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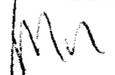
AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

MAR 25 2011

5 Attorneys for Valle Vista Property Owners Association, Inc.  
6  
7

DOCKETED BY 

8 **BEFORE THE ARIZONA CORPORATION COMMISSION**

9 IN THE MATTER OF THE  
COMMISSION ON ITS OWN MOTION  
10 INVESTIGATING THE FAILURE OF  
TRUXTON CANYON WATER  
11 COMPANY TO COMPLY WITH  
COMMISSION RULES AND  
12 REGULATIONS.

DOCKET NO. W-02168A-10-0247

**CLOSING BRIEF**

13  
14 Valle Vista Property Owners Association ("VVPOA") submits the following  
15 Closing Brief in the above referenced matter. At the recent hearing on February 28, 2011,  
16 the Administrative Law Judge requested closing briefs relating to the issues surrounding  
17 how to address the April 24, 2002 Agreement between the Claude K. Neal Family Trust  
18 ("Trust") and VVPOA ("Agreement") (copy attached as Exhibit A) in this docket.<sup>1</sup>

19 Under that Agreement, the Trust provides irrigation water to VVPOA and has been  
20 doing so since roughly 1972. As such, the Administrative Law Judge requested that the  
21 parties address their respective positions relating to assignment of the Agreement to  
22 Truxton Canyon Water Company in this docket. As set forth below, VVPOA is agreeable

23  
24 <sup>1</sup> This brief only addresses the issues surrounding assignment and transfer of the  
25 Agreement between the Trust and VVPOA to Truxton Canyon Water Company  
26 ("Truxton"). VVPOA does not address the various Truxton's non-compliance with  
Arizona Corporation Commission ("ACC" or "Commission") or Arizona Department of  
Environmental Quality ("ADEQ") rules and regulations.

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1 to becoming a customer of Truxton upon adoption of the terms and conditions set forth  
2 below. Generally speaking VVPOA agrees with the recommendations of Staff in this  
3 case relating to treatment and transfer of the Agreement. VVPOA also respectfully asks  
4 that the Commission consider and adopt the additional recommendations set forth below  
5 in order to protect VVPOA and residential homeowners in the Valle Vista development.

6 **I. VALLE VISTA PROPERTY OWNERS ASSOCIATION.**

7 The Valle Vista development is a planned community with approximately 4,300  
8 lots and 850 existing homes. Valle Vista is located about 15 miles northeast of Kingman,  
9 just off Historic Route 66. Valle Vista is located within Truxton's CC&N area. Valle  
10 Vista has a golf course, park, tennis court, and swimming pool, along with other  
11 recreational amenities. Those facilities and amenities are center pieces of the community  
12 and are a prime selling point for the community and its residents. VVPOA is the property  
13 owner's association for all lots within the Valle Vista development.

14 VVPOA has a long history with the Neal Family Trust, which has provided bulk  
15 irrigation water to Valle Vista since 1972. Originally, the Neal family came to the aid of  
16 the community and helped sustain the development by providing water to the golf course.  
17 The original contract rate was \$0.7213 per 1,000 gallons and the parties have been  
18 entering five year option periods for many years. The Trust and VVPOA entered the  
19 current agreement on April 24, 2002, and the parties agreed to a five year option period in  
20 December 2006. The current Agreement is set to expire on December 31, 2011.

21 Under the Agreement, the Trust has unilaterally applied a CPI adjuster to increase  
22 the contract rate each year. Those price increases have had a substantial impact on  
23 VVPOA, which simply can't afford any further increases. VVPOA also doesn't believe  
24 that the cost of service to the golf course actually increases with the CPI each year. The  
25 Trust also has billed VVPOA for a "Franchise Fee" and "Superfund Tax," but never  
26

1 explained what those charges were for or why they applied to VVPOA.<sup>2</sup>

2 Under these circumstances, VVPOA intervened in this docket to protect its  
3 interests. Among other things, VVPOA intervened because of Staff's proposal to place  
4 the Trust under Truxton and its impact on water service to VVPOA.<sup>3</sup> As stated in  
5 testimony provided by Mr. Bill Meehan on January 18, 2011, VVPOA has been hit  
6 extremely hard by the economy, which has depleted financial reserves and left VVPOA in  
7 a precarious financial position. VVPOA's cost of water for its various community  
8 facilities is critical to its ongoing viability and that of the Valle Vista community.

9 Further, VVPOA intervened to evaluate the ongoing viability of Truxton and to  
10 ensure that Truxton would charge affordable water prices to VVPOA in light of Staff's  
11 proposal to transfer VVPOA as a customer from the Trust to Truxton. Because the  
12 Agreement between the Trust and VVPOA is an agreement between private parties, the  
13 Commission doesn't have jurisdiction over that contract and cannot order assignment or  
14

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15 <sup>2</sup> In 2010, the Trust provided bills to VVPOA including a charge for the Superfund Tax of  
16 \$1,824.03 and a charge for the Franchise Fee of \$4,683.20.

17 <sup>3</sup> Direct Testimony ("DT") of A. Igwe dated November 10, 2010 at 10 ("Staff  
18 recommends that the Commission order the Trust to cease and desist from providing  
19 water service within Truxton's CC&N. Additionally, Staff recommends that the  
20 Commission order the Trust to transfer its water supply contract with the Association and  
21 all other such contracts to Truxton, within 30 days of the Commission decision in this  
22 proceeding. Further, Staff recommends that the Commission order the Trust to file a  
23 report with Docket Control, no later than 30 days from the date of the Commission Order  
24 in this proceeding, confirming that the Trust has transferred all its water customers within  
25 Truxton's CC&N to the Company, including but not limited to the Association.");  
26 Surrebuttal Testimony ("SRB") of A. Igwe dated December 23, 2010 at 8-9 ("Staff finds  
that since the Trust does not hold a CC&N, it is not authorized to provide water service in  
Arizona. More importantly, the Golf Course is within Truxton's CC&N and Truxton is  
the entity certificated to provide water service to the Golf Course. Accordingly, Staff  
recommends that the Commission order the Trust to transfer its Agreement with the Golf  
Course to Truxton, no later than 30 days from the effective date of the decision in this  
docket.").

1 transfer of that Agreement to Truxton without consent of the Trust and VVPOA.<sup>4</sup>  
2 Because these issues are vitally important to the community, VVPOA requests that the  
3 Commission consider the recommendations set forth below in the best interests of  
4 residential homeowners and utility customers in Valle Vista.

5 **II. POSITIONS OF ACC STAFF AND TRUXTON.**

6 In its testimony, Staff has concluded that the Trust is not authorized to provide  
7 bulk water to VVPOA under the Agreement. Specifically, “Staff finds that since the  
8 Trust does not hold a CC&N, it is not authorized to provide water service in Arizona.  
9 More importantly, the Golf Course is within Truxton’s CC&N and Truxton is the entity  
10 certificated to provide water service to the Golf Course. Accordingly, Staff recommends  
11 that the Commission order the Trust to transfer its Agreement with the Golf Course to  
12 Truxton, no later than 30 days from the effective date of the decision in this docket.”<sup>5</sup>

13 In response, Truxton agreed to transfer of VVPOA as a customer of the Trust to  
14 Truxton. In rebuttal, Rick Neal testified that it is “acceptable” to Truxton to take on  
15 VVPOA as a customer.<sup>6</sup> Mr. Neal went on to testify that “[t]he Trust has been serving  
16 the golf course for approximately 40 years. Requiring Valle Vista Property Owners  
17 association to pay the tariff rates for Golf Course water will likely lead to the golf course  
18 turf to go without water and die. The Golf Course will stop operating and the community  
19 will suffer an extremely adverse impact and their property values will fall drastically.  
20 Alternatively, with the Valle Vista Property Owners Association and Commission  
21 approval, the Trust assigns the contract to the Company until the term expires.”<sup>7</sup>

22

23 <sup>4</sup> *Trico Elec. Coop., Inc. v. Ralston*, 67 Ariz. 358, 362, 196 P.2d 470, 474 (1948)(“Clearly  
24 the construction of a contract is a judicial function and the court, not the corporation  
25 commission, have the jurisdiction to determine the validity of said option agreement...”).

25 <sup>5</sup> Igwe SRB at 8-9.

26 <sup>6</sup> Rebuttal Testimony (“RB”) of R. Neal dated December 10, 2010 at 4.

26 <sup>7</sup> Neal RB at 4.

1 In turn, "Staff recommends that the Commission order the Trust to cease and desist  
2 from providing water service within Truxton's CC&N. Additionally, Staff recommends  
3 that the Commission order the Trust to transfer its water supply contract with the  
4 Association and all other such contracts to Truxton, within 30 days of the Commission  
5 decision in this proceeding. Further, Staff recommends that the Commission order the  
6 Trust to file a report with Docket Control, no later than 30 days from the date of the  
7 Commission Order in this proceeding, confirming that the Trust has transferred all its  
8 water customers within Truxton's CC&N to the Company, including but not limited to the  
9 Association."<sup>8</sup> Finally, Staff made the following recommendation in surrebuttal:

10 The Golf Course is very concerned that it will be unable to purchase water  
11 for its operations at Truxton's current rate of \$2.50 per 1000 gallons, per  
12 Decision No. 63713 dated June 6, 2001. Staff finds it necessary for the  
13 Commission to authorize Truxton to charge the Golf Course the  
14 Agreement's prevailing rate of approximately \$1.1437 per 1,000-gallons  
15 plus applicable tax rates ("Golf Course Rate"). Further, Staff recommends  
16 that the Commission should not authorize Truxton to adjust the Golf Course  
17 Rate, based on the annual Consumer Price Index ("CPI")... Further, Staff  
18 recommends that Truxton file a revised tariff with Docket Control, as a  
19 compliance item in this docket, showing the Golf Course Rate.<sup>9</sup>

20 At the hearing on January 18, 2011, Truxton and Staff provided a Stipulation  
21 Agreement with a list of agreed "Recommendations and Timelines." Under that  
22 Stipulation, "Truxton agrees to receive assignment of the Water Supply Agreement  
23 between the Trust and the Association within 30 (thirty) days from the effective date of  
24 the Commission Order provided the Association agrees to the assignment."<sup>10</sup> Likewise,  
25 Truxton agreed that it "will charge to the Association the Agreement's prevailing rate at  
26 the time of the Agreement transfer, the rate will be referred to as the Golf Course Rate."<sup>11</sup>  
As noted in Staff's testimony, that prevailing rate is \$1.1437 per 1,000 gallons from

<sup>8</sup> Igwe SRB at 8.

<sup>9</sup> Igwe SRB at 9.

<sup>10</sup> Ex. S-1 at 3, ¶ 5.

<sup>11</sup> Ex. S-1 at 3, ¶ 6.

1 water supplied from the Hackberry Area Well Filed plus another \$.35 per 1,000 gallons  
2 for any water from sources other than the Hackberry Area Well Field.<sup>12</sup>

3 Next, the Stipulation states that "Truxton will no longer adjust the Golf Course  
4 Rate based on the annual Consumer Price Index ("CPI")."<sup>13</sup> Finally, the Stipulation  
5 provides that "Truxton will file a revised tariff or a special contract rate for the  
6 transferred Agreement....with Docket Control, as a compliance item in this docket, 30  
7 days from the effective date of the Commission order."<sup>14</sup> With the additional points noted  
8 below, VVPOA is agreeable to those stipulated terms and conditions.

9 **III. VVPOA'S POSITION.**

10 In this docket, VVPOA is willing to accept transfer as a customer to Truxton under  
11 the following terms and conditions. On these issues, VVPOA fully supports Staff's  
12 positions relating to transfer of the Agreement with the Trust to Truxton.

13 To start, VVPOA is willing to become a customer of Truxton assuming the  
14 Commission adopts the prevailing rate of \$1.14.37 per 1,000 gallons as recommended by  
15 Staff. VVPOA would not and cannot agree to such transfer in the event that a higher  
16 tariff rate is applied to VVPOA under these circumstances. In no uncertain terms,  
17 VVPOA is a significant revenue source for Truxton. According to Truxton's 2009  
18 Annual Report, Truxton had \$313,315 in total revenues and \$350,723 in total operating  
19 expenses. VVPOA paid \$265,511 to the Trust in 2009-2010. As such, it is critical for  
20 both VVPOA and Truxton that VVPOA's rates for water be set at a rate which will allow  
21 VVPOA to continue operations. In order for VVPOA to remain viable, the contract rate  
22 of \$1.1437 would need to apply going forward. VVPOA understands that the  
23 Commission can't address future rates in this docket, but it should be noted that all  
24

25 <sup>12</sup> Igwe SRB, Executive Summary at 2, ¶ 4.

26 <sup>13</sup> Ex. S-1 at 3, ¶ 7.

<sup>14</sup> Ex. S-1 at 3, ¶ 8.

1 parties, including Staff and Truxton, recognize the importance of minimizing VVPOA's  
2 rates in the upcoming rate case in order to preserve VVPOA's ongoing viability.

3 Further, VVPOA is willing to accept the added rate \$.35 per 1,000 gallons for any  
4 water from sources other than the Hackberry Area Well Field, but only in the event that  
5 such water supply is necessary. VVPOA requests that the Recommended Opinion and  
6 Order ("ROO") state that Truxton must give VVPOA at least 48 hours notice before using  
7 another water source. Such notice will allow VVPOA to modify its water usage to  
8 prevent any unnecessary charges resulting from the added rate of \$.35 per 1,000 gallons.

9 On this issue, VVPOA simply asks that Truxton be required to notify VVPOA of  
10 the need to use another water source besides the Hackberry Well Field to give VVPOA  
11 the opportunity to avoid any additional charges. The focus of this issue is Hualapai Well  
12 #1, which is a natural gas well owned by the Trust/Truxton that is used to provide water  
13 to VVPOA when the Hackberry Well Field reaches capacity, usually during the summer  
14 months. That natural gas well is costly to operate and VVPOA simply asks that Truxton  
15 provide advance notice to VVPOA before using that well to give VVPOA the opportunity  
16 to avoid those added costs. VVPOA does not want to face an additional \$.35 per 1,000  
17 gallon charge for water from the Hualapai #1 well based solely on Truxton's decision to  
18 use the Hualapai #1 well. All VVPOA is asking is for advance notice before that well is  
19 used to allow VVPOA to employ demand side management to avoid such charges.

20 Next, the transfer to Truxton is acceptable to VVPOA assuming that VVPOA is  
21 only required to pay for water that it actually uses. This is the prime issue in dispute  
22 between Truxton/the Trust and VVPOA/Staff. The Agreement between the Trust and  
23 VVPOA states that the Trust "shall provide the VVPOA a minimum of TWO HUNDRED  
24 MILLION (200,000,000) gallons of water annually during the terms of this agreement for  
25 use in irrigating the VVPOA golf course, park area, swimming pool, entry way, highway  
26

1 landscaping and other common areas within the subdivision.”<sup>15</sup> As stated at hearing,  
2 VVPOA has made substantial efforts to reduce its water usage. In 2009, VVPOA used  
3 199,256,400 gallons of water, but in 2010, VVPOA only used 150,461,800 gallons of  
4 water—a 25% reduction.<sup>16</sup> On this point, both VVPOA and Staff agree that once  
5 VVPOA is transferred as a customer to Truxton, then the Agreement would be  
6 extinguished. Instead of providing water under the Agreement, Truxton would provide  
7 water service to VVPOA under the tariff required to be filed by Truxton, which would  
8 employ the \$1.1437 per 1,000 gallon rate plus \$0.35 per 1,000 gallons for water provided  
9 from sources other than the Hackberry Well Field. Staff and VVPOA believe that such  
10 tariff should not allow Truxton to bill VVPOA for 50,000,000 gallons of water that  
11 VVPOA does not need and would not use.

12 Truxton, however, maintains that the Agreement would remain in force, including  
13 the requirement that Truxton provide 200,000,000 gallons of water to VVPOA, even if  
14 VVPOA only needs or uses 150,000,000 gallons. VVPOA urges the Administrative Law  
15 Judge and the Commission to reject this argument for several reasons. To start, Staff’s  
16 recommendations are based on Staff’s conclusion that the Trust is not legally authorized  
17 or certificated to provide water to VVPOA within Truxton’s CC&N area. Assuming that  
18 the Commission agrees with Staff’s conclusion, that necessarily means that Truxton will  
19 provide water service to VVPOA like any other regulated Arizona utility—i.e., Truxton  
20 would charge the tariff rate for all water used by its customers. VVPOA is not aware of  
21 any other Arizona water utility that is allowed to charge customers for water that is not  
22 used or needed by the customers. The Commission should not adopt any such policy or  
23 precedent in this case. Aside from being incredibly wasteful, the Commission should  
24 recognize VVPOA’s efforts to reduce its water use.

25 <sup>15</sup> Agreement at 1, ¶ 2(b).

26 <sup>16</sup> Summary of VVPOA Water Usage (attached as Exhibit B).

1 Further, if the Commission adopts Staff's position that the Trust is not legally  
2 authorized to provide water service to VVPOA, then it necessarily follows from Staff's  
3 position that the Agreement would be extinguished. Based on Staff's position taken at  
4 the February 28, 2011 hearing, the premise of Staff's recommendations is that all  
5 customers of the Trust, including VVPOA, should be transferred to Truxton and that the  
6 Agreement would be extinguished because Truxton then would provide water service to  
7 VVPOA under its special contract tariff and general Commission rules and regulations.

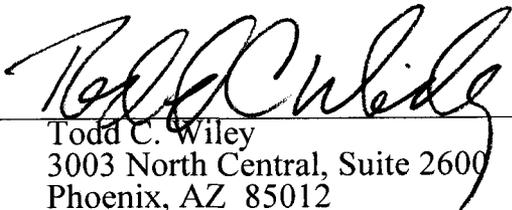
8 Ultimately, VVPOA asks that the Commission recognize that the water supply  
9 agreement for VVPOA has been in place for 40 years and that homeowners and property  
10 owners in VVPOA have relied on that arrangement relating to the development amenities,  
11 including the golf course, pool and park. As such, VVPOA asks the Commission to  
12 consider community concerns about potential rate increases that would put VVPOA out  
13 of business, and cause substantial impacts to the community, including lowering of  
14 property values. It is clear that application of a rate of \$1.1437 per 1,000 gallons is  
15 necessary and critical moving forward. It is also clear that VVPOA, like any other utility  
16 customer, should only pay for water that it actually needs and uses. All such water use  
17 would be metered and VVPOA would pay for water used at the applicable tariff rate of  
18 \$1.1437 per 1,000 gallons. As recommended by Staff, Truxton would not be allowed to  
19 apply a CPI adjuster and VVPOA requests that the Commission clarify that Truxton may  
20 not charge the "Franchise Fee" or "Superfund Tax" unless Truxton can demonstrate to  
21 VVPOA and Staff that such charges are justified, applicable and reasonable.

22 Finally, VVPOA requests that the Commission accept the recommendations of  
23 Staff, with the additional terms and issues noted above, including ordering Truxton to file  
24 a revised tariff with Docket Control, as a compliance item in this docket, 30 days from the  
25 effective date of Commission Order, showing the applicable golf course rate and adopting  
26 all of the conditions noted above. VVPOA should be allowed to review and comment on

1 Truxton's proposed tariff to confirm its compliance with the terms and conditions set  
2 forth in the final order in this docket before it becomes effective.

3 RESPECTFULLY SUBMITTED this 25th day of March, 2011.

4 FENNEMORE CRAIG

5  
6 By   
7 Todd C. Wiley  
8 3003 North Central, Suite 2600  
9 Phoenix, AZ 85012  
10 Attorneys for Valle Vista Property Owners  
11 Association, Inc.

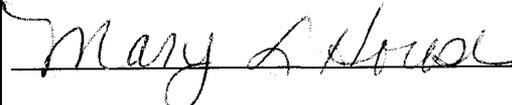
12 An original and 13 copies  
13 of the foregoing was filed  
14 this 25th day of March, 2011,  
15 with:

16 Docket Control  
17 Arizona Corporation Commission  
18 1200 West Washington Street  
19 Phoenix, Arizona 85007

20 A copy of the foregoing  
21 was mailed this 25th  
22 day of March, 2011, to:

23 Kimberly Ruht  
24 Legal Division  
25 Arizona Corporation Commission  
26 1200 W. Washington  
Phoenix, AZ 85007

Steve Wene  
Moyes Sellers Ltd.  
1850 N. Central Ave., Suite 1100  
Phoenix, AZ 85004

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# **EXHIBIT**

**A**

## AGREEMENT

This Agreement, made and entered into at Valle Vista, Subdivision Units 1, 2 and 3 within Mohave County, Arizona, this 24 day of April, 2002 by, and between, the CLAUDE K. NEAL FAMILY TRUST, hereinafter referred to as, "NEAL" and the VALLE VISTA PROPERTY OWNERS ASSOCIATION, INC., hereinafter referred to as, "VVPOA";

## WITNESS

NEAL is the owner of certain wells and pipelines located within the Hackberry Area and the Hualapai Valley and is able to provide for the irrigation needs of the VVPOA, and is desirous of selling such water from these wells and to provide TWO HUNDRED MILLION (200,000,000) gallons of water annually.

The VVPOA is in need of a reliable source of water for irrigation of the Valle Vista Country Club Golf Course and other areas described within Paragraph 2(a), and for which they are willing to pay pursuant to the terms of this agreement.

In consideration of the above mutual covenants, the parties agree as follows:

### 1. TERM:

This agreement is for a period of FIVE YEARS, commencing the First day of January, 2002 and ending the Thirty-first day of December, 2006. The VVPOA may extend this agreement for an additional FIVE YEARS by exercising the OPTION, within the terms of its provisions, as included within Paragraph 4 of this agreement.

### 2. NEAL OBLIGATION:

(a) NEAL shall provide the VVPOA a minimum of TWO HUNDRED MILLION (200,000,000) gallons of water annually during the term of this agreement for use in irrigating the VVPOA golf course, park area, swimming pool, entry way, highway landscaping, and other common areas within the subdivision.

(b) All the water produced in the Hackberry Area Well Field, which is metered at each well head or at the system entry point, less ten percent (10%) of the water produced for line loss, shall be credited to the VVPOA even though the actual water may be physically used before it reaches the various VVPOA meters. The price for the water from the Hackberry Area Well Field is included under paragraph 3(a) below.

(c) If the VVPOA demand for water is greater than can be accommodated on a first right to use basis from the Hackberry area, water can be provided by NEAL from other sources subject to the total available production of the NEAL system. The price for water from other than the Hackberry area well field is included under Provisions 3(b) and 3(c) below. In the event that NEAL is unable to provide the minimum amount of TWO HUNDRED MILLION (200,000,000) gallons of water for any year that this agreement is in effect, due to circumstances beyond his control, the VVPOA shall be required to pay for only the actual quantity of gallons delivered through the meters.

(d) NEAL will submit a Monthly Invoice when the VVPOA daily average for each month's usage exceeds the Hackberry Area Well Field production as described in Paragraph 2(b) which covers the water usage in accordance with the payment process of this agreement. Water delivered from the Hackberry Area Well Field will be subject to the rate schedule included within Paragraph 3(a) below and based upon the TWO HUNDRED MILLION (200,000,000) gallons annual minimum usage. Water delivered from other sources will be paid at the "added cost rate" defined under 3(b) below or "adjusted added cost rate" defined under 3(c) below at the conclusion of each applicable month after receipt of invoice.

### 3. VVPOA OBLIGATION:

(a) The VVPOA will pay for TWO HUNDRED MILLION (200,000,000) gallons of water annually at a rate of \$0.7213 plus all applicable taxes per THOUSAND (1,000) gallons as may be adjusted annually, based upon adjustments within the Consumers Price Index (CPI) as prepared by the Bureau of Labor Statistics (BLS) of the U.S. Department of Labor (USDL). Such adjustments, if any, will be determined during the month of December each year and go into effect as of the January payment of each year. Additional price adjustments based upon electric power rate fluctuations, as defined under Paragraph 3(e) below, may be imposed. Payments shall be made on or before the last day of each month, one month in advance, pursuant to an Annual Schedule of Payment mutually agreed upon.

(b) The VVPOA will pay an "added cost rate" of THIRTY-FIVE CENTS (\$0.35), plus all applicable taxes, per THOUSAND (1,000) gallons of water delivered from sources other than the Hackberry Area Well Field, as described in Paragraph 2(b), in addition to that described in Paragraph 3(a). This "added cost rate" extends from June 1, 2001 to December 31, 2006 and is not subject to adjustment based upon fluctuation of the CPI. Payment will be made within ten days following receipt of any applicable invoice from NEAL. The effective date of this sub-paragraph (b) is June 1, 2001.

(c) If the cost of natural gas is other than forty one and one half cents (\$0.4150) per therm (the "base rate"), an "adjusted added cost rate" will be computed as follows:

The "added cost rate" will increase or decrease at the rate of 74% of the difference between the actual cost per therm and the base rate per therm. For example, if the gas usage rate is \$0.3801 and the purchased gas adjustment is \$0.3435, the actual cost per therm is \$0.7236. This represents an increase of \$0.3086 per therm from the base rate. The difference of the base rate of \$0.4150 subtracted from the actual cost of \$0.7236 is equal to \$0.3086. Seventy four percent (74%) of \$0.3086 is equal to \$0.2284 which will be added to the "added cost rate" of \$0.3500 for a total of \$0.5784 which will then be the "adjusted added cost rate" for that month. Cost of a therm may include a wheeling fee if natural gas is purchased from a vendor other than Citizens' Gas.

Evidence supporting the actual cost per therm will be submitted along with the applicable invoice by NEAL.

(d) In the event the VVPOA demand exceeds the TWO HUNDRED MILLION (200,000,000) gallons within any calendar year, the excess gallons will be paid for at the conclusion of that year at the same base rate within this agreement as may be adjusted by fluctuations in the CPI. Payment will be made within ten days following receipt of any applicable invoice from NEAL. In the event NEAL, for reasons beyond his control, is unable to deliver the minimum demand for TWO HUNDRED MILLION (200,000,000) gallons during any year this agreement is in effect, the amount of overpayment shall be deducted from the ensuing years payment schedule.

(e) If electric power rate fluctuates by FIVE PERCENT (5%) or more, the cost of water to the VVPOA shall increase or decrease by a factor of SIXTY PERCENT (60%) of the total electric power rate change times the existing price of water. Changes (increases or decreases) made pursuant to this provision shall be reflected in the total price of water per THOUSAND (1,000) gallons of water delivered subsequent to the price adjustment. The base rate multiplier upon which adjustments will be considered is Mohave Electric Cooperative Small Commercial Base Rate 503 and 504 and the multiplier at the date of this agreement is \$0.053174 KWH.

4. Option:

The VVPOA, by providing to NEAL not less than sixty (60) days notice prior to the termination date of this agreement may, except as provided within the following sentence, extend this agreement for FIVE (5) additional years at the same terms and conditions included within this agreement. The "added cost rate", included within paragraphs 3(b) and 3(c) above, is subject to change by mutual agreement if this option is exercised.

5. ARBITRATION:

In the event that NEAL and the VVPOA cannot agree on all or any issue within this agreement, they shall submit to arbitration. NEAL and the VVPOA shall each appoint their own arbitrator and the two appointed arbitrators shall mutually appoint a third arbitrator. NEAL and the VVPOA shall pay their own arbitrator and split the cost for the third arbitrator and any additional costs for arbitration equally.

This agreement is entered into on this 24 day of April, 2002

Claude K. Neal Family Trust

Valle Vista Property Owners Association, Inc.

By: B Marc Neal By: Len Druian  
B. Marc Neal, Co-Trustee Len Druian, President

By: Rita B. Neal  
Rita B. Neal, Co-Trustee

**EXHIBIT**

**B**

2010	GOLF COURSE	PARK AND POOL	ENTRANCE
JANUARY	4,084,400	336,900	94,000
FEBUARY	3,783,400	246,100	175,000
MARCH	8,906,100	235,900	210,000
APRIL	11,822,900	204,200	270,000
MAY	15,536,500	200,200	300,000
JUNE	16,257,400	731,500	325,000
JULY	22,330,700	827,900	450,000
AUGUST	25,953,200	813,700	525,000
SEPTEMBER	17,310,800	692,200	461,000
OCTOBER	6,151,600	505,700	210,000
NOVEMBER	6,477,400	333,200	93,000
DECEMBER	3,193,500	322,400	91,000
<b>TOTALS</b>	<b>141,807,900</b>	<b>5,449,900</b>	<b>3,204,000</b>
			<b>GRAND TOTAL 2010</b>
			<b>150,461,800</b>

GRAND TOTAL 2009 GOLF COURSE, PARK AND POOL, AND ENTRANCE

195,743,900

GRAND TOTAL 2008 GOLF COURSE, PARK AND POOL, AND ENTRANCE

199,256,400