved the preliminary subdivision plat in the form delivered by Buyer. If Seller delivers to Buyer its specific written objections within such fifteen (15) day period, Buyer and Seller shall proceed to negotiate in good faith to resolve Seller's objections; and, if

Seller's objections are not resolved prior to the Feasibility Termination Date, Buyer may terminate this Agreement as provided in Paragraph 6, whereupon the Earnest Money shall be refunded to Buyer. If Buyer fails to terminate this Agreement as provided in Paragraph 6, Buyer shall be deemed conclusively to have consented to Seller's objections and waived its right to terminate as a result of Seller's objections. As used herein, the term "Preliminary Plat" shall mean the preliminary subdivision plat approved (or deemed approved) by the parties pursuant to this Paragraph. Buyer shall, through the exercise of reasonable diligence, process the Preliminary Plat for approval by the County. After Buyer receives from the County notice of any final or proposed stipulations or conditions of approval of the Preliminary Plat ("*Preliminary Plat Stipulations*"), Buyer shall deliver same to Seller. Buyer and Seller shall each have five (5) business days after receipt of the Preliminary Plat Stipulations to give written notice to the other party of its approval or disapproval thereof (together with specific reasons for any disapproval); provided, however, that approval of the Preliminary Plat Stipulations shall not be unreasonably withheld by either party, and neither party shall be entitled to disapprove any matter included in the Preliminary Plat and/or which is consistent with the Property Information delivered to Buyer pursuant to Paragraph 5.1. Upon receipt of notice and reasons for disapproval from either party pursuant to this Paragraph, Buyer and Seller shall promptly meet with the County in good faith to attempt to resolve to their reasonable satisfaction all disapproved matters. Approval by the County of the Preliminary Plat for the Property (in the form agreed upon by Buyer and Seller pursuant to this Paragraph), subject only to the Preliminary Plat Stipulations approved by the parties as provided in this Paragraph, is referred to herein as the "*Preliminary Plat Approval*."

10.1.2 **Final Plat and Engineering Plans.** Buyer shall prepare at its expense and submit for approval by the County a final subdivision plat and all subdivision improvement plans and other reports and submittals required by the County for final plat approval for the Property (collectively, the "*Final Plat Documents*"). Prior to submittal, Buyer shall deliver a copy of the Final Plat Documents to Seller for its review and approval, which approval shall not be withheld unreasonably. Within ten (10) days after receipt of the Final Plat Documents, Seller shall notify Buyer in writing of Seller's approval or disapproval (giving specific reasons for disapproval) of the Final Plat Documents. Seller shall not be entitled to disapprove any matter included in the Final Plat Documents if such matter is consistent with the Preliminary Plat and/or Preliminary Plat Stipulations. If Seller fails to deliver such written notice of disapproval prior to expiration of such ten (10) day period, then Seller shall be deemed to have approved the Final Plat Documents. If Seller delivers such notice of disapproval prior to expiration of such ten (10) day period, then promptly after receipt of

Seller's disapproval notice, Seller and Buyer shall meet with the County to attempt to resolve in good faith to Seller's reasonable satisfaction such matters disapproved by Seller. Buyer shall use its reasonable diligent efforts to obtain the Final Plat Approval (as hereinafter defined) on or before December 27, 2000 ("*Final Approvals Date*"). Approval by the County and all other applicable utilities and governmental authorities of the Final Plat Documents as provided in this Paragraph, including expiration of all protest and appeal periods without a protest or appeal having been filed, and recordation of the Final Plat (as hereinafter defined) is referred to herein as the "*Final Plat Approval*." The final plat approved pursuant to the Final Plat Approval is referred to herein as the "*Final Plat*." The subdivision improvement engineering plans approved pursuant to the Final Plat Approval are collectively referred to herein as the "*Subdivision Engineering Plans*."

10.1.3 **Final Plat Costs.** Buyer shall be solely responsible to pay all fees and costs incurred by Buyer to prepare, process and obtain the Final Plat Approval as provided in this Paragraph, including, without limitation, any bonds or other financial assurances required to be posted in connection with any improvements to be constructed by Buyer.

10.1.4 **Contingency for Final Plat Approval.** If, despite the exercise of Buyer's reasonable diligence, the Final Plat Approval has not been obtained on or before the Final Approvals Date, then Buyer, as Buyer's sole remedy therefor, shall elect by written notice delivered to Seller and Escrow Agent on or before 5:00 p.m. on the Final Approvals Date, to either (a) waive Final Plat Approval and proceed with the purchase of the Property pursuant to this Agreement, the Close of Escrow for which shall occur on or before five (5) business days after the Final Approvals Date, (b) terminate this Agreement, in which event the Earnest Money shall be refunded to Buyer, or (c) extend the Final Approvals Date as provided in Paragraph 10.5. If Buyer fails to deliver written notice of the foregoing election prior to expiration of the time period provided under this Paragraph, then Buyer shall be deemed to have elected to terminate according to clause (b) of the preceding sentence.

10.2 Grading and Drainage Approvals.

10.2.1 **Grading and Drainage Plans.** On or before fifteen (15) days prior to the Feasibility Termination Date, Buyer shall prepare, at its expense, and deliver to Seller grading and drainage plans for the Property. Seller shall be entitled to approve or reasonably disapprove the grading and drainage plans by delivering written notice to Buyer on or before ten (10) days after Seller's receipt thereof. Any such notice of disapproval delivered by Seller pursuant to this Paragraph shall specify in reasonable detail any matter to

which Seller objects. If no written approval or disapproval is delivered to Buyer within such ten (10) day period, Seller shall be conclusively deemed to have approved the grading and drainage plans in the form delivered by Buyer. If Seller delivers to Buyer its specific written objections with such ten (10) day period, Buyer and Seller shall proceed to negotiate in good faith to resolve Seller's objections; and, if Buyer's objections are not resolved prior to the Feasibility Termination Date, Buyer may terminate this Agreement as provided in Paragraph 6, whereupon the Earnest Money shall be refunded to Buyer. If Buyer fails to terminate this Agreement as provided in Paragraph 6, Buyer shall be deemed conclusively to have consented to Seller's objections and waived its right to terminate as a result of Seller's objections. Buyer shall, through the exercise of reasonable diligence, process the grading and drainage plans for approval by the County ("Grading and Drainage Plans Approval"). Buyer shall use its reasonable diligent efforts to obtain the Grading and Drainage Plans Approval on or before the Final Approvals Date. The grading and drainage plans approved pursuant to the Grading and Drainage Plans Approval is referred to herein as the "Grading and Drainage Plans".

- 10.2.2 **Grading and Drainage Plans Costs.** Buyer shall be solely responsible to pay all fees and costs incurred by Buyer to prepare, process and obtain the Grading and Drainage Plans Approval as provided in this Paragraph, including, without limitation, any bonds or financial assurances required to be posted in connection with any improvements to be constructed by Buyer.
- 10.2.3 **Contingency for Grading and Drainage Plans Approval.** If, despite the exercise of Buyer's reasonable diligence, the Grading and Drainage Plans Approval has not been obtained on or before the Final Approvals Date, then Buyer, as Buyer's sole remedy therefore, shall elect by written notice delivered to Seller and Escrow Agent on or before 5:00 p.m. on the Final Approvals Date, to either (a) waive Grading and Drainage Plans Approval and proceed with the purchase of the Property pursuant to this Agreement, the Close of Escrow for which shall occur on or before five (5) business days after the Final Approvals Date, (b) terminate this Agreement, in which event the Earnest Money shall be refunded to Buyer, or (c) extend the Final Approvals Date as provided in Paragraph 10.5. If Buyer fails to deliver written notice of the foregoing election prior to the expiration of the time period provided under this Paragraph, then Buyer shall be deemed to have elected to terminate according to clause (b) of the preceding sentence.

10.3 Arizona Department of Water Resources Approvals.

10.3.1 Final Plat. Buyer shall, through the exercise of reasonable diligence, process the Final Plat for approval by the Arizona Department of Water Resources ("ADWR"). If, despite the exercise of Buyer's reasonable diligence, the approval by ADWR of the Final Plat has not been obtained on or before the Final Approvals Date, then Buyer, as Buyer's sole remedy therefore, shall elect by written notice delivered to Seller and Escrow Agent on or before 5:00 p.m. on the Final Approvals Date, to either (a) waive approval by ADWR of the Final Plat and proceed with the purchase of the Property pursuant to this Agreement, the Close of Escrow for which shall occur on or before five (5) business days after the Final Approvals Date, (b) terminate this Agreement, in which event the Earnest Money shall be refunded to Buyer, or (c) extend the Final Approvals Date as provided in Paragraph 10.5. If Buyer fails to deliver written notice of the foregoing election prior to the expiration of the time period provided under this Paragraph, then Buyer shall be deemed to have elected to terminate according to clause (b) of the preceding sentence.

10.3.2 Assured Water Supply. Buyer shall, through the exercise of reasonable diligence, obtain from ADWR an assured water supply ("Assured Supply") for the Property. If, despite the exercise of Buyer's reasonable diligence, the Assured Supply has not been obtained on or before the Final Approvals Date, then Buyer, as Buyer's sole remedy therefore, shall elect by written notice delivered to Seller and Escrow Agent on or before 5:00 p.m. on the Final Approvals Date, to either (a) waive the Assured Supply and proceed with the purchase of the Property pursuant to this Agreement, the Close of Escrow for which shall occur on or before five (5) business days after the Final Approvals Date, (b) terminate this Agreement, in which event the Earnest Money shall be refunded to Buyer or (c) extend the Final Approvals Date as provided in Paragraph 10.5. If Buyer fails to deliver written notice of the foregoing election prior to the expiration of the time period provided under this Paragraph, then Buyer shall be deemed to have elected to terminate according to clause (b) of the preceding sentence.

10.3.3 Final Plat and Assured Supply Costs. Buyer shall be solely responsible to pay all fees and costs incurred by Buyer to process the approval of the Final Plat by ADWR as provided in Paragraph 10.3.1, and to obtain the Assured Water Supply as provided in Paragraph 10.3.2.

10.4 Arizona Department of Environmental Quality Approvals.

10.4.1 Subdivision Engineering Plans. Buyer shall use its reasonable diligent efforts to obtain the approval by the Arizona Department of

Environmental Quality ("ADEQ") of the Subdivision Engineering Plans. If, despite the exercise of Buyer's reasonable diligence, the Subdivision Engineering Plans have not been approved by ADEQ on or before the Final Approvals Date, then Buyer, as Buyer's sole remedy therefore, shall elect by written notice delivered to Seller and Escrow Agent on or before 5:00 p.m. on the Final Approvals Date, to either (a) waive approval of the Subdivision Engineering Plans by ADEQ and proceed with the purchase of the Property pursuant to this Agreement, the Close of Escrow for which shall occur on or before five (5) business days after the Final Approvals Date, (b) terminate this Agreement, in which event the Earnest Money shall be refunded to Buyer, or (c) extend the Final Approvals Date as provided in Paragraph 10.5. If Buyer fails to deliver written notice of the foregoing election prior to the expiration of the time period provided under this Paragraph, then Buyer shall be deemed to have elected to terminate according to clause (b) of the preceding sentence.

10.4.2 **Engineering Plans Costs.** Buyer shall be solely responsible to pay all fees and costs incurred by Buyer to obtain the approval by ADEQ of the Subdivision Engineering Plans.

10.5 **Obligation for Final Approvals.** The responsibility to pursue the Final Approvals contemplated by Paragraph 10 shall be the sole responsibility of Buyer, with Seller having no responsibility therefor other than to cooperate with Buyer as Buyer may request from time to time, but without any duty or obligation to expend Seller's funds or to incur any cost or expense incident thereto. Buyer's failure to obtain any of such Final Approvals shall excuse Buyer from any obligation to close the purchase of the Property contemplated hereby, but Buyer's failure to obtain the Final Approvals shall not entitle Buyer to a refund of its Earnest Money deposit if Buyer terminates this Agreement on the basis of its failure to obtain any one or more of such Final Approvals.

10.6 **Extension of Final Approvals Date.** In the event Buyer fails to obtain either (a) Final Plat Approval from the County; (b) Grading and Drainage Plans Approval from the County; (c) Final Plat Approval from ADWR; (d) the Assured Water Supply from ADWR; (e) the approval of the Subdivision Engineering Plans from ADEQ; or (f) the Utility Services Agreement from the pertinent utility provider, Buyer may elect, by written notice delivered to Seller and Escrow Agent on or before 5:00 p.m. on the Final Approvals Date, to extend the Final Approvals Date to December 27, 2001 ("Final Approvals Outside Date"). In the event that Buyer elects to extend the Final Approvals Date to a date not later than December 27, 2001, it shall give written notice to Seller of such election on or before 5:00 p.m. on December 22, 2000 and shall thereupon become obligated to pay an increased Purchase Price equal to One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) per month for each month or part thereof that the Final Approvals Date is extended. One-half (1/2) of each such monthly increase

in the Purchase Price in the amount of Seventy-Five Thousand and 00/100 Dollars (\$75,000.00) shall be due and payable by Buyer to Seller on the twenty-seventh (27th) day of each month for the following month in cash as a non-refundable extension fee ("Extension Fee" and collectively, the "Extension Fees"). During the period of such extension, such sum shall be paid to Escrow Agent by Buyer on or before the twenty-seventh (27th) day of each month for the following month, and shall be released by Escrow Agent to Seller not later than one (1) day after Escrow Agent's receipt thereof. Such Extension Fees shall be non-refundable to Buyer in all events and shall be deemed to be fully earned by Seller on receipt thereof. The payment by Buyer of Extension Fees shall not entitle Buyer to any releases from the Property or under the Deed of Trust and shall not be credited against any release price thereafter becoming due and payable in accordance with the provisions of Paragraph 2.2 above or the Note. Each Extension Fee, in the amount of Seventy-Five Thousand and 00/100 Dollars (\$75,000.00), shall be added to the Purchase Price and to the Down Payment, and, at Closing, Buyer shall receive credit for Extension Fees theretofore paid by Buyer and received by Seller against the Down Payment. The balance of each monthly increase in the Purchase Price during the period that the Final Approvals Date is extended, also in the amount of Seventy-Five Thousand and 00/100 Dollars (\$75,000.00) each, shall be added to the Purchase Price and to the Note and Deed of Trust, and the payment required under the terms of the Note shall be adjusted so that the full unpaid principal balance of the Note shall be fully amortized over a six (6) year period with an eight and one-half percent (8.5%) interest rate. The initial Extension Fee in the amount of Seventy-Five Thousand and 00/100 Dollars (\$75,000.00) shall be paid to Seller by Buyer with the notice of Buyer's election to extend which Seller must receive on or before December 22, 2000, and the Extension Fee related to each month thereafter shall be delivered to Escrow Agent on or before the twenty-seventh (27th) day of each month thereafter. In no event shall the Final Approvals Date be extended beyond December 27, 2001.

11. Off-Site Improvements.

- 11.1 Non-Utility Off-Site Improvements.** Buyer agrees that any and all off-site improvements required to be constructed by Buyer shall be the responsibility of Buyer, including any off-site improvements required by the County.
- 11.2 Utility Off-Site Improvements.** Buyer agrees that telephone, electric and gas off-site improvements necessary for service to the Property shall be the responsibility of the applicable utility provider in accordance with the requirements contained in the agreements between Buyer and the applicable utility providers.

12. Buyer's Improvements.

- 12.1 **On-Site Improvements.** Buyer agrees that any and all on-site improvements within the perimeter of the portions of the Property purchased by Buyer shall be the responsibility of Buyer.
- 12.2 **Buyer's Plans.** Notwithstanding any contrary provision of this Agreement, Seller shall have no right, title or interest in or to any of Buyer's drawings, plans or designs for any residences or other improvements to be constructed by Buyer on the Property.
13. **Buyer's Liability Insurance.** Prior to entry upon the Property, Buyer shall deliver to Seller a currently effective certificate of commercial general liability insurance with a minimum combined single limit of Three Million and 00/100 Dollars (\$3,000,000.00) with coverage for owned and non-owned motor vehicles and contractual liability. Seller shall be named as an additional insured under such insurance policy. Such insurance coverage may be included in blanket insurance policies. The insurer of such certificate shall commit to give Seller thirty (30) days prior notice before cancellation of the policy or reduction in coverage. Such insurance shall be underwritten by corporate insurers licensed in Arizona which are reasonably acceptable to Seller. Buyer agrees to maintain such insurance in force through the Close of Escrow and completion of Buyer's construction activities within the Property.
14. **Representations and Warranties of Buyer.** Buyer acknowledges, covenants, represents and warrants to Seller that the following are true in all material respects as of the Effective Date and will be true as of the Close of Escrow in all material respects, and in entering into this Agreement Seller is relying upon, the following:
- 14.1 **Due Organization, Etc.** Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Arizona and is duly authorized to transact business in Arizona. Buyer's execution and delivery of this Agreement, and the consummation of the transactions contemplated and required hereby, will not result in any violation of, or default under, any terms or provision of any agreement, instrument, mortgage, loan agreement or similar document to which Buyer is a party or by which Buyer is bound. Buyer further represents that it is not a partner or joint venturer with Seller in connection with the transactions contemplated by this Agreement, and that it is entering into this Agreement and any other contract, instrument and document contemplated hereby, voluntarily and solely for its own benefit.
- 14.2 **No Litigation.** There is no litigation, investigation or proceeding pending or, to the best of Buyer's knowledge, contemplated or threatened against Buyer which would impair or adversely affect Buyer's ability to perform its obligations under this Agreement or any other instrument or document related hereto.
- 14.3 **No Warranties.** Except as expressly provided in this Agreement, Seller, its employees, agents representatives and attorneys have not made, nor has Buyer relied on, any representations, warranties, guarantees, or promises (oral, written

or implied) regarding the condition of the Property or the suitability of the Property for Buyer's intended use or any other use.

14.4 **Investigation of Property by Buyer.** Prior to the Close of Escrow, Buyer shall have made its own examination, inspection and investigation of the condition of the Property, (including, without limitation the subsurface thereof, all soil, environmental, engineering and other conditions which may affect construction thereon) and all matters affecting the development thereof as it deems necessary or appropriate, and Buyer is entering into this Agreement and purchasing the Property based upon the results of such inspections and investigations and not in reliance on any statements, representations, or agreements of Seller not contained in this Agreement. Buyer acknowledges and agrees that it is acquiring the Property in an "AS IS" and "WHERE IS" condition, except for representations and warranties of Seller as stated in this Agreement.

14.5 **Interstate Land Sales Full Disclosure Act.** To assure that Seller's operations qualify for exemption from the Interstate Land Sales Full Disclosure Act (the "Act"), Buyer represents and warrants that: (i) Buyer is a duly organized and validly existing business entity; (ii) Buyer is purchasing the Property for its own use and development; (iii) Buyer has been represented in the negotiations regarding the subject purchase by a representative of its own choosing; and (iv) Buyer does not intend for this transaction to be subject to the Act.

The warranties and representations of Buyer set forth in this Paragraph 14 shall survive the Close of Escrow for a period of three (3) years. Seller agrees for itself and its successors and assigns to commence any legal action for breach of any such warranty and representation within three (3) years after the Close of Escrow, and Seller for itself and successors and assigns hereby waives all rights and remedies against Buyer, its successors and assigns arising out of or in connection with any alleged breach of warranty or representation as to which a legal action has not been commenced within said three (3) year limitation period.

15. **Representations and Warranties of Seller.** Seller acknowledges, represents and warrants to Buyer that, except as otherwise disclosed in the Property Information and/or the Title Commitment, the following are true in all material respects as of the Effective Date and will be true as of the Close of Escrow in all material respects, and in entering into this Agreement, Buyer is relying upon the following:

15.1 **Due Organization, Etc.** Seller is a duly organized, validly existing general partnership, and is qualified to do business in the State of Arizona. The transactions contemplated by this Agreement and the execution and delivery of all documents required herein, and its performance hereunder have been duly authorized by Seller. The execution and delivery of this Agreement and any other documents required herein and the consummation of the transactions contemplated hereby and thereby will not result in any violation of, or default

under, any term or provision of any agreement, instrument, mortgage, loan or similar documents to which Seller is a party of or by which Seller is bound.

- 15.2 **Foreign Person.** Seller is not a "foreign person" as such term is defined under Internal Revenue Code § 1445.
- 15.3 **No Litigation.** There is no litigation, investigation or proceeding pending or, to the knowledge of Seller, contemplated or threatened against Seller or the Property which would impair or adversely affect Seller's ability to perform its obligations under this Agreement or under any contract, instrument or document related hereto.
- 15.4 **No Mechanics' Liens.** To Seller's knowledge, there are no mechanics' or materialmen's liens perfected against the Property (other than those resulting from the acts or omissions of Buyer or its agents or contractors). Seller shall cause to be released and discharged promptly, and shall indemnify, defend and hold Buyer harmless for, from and against any liens filed against the Property prior to or after the Close of Escrow in violation of this warranty (other than those liens resulting from the acts or omissions of Buyer or its agents or contractors and for labor performed and materials delivered after the Close of Escrow).
- 15.5 **No Condemnation.** To Seller's knowledge, there are no existing, pending or anticipated condemnation or similar proceedings against or involving the Property.
- 15.6 **No Leases.** Seller has not entered into, and to Seller's knowledge no prior owner of the Property has entered into, any farm or other leases applicable to or affecting the Property other than the leases described in Exhibit H attached hereto, all of which, at Buyer's election, shall either be terminated by Seller, at its cost and expense prior to Close of Escrow, or, in the alternative, assigned to Buyer. To the extent that any such leases exist, at the request of Buyer, Seller shall obtain a termination thereof on or before the Close of Escrow for the portion of the Property affected by the lease.
- 15.7 **No Undisclosed Assessments.** To Seller's knowledge, there are no taxes, assessments (special, general or otherwise) or bonds of any nature affecting the Property, or any portion thereof (other than those disclosed in the Title Commitment). Seller has no understanding or agreement with any taxing authority respecting the imposition or deferment of any taxes or assessments respecting the Property.
- 15.8 **Transfers and Encumbrances.** Seller shall not sell, convey, assign, lease or otherwise transfer all or any part of the Property, or cause or permit any new liability, encumbrance or obligation to be placed or imposed upon all or any part of the Property from the Effective Date until the Close of Escrow other than

those liabilities, encumbrances and obligations which can be fully released and extinguished for an amount equal to Twenty-Two Thousand Five Hundred and 00/100 Dollars (\$22,500.00) per acre or less, and which Seller shall be obligated to release or extinguish at or prior to the Close of Escrow.

- 15.9 **Maintenance.** Prior to the Close of Escrow, Seller shall maintain the Property in the same state as exists on the Effective Date, except as to changes in the state of repair caused by Buyer, its agents, designees, invitees and/or licensees.
- 15.10 **Ownership and Authority.** Seller is the owner of the Property and has full power and authority to enter into and perform this Agreement in accordance with its terms.
- 15.11 **Environmental.** Except as may be disclosed to Buyer in any Phase I or Phase II environmental reports provided to Buyer by Seller, or otherwise provided to Buyer by Seller prior to Close of Escrow, Seller has no knowledge that there exists or has existed, and Seller itself has not caused, any generation, production, location, transportation, storage, treatment, discharge, disposal, release or threatened release upon or under the Property of any toxic or hazardous substance or "*pollutant*" (as that term is defined in A.R.S. § 49-201(23)) subject to regulation under the Resource Conservation and Recovery Act (as amended by the Hazardous and Solid Waste Amendments of 1984), 42 U.S.C. § 6901, *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (as amended by the Superfund Amendments and Reauthorization Act of 1986), 42 U.S.C. § 9601, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Toxic Substances Control Act, 18 U.S.C. § 2601, *et seq.*; the Clean Air Act, 42 U.S.C. § 7401, *et seq.*; the Safe Drinking Water Act, 42 U.S.C. § 300h, *et seq.*; the Clean Water Act, 33 U.S.C. § 1251, *et seq.*; the Arizona Environmental Quality Act, A.R.S. § 49-201, *et seq.*; the Arizona "State Superfund" provisions, A.R.S. § 49-281, *et seq.*; the Arizona Solid Waste Management provisions, A.R.S. § 49-701, *et seq.*; the Arizona Hazardous Waste Management Act, A.R.S. § 49-921, *et seq.*; and the Arizona Underground Storage Tank provisions, A.R.S. § 49-1001, *et seq.*, or any other applicable State or Federal environmental protection law or regulation.
- 15.12 **Development.** Seller has no knowledge of any fact or matter that would materially limit or in any manner materially interfere with the development of the Property as a mixed use development in accordance with the requirements of applicable law including, but not limited to, zoning ordinances and requirements.
- 15.13 **Limitations.**
- 15.13.1 Seller does not warrant or represent the accuracy or completeness of any engineering drawings or any reports, studies or plans furnished to Buyer by Seller or at Seller's direction and shall have no liability to Buyer in connection therewith; provided, however, that, prior to Close of Escrow,

Seller shall notify Buyer promptly of any inaccurate or incomplete matter of which Seller obtains knowledge as defined in Paragraph 15.13.2;

15.13.2 To the extent that any of the representations and warranties made by Seller pursuant to this Paragraph 15 are made to Seller's knowledge (or lack thereof), Buyer acknowledges and agrees that such representations and warranties are based on the actual (not constructive or imputed) knowledge of Ralph Thomas, Managing Partner of Seller, as of the Effective Date and as of the Close of Escrow; and, notwithstanding any contrary provision of this Agreement, in no event shall the foregoing individual have any personal liability or obligation hereunder;

15.13.3 As to the above warranties and representations of Seller which are based upon lack of knowledge of Seller, if, after the Effective Date and prior to the Close of Escrow, Seller obtains knowledge (as defined in Paragraph 15.13.2) that any of such warranties or representations is untrue in any material respect, then Seller shall notify Buyer thereof within seven (7) business days after such discovery by Seller, in which event such warranty or representation shall be deemed modified to the extent described in such notice retroactively to the Effective Date. If Seller gives notice to Buyer of such modification of any such warranty or representation, Buyer shall have ten (10) days after receipt of such notice in turn to notify Seller of Buyer's objection thereto if Buyer reasonably determines that any such modification to such warranty or representation reasonably could have a material negative financial impact on Buyer's development and marketing of the Property. If Buyer delivers such notice of objection, Buyer and Seller shall thereafter proceed to negotiate in good faith to resolve such objections. If such objections are not resolved on or before the earlier of the Closing Date, or ten (10) days after the objections are delivered to Seller ("*Negotiation Period*"), then either party may terminate this Agreement by giving notice to the other and Escrow Agent which termination shall be effective seven (7) business days after delivery of such notice in which event the Earnest Money shall be refunded to Buyer; provided, however, that Buyer may revoke any termination by Seller within seven (7) business days after receipt of such termination notice by providing a notice waiving its objection and Seller may revoke any termination notice given by Buyer by curing Buyer's objection within seven (7) business days after receipt of a termination notice. Notwithstanding any contrary provision of this Agreement, the Closing Date shall be extended as necessary to accommodate the full time periods provided under this Paragraph 15.13.3);

15.13.4 The warranties and representations of Seller set forth in this Paragraph 15 shall survive the Close of Escrow a period of three (3) years ("*Limitation Period*"). Buyer agrees for itself and its successors and

assigns to commence any legal action for breach of any such warranty and representation within the Limitation Period, and Buyer for itself and successors and assigns hereby waives all rights and remedies against Seller, its successors and assigns arising out of or in connection with any alleged breach of warranty or representation as to which a legal action has not been commenced within the Limitation Period; and

15.13.5 In the event that, prior to the Close of Escrow, Buyer receives notice or obtains knowledge of any information which indicates that any of the foregoing representations and warranties are untrue, Buyer shall promptly advise Seller in writing of such notice, information or knowledge. Buyer shall be deemed to have waived such representation and warranty to the extent Buyer fails to advise Seller of such notice, information or knowledge pursuant to the preceding sentence and thereafter consummates the transaction contemplated hereby. In the event Buyer knowingly waives any representation or warranty, then Seller shall have no liability under this Paragraph 15 for such representation or warranty to the extent waived.

16. **Possession.** Seller shall deliver possession of the Property to Buyer at the Close of Escrow.

16.1 **Farming Operation.** Notwithstanding the foregoing, Buyer acknowledges that Seller is operating, either directly or through arrangements with third parties, a portion of the Property as a pecan ranch, farm, or orchard. Seller shall be obligated to continue to cultivate, irrigate, fertilize and otherwise care for such orchard and that all crops of pecans harvested after the date hereof but prior to Close of Escrow shall belong to Seller and Buyer shall have no right or claim thereto. It is further acknowledged by Buyer that due to the uncertainty of the timing when the Close of Escrow shall happen hereunder, given numerous conditions precedent beyond the control of the parties hereto, that if the Close of Escrow takes place between the dates of October 1, 2000 and February 28, 2001, or, if the Final Approvals Date is extended and the sale contemplated hereby closed between the dates of October 1, 2001 and February 28, 2002, Seller will have made a substantial investment in a pecan crop that it should be allowed to harvest. Accordingly, notwithstanding the Close of Escrow may have occurred and possession may have passed to Buyer, Buyer shall not take any action to harm or damage the then growing crop of pecans on that part of the Property previously maintained by Seller as a pecan ranch, farm, or orchard and that the crop then growing may be harvested by Seller in the normal course on or before February 28 following the Closing Date, and that all rights to such crop and the revenue therefrom shall belong to Seller without any obligation to compensate Buyer in any way or to share any portion of such revenue with Buyer. At the Close of Escrow, Buyer shall execute and deliver a license, easement, lease or other instrument mutually acceptable to the parties hereto that will allow Seller

to complete its farming operation with respect to such growing pecan crop and to harvest same, subject to no more than a nominal fee, rental or other compensation to Buyer of no more than Ten and 00/100 Dollars (\$10.00). In the event of a Close of Escrow between October 1 and February 28 of the following year, under such agreement Seller shall be permitted access to the portion of the Property where the pecan ranch, farm or orchard is maintained and shall be permitted to continue to irrigate, cultivate, fertilize and otherwise care for such pecan trees in the normal course, and to harvest the then growing crop of pecans in the normal course. In such event, Seller shall indemnify and hold Buyer harmless from any and all damage to persons or property caused by Seller and its agents and employees during such continued farming and harvesting operation. Once the pecan crop that is growing at the time of the Close of Escrow has been harvested, Seller shall have no further right, title or interest in or to the existing pecan trees, or any crop thereafter produced therefrom. Seller has made no representations or warranties to Buyer with respect to the condition or status of the pecan trees growing on the Property and Buyer is taking same based on its own inspection thereof. Seller shall prepare and deliver to Buyer prior to Close of Escrow an inventory list of all farm equipment and machinery owned by Seller in connection with the operation of the pecan ranch. Seller agrees to convey such farm equipment and machinery to Buyer at Close of Escrow by bill of sale in consideration of the agreement of Buyer to allow Seller to complete its farming operation as set forth above.

- 16.2 **Gravel Pit Operation.** Buyer acknowledges that Seller has disclosed to Buyer that a portion of the Property has been leased to Southwest Rock Products, L.L.C. ("Gravel Pit Operator") and that such portion is being mined by the Gravel Pit Operator for sand and gravel. The parties acknowledge and agree that prior to Closing such Gravel Pit Operator shall be permitted to continue to mine the area currently occupied by it for sand and gravel, and that all income paid to Seller prior to Closing in consideration for such mining license, permit or lease shall be and remain the property of Seller, except that any payment attributable to the month in which the Close of Escrow occurs shall be prorated between Buyer and Seller based on the number of days during the month of closing when they respectively held title to the Property. Seller shall defend, indemnify and hold Buyer harmless for, from and against all claims, demands, actions, liabilities, and obligations (including, but not limited to reasonable attorneys' fees) arising from the mining operations occurring prior to the Close of Escrow, which indemnification obligation shall survive the Close of Escrow or the termination or cancellation of this Agreement. Seller agrees to remediate, at its cost and expense, or to cause the Gravel Pit Operator to remediate, the portion of the Property subject to the mining operations in an amount not to exceed One Hundred Thousand and 00/100 Dollars (\$100,000.00). Such remediation shall restore the Property to its condition existing immediately prior to the mining operations and shall be completed no later than the Close of Escrow. The remediation shall be done in such manner as may be reasonably approved in

writing by Buyer. In the event Seller fails to complete the remediation prior to the Close of Escrow, in addition to the other remedies set forth in this Agreement, Buyer shall be entitled to deduct the remediation costs actually incurred by Buyer from the Purchase Price and the payments under the Note in the first order of maturity.

17. **Commissions.** In the event that the Close of Escrow occurs, Seller agrees to pay to Nathan & Associates, Inc. a sales commission in the amount of three percent (3.0%) of the Purchase Price ("*Broker*") which payment shall be made through Escrow. The Broker shall not be entitled to any commissions if this Agreement is terminated irrespective whether Seller receives any compensation as a result of such termination. Except as provided in this Paragraph 17, each party warrants and represents to the other that no real estate sales or brokerage commissions or like commissions are or may be due in connection with this transaction. Each party agrees to indemnify, defend (with legal counsel reasonably acceptable to the indemnitee) and hold harmless the other party for, from and against any claims by third parties made by or through the acts of such party, for real estate or brokerage commissions, or a finders fee, in connection with the transactions provided herein, and all costs and expenses incurred by the indemnitee in connection therewith including, but not limited to, reasonable attorneys' fees. Buyer and Seller acknowledge that certain employees and/or principals of Buyer and Seller are licensed real estate brokers or salespersons in the State of Arizona. Buyer hereby acknowledges that the partners comprising Seller have disclosed to Buyer that Seller has agreed to pay a management fee to Ralph Thomas, one of the general partners of Seller, for which Buyer shall have no liability or responsibility. The commitment of Seller to pay such management fee shall not be deemed to be a default or violation of Seller's representations contained in this Paragraph 17.

18. **Seller's Remedies.**

18.1 **Prior to Close of Escrow.** If Buyer shall breach any of the terms or provisions of this Agreement or otherwise default prior to the Close of Escrow, and shall fail to cure such breach within five (5) days following written notice thereof given by Seller to Buyer, Seller's sole remedy shall be to terminate this Agreement and to be paid and/or retain the Earnest Money and Extension Fee as liquidated damages; provided, however, that in no event shall the deadline for Close of Escrow be extended by more than four (4) days as a result of the giving of notice by Seller of Buyer's default as required in this Paragraph 18.1. Seller and Buyer acknowledge that it would be extremely difficult if not impossible to ascertain Seller's actual damages and that the Earnest Money and Extension Fee is a reasonable forecast of just compensation to Seller resulting from Buyer's breach. Upon default of Buyer and expiration of the applicable grace period, and upon receipt of a written notice from Seller that Buyer is in breach of one or more of its obligations under this Agreement and, as a consequence thereof, Seller has elected to terminate this Agreement, Escrow Agent immediately shall disburse to Seller all Earnest Money and Extension Fee then held in Escrow. Upon

termination of this Agreement by Seller and payment to Seller of the sum of liquidated damages, neither party shall have any further obligation or liability hereunder, except indemnity obligations contained herein. Notwithstanding anything to the contrary in this paragraph, the obligations of Buyer pursuant to Paragraphs 5.2, 18 and 26 hereof shall be independent of and shall not be modified, abrogated, or otherwise affected by the limitation of Buyer's liability as set forth in this Paragraph.

- 18.2 **Following Close of Escrow.** If, after Close of Escrow Buyer shall breach any of the terms or provisions of this Agreement, or if it shall be determined by a court of competent jurisdiction that Buyer breached any of the representations, warranties or covenants made by Buyer at, or as of, the Close of Escrow, or if Buyer otherwise defaults in its post-closing obligations, Seller shall have, in addition to the rights and remedies set forth elsewhere in this Agreement and/or in any documents or instruments delivered to Seller at the Close of Escrow, any right or remedy available at law or in equity, including but not limited to the right to demand and have specific performance; provided, however, that Seller shall only be entitled to seek recovery of actual damages which directly result from Buyer's breach, Seller hereby waiving and covenanting not to assert any right to seek or obtain any other damages (including, but not limited to, incidental or consequential damages) resulting from Buyer's breach, and provided, further, that Seller waives any right to rescind the sale and purchase transaction.

19. **Buyer's Remedies.**

- 19.1 **Prior to Close of Escrow.** If, on or before Close of Escrow, Seller breaches any of the terms or provisions of this Agreement or otherwise defaults hereunder, and fails to cure such breach within five (5) days following written notice thereof given by Buyer to Seller, Buyer may either (i) terminate this Agreement by written notice to Seller and to Escrow Agent, whereupon the Earnest Money and Extension Fee shall be refunded to Buyer; (ii) waive such default and consummate the transaction contemplated hereby in accordance with the terms hereof; or (iii) institute all proceedings necessary to specifically enforce the terms of this Agreement and cause title to Property to be conveyed to Buyer, it being understood and agreed that the Property is unique and that the right of specific performance is a just and equitable remedy under the circumstances. Buyer hereby waives and covenants not to assert any right to seek or obtain monetary damages resulting from Seller's breach; provided that if specific performance is not available as a remedy to Buyer as the result of an action by Seller, Buyer may pursue an action against Seller to recover the actual out-of-pocket damages which directly result from Seller's breach. Buyer waives and covenants not to assert any right to seek or obtain monetary damages (including, but not limited to, incidental or consequential damages) resulting from Seller's breach.

- 19.2 **Following Close of Escrow.** If, after Close of Escrow, Seller shall breach any of the terms or provisions of this Agreement, or if it shall be determined by a court of competent jurisdiction that Seller breached any of the representations, warranties or covenants made by Seller at, or as of, the Close of Escrow, or if Seller otherwise defaults in its post-closing obligations, Buyer shall have, in addition to the rights and remedies set forth elsewhere in this Agreement and/or in any documents or instruments delivered to Buyer at the Close of Escrow, any right or remedy available at law or in equity, including the right to demand and have specific performance; provided, however, that Buyer shall only be entitled to seek recovery of actual damages which directly result from Seller's breach, Buyer hereby waiving and covenanting not to assert any right to seek or obtain any other damages (including, but not limited to, incidental or consequential damages) resulting from Seller's breach; and provided, further, that Buyer waives any right to rescind the sale and purchase transaction.
20. **Termination of Agreement.** If this Agreement is terminated (or deemed terminated) pursuant to a provision hereof specifically requiring that the Earnest Money and Extension Fee be refunded to Buyer, then the Earnest Money and Extension Fee shall be refunded to Buyer, less Buyer's share (if any) of escrow cancellation charges. If this Agreement is terminated (or deemed terminated) pursuant to a provision hereof specifically requiring that the Earnest Money and Extension Fee be paid to Seller, then the Earnest Money and Extension Fee shall be disbursed to and retained by Seller, less Seller's share (if any) of escrow cancellation charges. In any event of termination or cancellation, Escrow Agent shall return all documents to the parties who supplied the documents, and Buyer shall deliver to Seller all reports, studies, plans, surveys, drawings, plats, specifications, filings, and all other documents in its possession or control concerning the Property prepared by or at the request of Buyer in connection with the Property (except for confidential or proprietary information of Buyer including, but not limited to, financial projections). Upon such return of Earnest Money and Extension Fee to Buyer or disbursement to Seller as liquidated damages and delivery of documents, the Escrow shall be deemed canceled, Buyer's obligation to purchase the Property from Seller shall be deemed terminated and Seller's obligation to sell the Property to the Buyer shall be deemed terminated. All indemnity obligations contained herein shall survive the termination of this Agreement.
21. **Condemnation.** Buyer shall have the right to terminate this Agreement by written notice to Seller and Escrow Agent if more than fifty (50) acres of the Property in the aggregate is taken in condemnation or other like proceedings or if a notice of a proposed condemnation affecting more than fifty (50) acres of the Property in the aggregate is received by either Buyer or Seller prior to the Close of Escrow (for the purposes of this Agreement, a taking for a limited or indefinite term shall be deemed to be equivalent to a transfer of a fee title) or if more than fifty (50) acres of the Property in the aggregate is transferred in lieu of condemnation or other like proceeding. Seller shall deliver written notice to Buyer of any such actual or proposed condemnation within five (5) business days after Seller obtains actual knowledge thereof. Buyer's notice of cancellation shall be

delivered by Buyer within fifteen (15) days after written notice of such taking is delivered to Buyer by Seller or any third party, and if such notice is not delivered by Buyer within such fifteen (15) day period, Buyer shall be deemed to have waived its right to cancel this Agreement as a result thereof. In the event of cancellation by Buyer pursuant to the preceding sentence, the Earnest Money and Extension Fee shall be refunded to Buyer. If Buyer waives its right to cancel this Agreement notwithstanding such a condemnation, notice of condemnation or transfer, Seller shall irrevocably assign to Buyer upon the Close of Escrow all future awards and proceeds payable as a result of condemnation or transfer and credit Buyer for all awards and proceeds previously received by Seller, but there shall be no adjustment to the Purchase Price. Seller shall provide to Buyer the right to participate in any negotiations or other meetings with the condemning authority relating to any such condemnation involving the Property.

22. **Prorations, Transaction Privilege Tax and Closing Costs.**

22.1 **Taxes and Assessments.** Current ad valorem taxes and assessments, including special assessments, pertaining to the Property shall be prorated at and as of the Close of Escrow. Such prorations shall be based on the latest available information at the time of proration. If taxes must be paid before Pinal County tax records reflect the Property as a separate tax parcel, taxes shall be allocated between the Property and the rest of the tax parcel on the basis of acreage, except that any taxes attributable to improvements shall be allocated to the land on which the improvements are located. Notwithstanding the foregoing, Buyer and Seller acknowledge that as part of the bargained for consideration to Seller, Buyer has agreed to pay the Vineyard Road assessment being imposed by Pinal County, Arizona and that if this transaction closes, the same shall not be the responsibility of Seller irrespective of whether the assessment becomes due or payable before or after the Close of Escrow.

22.2 **Closing Costs.** Seller and Buyer shall each pay one-half (1/2) of the recording costs and escrow fees incurred in connection with this transaction. The premium for Buyer's title insurance shall be allocated between Buyer and Seller as provided in Paragraph 7.6. All other closing costs shall be allocated between Buyer and Seller according to the prevailing custom in Pinal County, Arizona, as determined by Escrow Agent.

23. **No Partnership; Third Person.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Seller and Buyer. No term or provision of this Agreement is intended to benefit any person, partnership, corporation or other entity not a party hereto (including, without limitation, any broker), and no such other person, partnership, corporation or entity shall have any right or cause of action hereunder.

24. **Assignment.**

24.1 **By Buyer.** Buyer shall not prior to Close of Escrow voluntarily or by operation of law assign or otherwise transfer or encumber all or any part of Buyer's interest in this Agreement or in the Property. Any attempt to assign, transfer or encumber shall be void and shall be a breach of this Agreement. Notwithstanding the foregoing, Buyer may (i) assign its interest hereunder with the prior written consent of Seller, which consent shall not be unreasonably withheld; or (ii) assign its interest hereunder to any Permitted Transferee (as hereinafter defined) without the prior written consent of Seller; provided, however, that any assignment pursuant to this Paragraph 24.1 shall be conditioned upon the delivery to Seller of written notice of such assignment together with an executed copy of documents pursuant to which such assignee assumes all of Buyer's covenants under this Agreement and agrees to be bound by all of the terms, conditions and provisions hereof. Any such assignment shall not affect or limit the liability of Buyer hereunder, even if, after such assignment, the terms of this Agreement are materially altered, without the consent of Buyer which consent shall not be necessary. As used herein, the term "*Permitted Transferee*" shall mean any individual or entity controlled by, or under common control with, Buyer (including any limited partnership whose general partner is Buyer, or is controlled by, or under common control with, Buyer).

24.2 **By Seller.** Subject to the continuing obligation to perform its duties and covenants hereunder, Seller may freely assign, transfer or encumber all or any of its right, title and interest in this Agreement and/or the Property; provided, however, that at the Close of Escrow, fee simple title to the Property shall be conveyed to Buyer subject only to the Permitted Title Exceptions and such other matters approved by Buyer or resulting from Buyer's actions.

25. **Notices.** All notices and other communications required or permitted hereunder shall be in writing and shall be given by personal delivery, facsimile transmission, overnight courier or by deposit in the United States mail, first class, registered or certified, return receipt requested, postage prepaid, correctly addressed to the intended recipient at the Notice Address specified on page 2 of this Agreement. Such notices and other communications shall be deemed to be given and received as follows: (i) upon delivery to a party's office(s) listed on page 2, if delivered personally; (ii) upon the next business day following confirmed transmission if transmitted by facsimile on a day which is not a business day or if transmitted after 5:00 p.m. (Phoenix time) on a business day; (iii) upon delivery to a party's office(s) listed on page 2, if delivered by overnight courier; or (iv) three (3) days following deposit in the mail, if delivered by mail. The parties and Escrow Agent may, from time to time, designate a different address by written notice given in the manner provided for above, not less than three (3) days prior to the effective date of the change.

26. **Attorneys' Fees.** If either party commences litigation or other legal proceedings against the other party for a default hereunder or to enforce the provisions hereof, the prevailing party in any such proceeding shall be entitled to recover its costs and expenses, including

reasonable investigative fees, attorneys' fees and expert witness fees, with attorneys' fees to be determined by the court and not a jury in any such litigation.

27. **Entire Agreement.** This Agreement, together with any exhibits and other matters attached hereto and/or incorporated herein by this reference, constitutes the entire contract and agreement between the parties. All terms, conditions, representations, warranties, understandings and interpretations contained in any other written or oral communications between the parties are superseded. In executing this Agreement, the parties acknowledge that they are relying solely on the matters set forth herein and not on any other inducements, written or oral, by the other party or any agent, employee or representative thereof.
28. **Further Instruments.** Each party, promptly upon the written request of the other or Escrow Agent, shall execute (and have acknowledged, if appropriate) and deliver to the other or to Escrow Agent, or as may be otherwise reasonably designated, all additional instruments reasonably requested to evidence or give effect to this Agreement, whether the request is made before or after the Close of Escrow.
29. **Modification of Agreement.** No modification of this Agreement shall be effective unless it is in writing and is signed by all parties hereto.
30. **Waiver.** No waiver of any term or condition of this Agreement shall be effective unless it is in writing and is signed by the party against whom enforcement of the waiver is sought, and then only in the particular circumstances specified. No failure by a party to exercise any right or privilege provided for herein, or to require timely performance of any obligation herein in strict accordance with the provisions hereof, shall preclude the exercise of such rights or privileges or the enforcement of such obligations in different circumstances or upon the reoccurrence of the same or similar circumstances. Moreover, the exercise of any remedy provided for at law, in equity, or herein shall not by implication preclude the exercise of any other remedy except when, and then only to the extent that, the other remedy is expressly forbidden or limited by the provisions hereof.
31. **Time Periods.** As used in this Agreement, the term "*business day*" shall mean a day that is not a Saturday, Sunday or federal or State of Arizona legal holiday. If the time fixed for performance of any obligation hereunder expires on a day that is not a business day, the deadline shall be extended automatically to the next day that is a business day. Except as may be otherwise expressly provided herein, the time for performance of any obligation hereunder shall expire at 5:00 p.m. (Phoenix time) on the last day of the period allowed hereunder.
32. **Time of the Essence.** Time is of the essence for performance or satisfaction of all requirements, conditions, or other provisions hereof.
33. **Applicable Laws.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

34. **Construction.** As used in this Agreement, the masculine, feminine and neuter gender and the singular or plural shall each be construed to include the other whenever the context so requires. This Agreement shall be construed as a whole and in accordance with its fair meaning, without regard to any presumption or rule of construction causing this Agreement or any part of it to be construed against the party causing the Agreement to be written. The parties acknowledge that each has had a full and fair opportunity to review the Agreement and to have it reviewed by counsel. If any words or phrases in this Agreement have been stricken, whether or not replaced by other words or phrases, this Agreement shall be construed (if otherwise clear and unambiguous) as if the stricken matter never appeared and no inference shall be drawn from the former presence of the stricken matters in this Agreement or from the fact that such matters were stricken.
35. **Inurement.** This Agreement shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors and permitted assigns of the respective parties.
36. **IRS Real Estate Sales Reporting.** Buyer and Seller hereby appoint Escrow Agent as, and Escrow Agent agrees to act as, "*the person responsible for closing*" the transactions which are the subject of this Agreement pursuant to Internal Revenue Code of 1986 § 6045(e). Escrow Agent shall prepare and file the informational return (IRS Form 1099-B) required by and otherwise comply with the terms of Internal Revenue Code § 6045(e). Escrow Agent further agrees to indemnify and hold Buyer, Seller and their respective attorneys harmless for, from and against all claims, costs, liabilities, penalties or expenses resulting from Escrow Agent's failure to file the appropriate reports and otherwise comply with the terms of the Internal Revenue Code pursuant to this paragraph.
37. **Descriptive Headings.** The descriptive headings of the paragraphs, subparagraphs and other portions of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any provisions herein.
38. **Counterparts.** This Agreement may be executed in counterparts, each of which may contain fewer than all signatures but all of which, together, shall constitute a single instrument.
39. **Recordation.** This Agreement shall not be recorded.
40. **Expiration of Offer.** Seller's offer contained in this Agreement shall be deemed withdrawn without further notice, and Seller and Buyer shall have no obligations or liabilities under this Agreement unless, on or before 3:00 p.m. (Phoenix time) on June 16, 2000, three (3) originals of this Agreement fully executed by Buyer and Seller, together with Buyer's Earnest Money deposit described in Paragraph 2.1.1, are delivered to Escrow Agent at the address set forth above.

IN WITNESS WHEREOF, the parties have executed this Sale Agreement as of the date first set forth above.

SELLER:

PECAN RANCH PARTNERSHIP, an Arizona general partnership

By: [Signature]

Its: [Signature]

BUYER:

QC PECAN RANCH, L.L.C., an Arizona limited liability company

By: [Signature]

Its: [Signature]

ESCROW AGENT:

Escrow Agent hereby: (i) agrees to be bound by the provisions hereof applicable to Escrow Agent, (ii) agrees to perform its obligations as set forth herein, (iii) acknowledges receipt of the initial Earnest Money deposit described in **Paragraph 2.1.1**, and (iv) declares that Opening of Escrow has occurred this 12th day of June, 2000.

Security Title

By: [Signature]

Its: [Signature]

EXHIBIT A

Property

PARCEL NO. 1:

All of Section 29, Township 2 South, Range 8 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona.

PARCEL NO. 2:

The South half of the Southeast quarter and the South half of the Southwest quarter of Section 20, Township 2 South, Range 8 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona.

PARCEL NO. 3:

The South half of the North half of the Southeast quarter and the South half of the North half of the Southwest quarter of Section 20, Township 2 South, Range 8 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona.

Exhibit
2

Q.C. Pecan Ranch, L.L.C.

6140 S. Kings Ranch Road
Gold Canyon, AZ 85219

August 15, 2000

Chairman Carl Kunasek
ARIZONA CORPORATION COMMISSION
1200 W. Washington St.
Phoenix, AZ 85007

RE: Johnson Utilities
Docket No. WS-02987A-99-0583

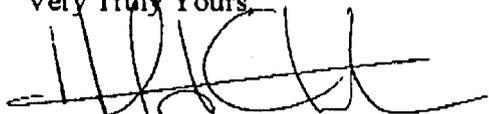
Dear Chairman Kunasek:

We are in the process of purchasing the Pecan Farms property in Pinal County. Our plans are to develop that property primarily with residential builders. To do so, we will need reliable quality water and sewer service. It is our understanding that Johnson Utilities and H2O are both seeking the right to serve our development. We strongly prefer that Johnson Utilities be awarded the right to serve us for the following reasons:

1. Johnson Utilities is much stronger financially and, therefore, we feel more secure that they will be a reliable provider of service in the future.
2. H2O does not provide sewer service whereas Johnson does provide sewer service. It is much more convenient for owners and developers to deal with one company for both water and sewer.
3. Johnson has been given an Assured Water Designation by the Arizona Department of Water Resources. Such designation makes the development of the property substantially easier, efficient and more certain because we can rely on this assured water designation.

We urge you to authorize Johnson Utilities to serve our development.

Very Truly Yours,



Harold Christ

:psw

c: Commissioner Irvin
Commissioner Mundell
Mark DiNunzio