

ORIGINAL

INTERVENTION



0000127384

1 RYLEY CARLOCK & APPLEWHITE  
2 One North Central Avenue, Suite 1200  
3 Phoenix, Arizona 85004-4417  
4 Telephone: 602/258-7701  
5 Telecopier: 602/257-9582

RECEIVED

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4 Fredric D. Bellamy - 010767  
5 Michele L. Van Quathem - 019185

AZ CORP COMMISSION  
DOCKET CONTROL

6 SHERMAN & HOWARD  
7 7047 East Greenway Parkway, Suite 155  
8 Scottsdale, Arizona 85254  
9 Telephone: 480/624-2717  
10 Telecopier: 480/624-2029

Arizona Corporation Commission  
DOCKETED

JUL - 6 2011

8 Janet G. Betts - 006138

DOCKETED BY *MM*

9 Attorneys for Proposed Intervenor Wind P1Mortgage  
10 Borrower, LLC, doing business as The Boulders Resort

11 BEFORE THE ARIZONA CORPORATION COMMISSION

12 COMMISSIONERS

13 GARY PIERCE, Chairman  
14 SANDRA D. KENNEDY  
15 PAUL NEWMAN  
BOB STUMP  
BRENDA BURNS

Docket No. SW-2361A-08-0609

16 IN THE MATTER OF THE APPLICATION  
17 OF BLACK MOUNTAIN SEWER  
18 CORPORATION, FOR A  
19 DETERMINATION OF THE FAIR VALUE  
20 OF ITS UTILITY PLANT AND  
21 PROPERTY AND FOR INCREASES IN  
ITS RATES AND CHARGES BASED  
THEREON FOR UTILITY SERVICE  
BASED THEREON.

THE BOULDERS RESORT'S  
MOTION TO INTERVENE

22 Pursuant to Rule 14-3-105 of the Rules of Practice and Procedure before the  
23 Corporation Commission, Wind P1 Mortgage Borrower, LLC, doing business as The  
24 Boulders Resort (hereinafter referred to as "The Boulders"), respectfully moves to  
25 intervene in the above-captioned matter, Docket No. SW-02361A-05-0657. The  
26 Boulders further requests that a hearing be scheduled to enable The Boulders to present  
27 its legal points and authorities and evidence pertinent to the Commission's proceedings  
28 in this matter.



1 condition in the agreement expressly relating to The Boulders' contract with Black  
2 Mountain Sewer.

3 That condition was that Black Mountain Sewer would negotiate to terminate its  
4 contract with The Boulders at "no to little cost." ("Wastewater Treatment Plant Closure  
5 Agreement" between BHOA and Black Mountain Sewer, dated Sept. 17, 2009, p.3, ¶  
6 iv.) The agreement said absolutely nothing about how Black Mountain Sewer would  
7 achieve such a negotiated termination consistent with Black Mountain Sewer's  
8 continuing obligation to supply The Boulders with water for the next ten years.

9 A fair resolution consistent with the terms of the agreement, of course, would  
10 require that Black Mountain Sewer make arrangements for The Boulders to receive  
11 replacement water from some other supplier at a cost consistent with the terms of The  
12 Boulders' contract with Black Mountain Sewer. In that event, The Boulders would be in  
13 a position to be able to release Black Mountain Sewer from the remainder of its contract  
14 with The Boulders, and Black Mountain Sewer presumably could move forward with its  
15 intended closure plan, subject to its remaining conditions.

16 However, Black Mountain Sewer has failed to make any such arrangement, and  
17 instead appears to be looking to the Commission to get Black Mountain Sewer off the  
18 hook for its binding contractual commitment to The Boulders. That is an improper  
19 request, and is patently inconsistent with the condition in the agreement previously  
20 approved by the Commission. To consider rewriting that condition – and, in effect,  
21 erasing it – would be legally improper without conducting a hearing to provide The  
22 Boulders with a full and complete opportunity to be heard.

### 23 **The Boulders' Contract with Black Mountain Sewer**

24 This proceeding involves a request by Black Mountain Sewer for approval of a  
25 rate surcharge to cover the costs associated with Black Mountain Sewer's intended  
26 closure plan for the wastewater treatment plant that currently supplies The Boulders  
27 with approximately 125,000 gallons per day of treated water. The Boulders and Black  
28 Mountain Sewer entered into this water-supply contract in 2001, and ten years still

1 remain under the contract.<sup>1</sup> The Boulders has relied on this contract for this water for a  
2 decade, and Black Mountain Sewer has made no arrangement to supply replacement  
3 water between the date of its intended closure and 2021 when the contract expires.

4 In the 2001 contract, Black Mountain Sewer promised and covenanted to:

- 5 (a) Operate the Boulders East Plant and the related  
6 pipelines, pumps and facilities so as to allow the  
7 production and delivery of Effluent to User;
- 8 (b) Maintain in good standing and renew when  
9 appropriate all permits and other regulatory approvals  
10 necessary for purposes of subparagraph (a);
- 11 (c) Make such repairs, upgrades and improvements to  
12 the Boulders East Plant as may be necessary in  
13 connection with subparagraph (a); and
- 14 (d) Not restrict, reduce or otherwise limit the quantity of  
15 Effluent produced by the Boulders East Plant or take  
16 any action that would reduce the plant's treatment  
17 capacity except as otherwise provided for in this  
18 Agreement."

19 Further underscoring The Boulders' right to rely on water from Black Mountain  
20 Sewer, the contract also provides that:

21 "The obligations of [Black Mountain Sewer] under this  
22 Paragraph shall terminate if physical conditions at the  
23 Boulders East Plant or any laws, regulations, orders or other  
24 regulatory requirements prevent or materially limit the  
25 operation of the Boulders East Plant or render the operation  
26 of such plant uneconomic. *If economic considerations,*

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27  
28 <sup>1</sup> A copy of this contract was included as "Attachment A" (Hearing Exhibit BHOA-3) to the BHOA's motion, and for convenience is also attached to this motion.

1           *technical requirements or regulatory changes require*  
2           *[Black Mountain Sewer] to close or relocate the Boulders*  
3           *East Plant, [Black Mountain Sewer] will attempt, in good*  
4           *faith and to the extent technically feasible, to relocate the*  
5           *Boulders East Plant or construct a new wastewater*  
6           *treatment plant at a site that is as close as reasonably*  
7           *possible (taking into account the economics of such*  
8           *relocation or construction) to the Golf Courses."*

9 (Emphasis added.) The contract also specifies that, "[f]or purposes of this provision, the  
10 term 'uneconomic' means that the costs and expenses relating to the treatment and  
11 delivery of Effluent, including applicable overheads, would exceed the market price for  
12 effluent used for golf course irrigation and similar purposes in Maricopa County."

13           In this manner the contract makes it clear that Black Mountain Sewer's obligation  
14 to supply the required amount of water to The Boulders through 2021 would continue,  
15 *even if the existing plant were closed*, unless a new plant could not supply the  
16 replacement water for less than the market price. That condition makes perfect sense  
17 because in that situation The Boulders presumably could purchase the replacement  
18 water from an alternate supplier on the market for less than the cost of Black Mountain  
19 Sewer's new plant. Otherwise, Black Mountain Sewer remains obligated to supply The  
20 Boulders with water in the contractually specified amounts until the contract expires in  
21 2021.

22           In failing to make any arrangements to replace The Boulders' water while  
23 planning to shut down its plant, Black Mountain Sewer has not done anything to put  
24 The Boulders in a position where it reasonably could agree to release Black Mountain  
25 Sewer from its contractual obligations. Instead, it is patently obvious that Black  
26 Mountain Sewer hopes to use this proceeding, with the BHOA acting as Black  
27 Mountain Sewer's stalking horse, to try to get off the hook on a contract that Black  
28 Mountain Sewer now evidently views as an inconvenience. During the last ten years



1 1.22-23). The BHOA is making these remarkable assertions without firsthand  
2 knowledge and without even having allowed The Boulders and Black Mountain Sewer  
3 time to engage in the dispute resolution process required of the parties under their  
4 contract. The Boulders clearly needs to be allowed to appear to speak for itself  
5 regarding these circumstances.

6 Second, the BHOA characterizes the nature of the proceedings and the  
7 Commission's prior decision as if it had been a fully adjudicated matter regarding a  
8 plant closure order, thus rendering a hearing unnecessary. However, the Commission  
9 approved a proposed settlement agreement, which contained a number of specified  
10 conditions (which as the BHOA's motion itself says have not been met), under which  
11 the Commission approved a rate surcharge. Given the nature of the *settlement*  
12 *agreement* between only two of several necessary parties, it cannot be assumed that  
13 matters that the parties merely agreed to between themselves can somehow qualify as  
14 factual findings binding on third parties, such as The Boulders, who were not present  
15 and did not participate in that agreement.

16 Third, the BHOA characterizes the nature of the Commission's legal authority in  
17 terms that go well beyond the actual record in the case. The Commission noted the  
18 unique circumstances of the case in approving a settlement agreement between the  
19 BHOA and Black Mountain Sewer, and approving a conditional rate change. While the  
20 Commission has noted its inherent authority to regulate a utility's operations, including  
21 requiring improvements in the interest of protecting the public, there has not been a  
22 binding and definitive ruling on the issue of the Commission's authority to order a  
23 closure outside the context of a proposed settlement agreement seeking a rate increase.  
24 Now the BHOA seeks, in effect, to change the settlement agreement, even though the  
25 Commission has not heard any evidence regarding the elimination of the condition that  
26 the BHOA seeks.

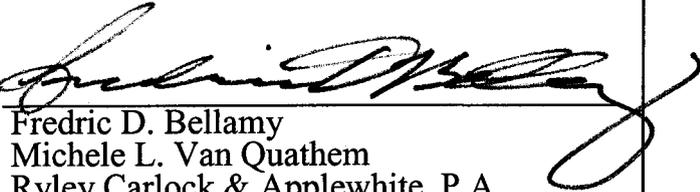
27 Fourth, the BHOA has completely ignored the serious implications of its  
28 argument asking the Commission to interfere with the obligations under a private

1 contract. While the Commission unquestionably has the authority to regulate utility  
2 rates, the BHOA's proposed remedy effectively seeks to have the Commission abrogate  
3 an entire private contract. Such a remedy raises serious constitutional as well as  
4 statutory issues relating to the impairment of contracts. No party has yet to step forward  
5 to address these important legal issues, as The Boulders finds it must now do.

6 For all the foregoing reasons, The Boulders respectfully requests that it be  
7 permitted to intervene as a party in these proceedings, and further requests that a  
8 hearing be scheduled on all matters relating to the pending motion for plant closure.

9 DATED this 6<sup>th</sup> day of July, 2011.

10 **RYLEY CARLOCK & APPLEWHITE**

11  
12 By 

Fredric D. Bellamy  
Michele L. Van Quathem  
Ryley Carlock & Applewhite, P.A.  
One North Central Avenue, Suite 1200  
Phoenix, Arizona 85004-4417

15 Janet G. Betts  
16 Sherman & Howard  
17 7047 East Greeway Parkway, Suite 155  
18 Scottsdale, Arizona 85254

Attorneys for The Boulders

19 ORIGINAL and 13 copies of the foregoing  
20 filed this 6<sup>TH</sup> day of July, 2011, with:

21 Docket Control  
22 Arizona Corporation Commission  
23 1200 W. Washington  
Phoenix, Arizona 85007

24 COPIES of the foregoing HAND-DELIVERED  
this 6<sup>th</sup> day of July, 2011, to:

25 Commissioner Gary Pierce, Chairman  
26 Commissioner Paul Newman  
27 Commissioner Sandra D. Kennedy  
28 Commissioner Bob Stump  
Commissioner Brenda Burns  
1200 West Washington Street  
Phoenix, Arizona 85007

1 Janice Alward, Chief Counsel  
Legal Division  
2 ARIZONA CORPORATION COMMISSION  
1200 W. Washington Street  
3 Phoenix, Arizona 85007

4 Steve Olea, Director  
Utilities Division  
5 ARIZONA CORPORATION COMMISSION  
1200 W. Washington Street  
6 Phoenix, Arizona 85007

7 Lyn Farmer  
Utilities Division  
8 ARIZONA CORPORATION COMMISSION  
1200 W. Washington Street  
9 Phoenix, Arizona 85007

10 COPIES of the foregoing MAILED  
11 this 6<sup>th</sup> day of July, 2011, to:

12 Greg Sorensen  
ALGONQUIN WATER SERVICES  
13 12725 W. Indian School Road, Suite D-101  
Avondale, Arizona 85392

14 Jay L. Shapiro ([jshapiro@fclaw.com](mailto:jshapiro@fclaw.com))  
15 Norman D. James ([njames@fclaw.com](mailto:njames@fclaw.com))  
FENNEMORE CRAIG, PC  
16 3003 N. Central Avenue, Suite 2600  
Phoenix, Arizona 85012  
17 Attorneys for Black Mountain Sewer Corporation

18 Michael Wright  
SHERMAN & HOWARD, LLC  
19 7047 E. Greenway Parkway, Suite 155  
20 Scottsdale, Arizona 85254-8110

21 and  
22 201 E. Washington St., Suite 800  
Phoenix, Arizona 85004-2327  
23 Attorneys for Town of Carefree

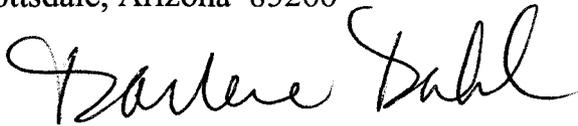
24 Jodi Jerich, Director  
RUCO  
25 1110 W. Washington Street, Suite 220  
Phoenix, Arizona 85004-1481

26 Michelle L. Wood ([mwood@azruco.gov](mailto:mwood@azruco.gov))  
27 Residential Utility Consumer Office  
1110 W. Washington, Suite 220  
28 Phoenix, Arizona 85007

1 Roger Strassburg  
Roger Strassburg, PLLC  
2 9117 East Los Gatos Drive  
Scottsdale, Arizona 85255  
3 Attorneys for D.E. Doelle, D.D.S.

4 Dennis E. Doelle, D.D.S.  
7223 E. Carefree Drive  
5 P.O. Box 2506  
6 Carefree, Arizona 85377

7 M.M. Schirtziner  
34773 N. Indian Camp Trail  
8 Scottsdale, Arizona 85266

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## EFFLUENT DELIVERY AGREEMENT

THIS EFFLUENT DELIVERY AGREEMENT (this "Agreement") is made this \_\_\_\_ day of March, 2001 between THE BOULDERS CAREFREE SEWER CORPORATION, an Arizona corporation ("BCSC"), and BOULDERS JOINT VENTURE, an Arizona general partnership ("User"), sometimes referred to herein as a "Party" or collectively as the "Parties," for the purposes and consideration set forth hereinafter.

### RECITALS:

A. BCSC owns and operates certain wastewater collection and treatment facilities and holds a certificate of convenience and necessity granted by the Arizona Corporation Commission (the "Commission") authorizing BCSC to provide sewer utility service within portions of the Town of Carefree and the City of Scottsdale, Arizona, including the sale of treated effluent ("Effluent") resulting from the operation of BCSC's treatment facilities.

B. User owns and operates a destination resort in north Scottsdale commonly known as The Boulders Resort and Club ("the Resort"). The Resort includes a hotel, clubhouse, pool, tennis courts, various landscaped areas and two 18-hole championship golf courses (the "Golf Courses"), and is located within BCSC's certificated service territory.

C. At the present time, BCSC operates a single wastewater treatment plant known as the Boulders East Plant. This treatment plant currently has a permitted capacity of 120,000 gallons per day ("gpd"). BCSC intends to seek approval to increase the treatment plant's permitted capacity to 150,000 gpd. The remainder of BCSC's wastewater is delivered to the City of Scottsdale for treatment.

D. BCSC currently delivers all of the Effluent produced by the Boulders East Plant to the Resort, pursuant to that certain Agreement, dated March, 18, 1986, as amended by that certain First Amendment to Agreement, dated March 18, 1996. The Resort utilizes the Effluent for

irrigation and maintenance of the turf, trees, shrubs and other landscaping at the Golf Courses, for the filling and refilling of storage reservoirs at the Golf Courses, and for related exterior uses.

E. The Parties desire to enter into a new agreement in order to modify certain terms and conditions, which shall supersede and replace the existing agreement, as amended.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

**AGREEMENTS:**

1. Purchase and Sale of Effluent. BCSC agrees to sell and deliver and User agrees to purchase and accept delivery of all Effluent generated by the Boulders East Plant subject to the terms and conditions set forth hereinafter.

2. Service and Delivery of Effluent. BCSC shall deliver and User shall accept Effluent as follows:

(a) Quantity of Effluent. BCSC shall deliver to the Resort all Effluent generated by the operation of the Boulders East Plant (or a new wastewater treatment facility which may be constructed by BCSC as contemplated herein). In the event the treatment capacity of the Boulders East Plant is increased to a capacity greater than 150,000 gpd, or a new wastewater treatment facility is constructed by BCSC to replace the Boulders East Plant which produces Effluent in a quantity that is greater than 150,000 gpd, BCSC shall enter into good faith negotiations with User for the purchase by User of amounts of Effluent in excess of 150,000 gpd. The foregoing notwithstanding, nothing herein shall require BCSC to deliver Effluent to User in amounts in excess of 150,000 gpd.

(b) Quality of Effluent. The Effluent delivered by BCSC shall meet all applicable Federal, State of Arizona, and local health and safety standards for non-potable water supplied for turf irrigation and other exterior uses contemplated in this Agreement. BCSC makes no

representations or warranties with respect to any characteristic of the Effluent which is not specifically addressed by the applicable standards or the current re-use permit held by the User with respect to the Effluent. BCSC makes no representation or warranty that the Effluent is suitable for any purpose intended by User and use of the Effluent for any purpose is at the sole risk of the User.

(c) Metered Deliveries; Delivery Point. All deliveries of Effluent to User shall be metered. The meter is presently located immediately adjacent to the Boulders East Plant, which shall constitute the point of delivery. BCSC shall be responsible for the maintenance, repair and replacement of all facilities on BCSC's side of the meter as well as the meter, and User shall be responsible for the maintenance, repair and replacement of all facilities on User's side of the meter. The location of the meter may be changed by the mutual agreement of the parties. The User shall pay all costs associated with the maintenance, testing and certification of the meter.

(d) Service Interruptions by BCSC. BCSC shall use its reasonable efforts to provide a continuous level of service to User. In the event service is to be temporarily discontinued, BCSC shall promptly notify User of the particular circumstances and the estimated length of time during which service will be discontinued. BCSC shall make reasonable efforts to resume normal service as quickly as possible.

(e) Service Interruptions by User. In the event User is unable to accept deliveries of Effluent, User shall pay BCSC as if such Effluent had been delivered in accordance herewith and shall further pay BCSC the reasonable costs incurred by BCSC to dispose of such Effluent. In the event of a temporary interruption of the ability of User to accept Effluent, BCSC shall cooperate with User to minimize the amount of Effluent which cannot be accepted by BCSC. User shall make reasonable efforts to resume acceptance of deliveries of effluent as quickly as possible.

3. Charges for Effluent. The charge for all Effluent delivered to User hereunder shall

be determined from time to time by the Commission in connection with a general rate proceeding or similar proceeding in which all of BCSC's rates and charges for sewer utility service are determined in accordance with applicable laws and regulations. BCSC shall promptly notify User of all requests for modification of the charge for Effluent, and shall provide User, at User's cost, with a complete copy of all requests for rate increases or other rate adjustments, including the application, pre-filed testimony and supporting schedules and other exhibits. If the Commission at any time de-tariffs effluent service or ceases to consider such service a regulated service subject to the Commission's jurisdiction, the charge for Effluent delivered to User shall remain the tariffed charge for at least one year, after which time BCSC may modify the charge for Effluent without Commission approval provided that BCSC and User shall negotiate such modification in good faith. All such charges shall be subject to the provisions of Paragraph 12(a), below.

4. Payment for Effluent Service. User shall be billed for and shall pay for Effluent on a quarterly basis based on the metered quantity of Effluent delivered to User during the preceding calendar quarter plus the amount of any Effluent which BCSC made available but User was unable to accept during such calendar quarter. All amounts payable by User to BCSC hereunder shall be due and payable within twenty-five (25) days of receipt of invoice, and any payment not received within such time shall be considered delinquent and be subject to any late payment penalty authorized by the Commission.

5. Changes to Effluent Standards. In the event that material changes are made to the re-use permit held by the User, or to an Aquifer Protection Permit, or to the quality standards applicable to Effluent used for turf irrigation and related purposes, BCSC shall notify User of those modifications to the facility from which the Effluent is provided or to any retainage features which are required to ensure that such new standards are met. At the option of the User, User shall (a) pay the reasonable costs of such modifications which are required to be made to the facility or retainage

feature for the purpose of complying with the new permit requirements or effluent re-use standards, or (b) terminate this agreement in accordance with Paragraph 12.

6. BCSC's Covenants. BCSC covenants and agrees that BCSC will:

- (a) Operate the Boulders East Plant and the related pipelines, pumps and facilities so as to allow the production and delivery of Effluent to User;
- (b) Maintain in good standing and renew when appropriate all permits and other regulatory approvals necessary for purposes of subparagraph (a);
- (c) Make such repairs, upgrades and improvements to the Boulders East Plant as may be necessary in connection with subparagraph (a); and
- (d) Not restrict, reduce or otherwise limit the quantity of Effluent produced by the Boulders East Plant or take any action that would reduce the plant's treatment capacity except as otherwise provided for in this Agreement.

The obligations of BCSC under this Paragraph shall terminate if physical conditions at the Boulders East Plant or any laws, regulations, orders or other regulatory requirements prevent or materially limit the operation of the Boulders East Plant or render the operation of such plant uneconomic. If economic considerations, technical requirements or regulatory changes require BCSC to close or relocate the Boulders East Plant, BCSC will attempt, in good faith and to the extent technically feasible, to relocate the Boulders East Plant or construct a new wastewater treatment plant at a site that is as close as reasonably possible (taking into account the economics of such relocation or construction) to the Golf Courses. In the event the Boulders East Plant is relocated or a new facility constructed, User will be responsible for the costs of constructing additional pipelines and other facilities necessary to transport the Effluent from such new location to the Resort's delivery point, which upon request of BCSC shall be considered a contribution in aid of construction. BCSC shall be solely responsible for all costs and expenses resulting from the treatment of such pipelines and

facilities as contributions in aid of construction, including (without limitation) (i) costs relating to any easements for pipelines and facilities; (ii) costs relating to meter relocation; (iii) costs relating to maintenance and repair of the pipelines and facilities; and (iv) any income taxes. In the event the relocated or new facility has a larger capacity than the Boulders East Plant, User shall have the right to purchase a maximum amount of 150,000 gpd of effluent. For the purposes of this provision, the term "uneconomic" means that the costs and expenses relating to the treatment and delivery of Effluent, including applicable overheads, would exceed the market price for effluent used for golf course irrigation and similar purposes in Maricopa County.

7. User's Covenants. User covenants and agrees that User will:

- (a) Operate, repair and maintain its storage lakes, pipelines, and other facilities used in connection with the transportation and storage of Effluent provided hereunder in accordance with all applicable laws and regulations; and
- (b) Maintain in good standing and renew when appropriate all permits, including but not limited to Aquifer Protection Permits, and other approvals necessary for User to receive delivery of, store and utilize Effluent for turf irrigation, exterior landscape watering and similar uses.

8. Limitations on Effluent Use. User covenants and agrees that all Effluent delivered to User pursuant to this Agreement shall be used by User in connection with the Resort. User shall not make any changes in the nature of the use of the Effluent nor make any application for changes or amendments to the permit governing the use of the Effluent by the User, which changes or amendments may affect BCSC's operations, without the express written consent of BCSC. User shall not transport Effluent to any location outside of BCSC's certificated service territory, nor shall User sell or agree to sell Effluent to any other person or entity.

9. Indemnity.

(a) Indemnification of User. Subject to the limitations set out herein, BCSC shall indemnify, protect, defend (with legal counsel acceptable to User) and hold User harmless from, and upon demand shall pay or reimburse User for, any and all claims, actions, costs, fees, expenses, damages, environmental investigation costs, obligations, penalties, fines and liabilities (including, without limitation, reasonable attorneys' fees and court costs) arising out of any breach or default in the performance of this Agreement by BCSC or caused by any act, neglect, fault or omission of BCSC or its agents, contractors, employees or servants. User shall not seek indemnification from BCSC for any and all claims, actions, costs, fees, expenses, damages, environmental investigation costs, obligations, penalties, fines and liabilities (including, without limitation, reasonable attorneys' fees and court costs) arising out of the use of Effluent by the User or resulting from any characteristic of the Effluent which is not specifically addressed in the standards which are applicable to the Effluent.

(b) Indemnification of BCSC. User shall indemnify, protect, defend (with legal counsel acceptable to BCSC) and hold BCSC harmless from, and upon demand shall pay or reimburse BCSC for, any and all claims, actions, costs, fees, expenses, damages, environmental investigation costs, obligations, penalties, fines and liabilities (including, without limitation, reasonable attorneys' fees and court costs) arising out of any breach or default in the performance of this Agreement by User or caused by any act, neglect, fault or omission of User or its agents, contractors, employees or servants.

10. Force Majeure. Neither Party to this Agreement shall be liable to the other for failure, default or delay in performing any of its obligations hereunder, other than for the payment of money obligations specified herein, when such failure, default or delay is caused by strikes or other labor problems, by forces of nature, unavoidable accident, fire, acts of the public enemy,

interference by civil authorities, passage of laws, orders of the court, delays in receipt of materials, or any other cause, where such cause is not within the control of the Party affected and which, by the exercise of due diligence, such Party is unable to prevent. Should any of the foregoing occur, the Parties hereto agree to proceed with diligence to do what is reasonable and necessary so that each Party may perform its obligations under this Agreement.

11. Term. This Agreement shall remain in effect for a period of twenty (20) years from the date on page one of this Agreement, unless earlier terminated as provided under Paragraph 12, below. After the expiration of the initial twenty (20) year term, this Agreement shall be automatically renewed for successive five (5) year terms unless a Party provides written notice to the other Party of its election to terminate the Agreement, which notice shall be provided no less than one (1) year prior to the renewal of the Agreement.

12. Termination of Agreement.

(a) Rate Increases. In the event that the charge for Effluent delivered to User under this Agreement increases by more than twenty-five percent (25%) above the charge in effect at the time of any increase in the charge for Effluent or, in the alternative, increases by more than fifty percent (50%) within any five-year period, User, in its sole discretion, may terminate this Agreement by providing notice of its intent to terminate to BCSC on or before sixty (60) days from the date on which the increased charge becomes effective. If such notice is given, this Agreement, and all rights and obligations hereunder, shall terminate without further action one hundred twenty (120) days from the date such notice is delivered to BCSC. In the event that User elects not to exercise its right to terminate this Agreement following any increase in the charges for Effluent, User shall not waive its right to terminate based on future increases in charges.

(b) Termination for Breach. Either Party may terminate this Agreement in the event of a breach or anticipated breach of a material term or condition by the other Party. In such

event, the Party contending that a breach has or will occur shall promptly provide notice thereof to the other Party, and shall initiate proceedings in accordance with Paragraph 14, below.

(c) Termination for Effluent Quality Changes. If User elects not to pay for those modifications to the East Boulders Plant necessary to ensure the Effluent continues to meet changes to the quality standards applicable to the Effluent, this Agreement may be terminated by BCSC upon 120 days written notice to User by BCSC.

13. Notices. Any notice required or permitted to be given hereunder shall be in writing and directed to the address set forth below for the Party to whom the notice is given and shall be deemed delivered (i) by personal delivery, on the date of delivery; (ii) by first class United States mail, three (3) business days after being mailed; or (iii) by Federal Express Corporation (or other reputable overnight delivery service), one (1) business day after being deposited into the custody of such service.

If to BCSC to: Trevor Hill  
Suite 201, 1962 Canso Road,  
Sidney, British Columbia,  
Canada V8L 5V5

with a copy to: Algonquin Power Income Fund  
c/o Peter Kampian  
Algonquin Power Corporation, Inc.  
#210, 2085 Hurontario Street  
Mississauga, Ontario L5A 4G1

If to User to: Boulders Joint Venture  
c/o Wyndham International, Inc.  
1950 Stemmons Freeway, Suite 6001  
Dallas, Texas 75207  
Attention: Legal Department

Any Party may designate another address for notices under this Agreement by giving the other Party not less than thirty (30) days advance notice.

14. Dispute Resolution.

(a) Good Faith Negotiations. For the purpose of dispute resolution, each Party

shall designate an officer or employee to act as its representative (hereinafter, "a Designated Representative"). A Party that believes a dispute exists under this Agreement will first refer the dispute to the Designated Representatives of the Parties for resolution. The Designated Representatives will personally meet and attempt in good faith to resolve the dispute. If the Designated Representatives cannot resolve the dispute within thirty (30) days, a Party that still believes a dispute requires resolution shall avail itself of the provisions of subparagraph (b), below.

(b) Arbitration. If a Party still believes a dispute requires resolution after following the procedures of subparagraph (a), that Party shall provide a detailed written notice of dispute to the other Party setting forth the nature of the dispute and requesting that the dispute be determined by means of arbitration. Immediately following such notice, the dispute shall be submitted for and settled by binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules before a single arbitrator. Judgment on the award rendered by the arbitrator may be entered in any court with jurisdiction.

(c) Other Remedies. The preceding subparagraphs are intended to set forth the primary procedure to resolve all disputes under this Agreement. It is expected that all disputes that would traditionally be resolvable by a law court would be resolved under this procedure. However, the Parties recognize that certain business relationships could give rise to the need for one or more of the Parties to seek equitable remedies from a court that were traditionally available from an equity court, such as emergency, provisional or summary relief, and injunctive relief. Immediately following the issuance of any such equitable relief, the Parties will stay any further judicial proceeding pending arbitration of all underlying claims between the Parties. The Parties also recognize that the Commission may have primary jurisdiction over certain issues that may arise between and among the Parties that relate to the provision of public utility service. Accordingly, this paragraph is not intended to prohibit a Party from bringing any such issues to the Commission

for resolution or from taking any position at the Commission that would not be inconsistent with or barred by this Agreement or by collateral estoppel, res judicata or other issue or fact preclusion doctrines.

15. Attorneys' Fees. In the event either Party hereto employs legal counsel or brings a judicial action or any other proceeding against the other Party to enforce any of the terms, covenants or conditions hereof, the prevailing Party in such action or proceeding shall be entitled to recover its reasonable attorneys' fees and costs from the other Party, and in the event any judgment is secured by such prevailing Party, all such attorneys' fees and costs shall be included in such judgment. Any arbitration shall be considered a judicial action for the purposes of this paragraph.

16. Resort Accommodations. From time to time, and subject to availability, User shall make accommodations at the Resort available to visiting representatives of BCSC at the best available corporate rate then offered by the Resort. BCSC's rights under this Paragraph shall be strictly limited to the use of accommodations for business purposes.

17. Amendments and Waiver of Conditions. No waiver by either Party of any breach of this Agreement by the other Party shall be construed as a waiver of any preceding or succeeding breach. This Agreement may be amended only in writing and may not be amended or modified by any part performance, reliance or course of dealing.

18. Additional Acts. The Parties agree to execute promptly any other documents and to perform promptly any other acts as may be reasonably required to effectuate the purposes and intent of this Agreement.

19. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties. This Agreement, together with all rights, obligations, duties and privileges arising hereunder, may be assigned by either Party without the consent of the other Party. If either Party assigns its interest hereunder, then such assignment shall

be set forth in a written document executed by the assignor and assignee, which document shall contain an express assumption by the assignee of all obligations of the assignor under this Agreement. The foregoing notwithstanding, the failure of an assignee or other successor in interest to execute and deliver such written document shall not terminate or otherwise limit the rights of the non-assigning Party hereunder.

20. Governing Law; Severability. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona. If a court or governmental agency with jurisdiction determines that any provision of this Agreement is unenforceable, illegal or contrary to any applicable law, regulation, regulatory order, or tariff, then such provision shall be severed from this Agreement. In such case, the remainder of this Agreement shall remain in effect if both Parties can legally, practicably, and commercially continue without the severed provision.

21. Construction. The terms and provisions of this Agreement represent the results of negotiations between BCSC and User, neither of which have acted under any duress or compulsion, whether legal, economic or otherwise. Each Party has had the full opportunity to review and understand the legal consequences of this Agreement. Consequently, the terms and provisions of this Agreement should be interpreted and construed in accordance with their usual and customary meaning, and BCSC and User each waive the application of any rule of law providing that ambiguous or conflicting terms or provisions are to be interpreted or construed against the Party whose attorney prepared this Agreement.

22. Integration. The terms of this Agreement supersede all prior and contemporaneous oral or written agreements and understandings of BCSC and User with respect to its subject matter, all of which will be deemed to be merged into this Agreement. This Agreement is a final and complete integration of the understandings of BCSC and User with respect to the subject matter hereof. If there is any specific and direct conflict between, or any ambiguity resulting from, the

and provisions of this Agreement and the terms and provisions of any document, instrument, or other agreement executed in connection with or furtherance of this Agreement, the term, document, instrument, letter or other agreement will be interpreted in a manner consistent with the general purpose and intent of this Agreement.

22. Headings and Captions. The headings and captions of this Agreement are for information only and are not intended to limit or define the meaning of any provision of this Agreement.

23. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered, shall be deemed an original, but all of which when taken together shall constitute one binding contract and instrument.

IN WITNESS WHEREOF, BOULDERS CAREFREE SEWER COMPANY and BOULDERS JOINT VENTURE, have caused this Agreement to be executed on their behalf by their authorized representatives as of the day and year first above written.

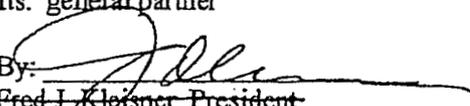
BOULDERS CAREFREE SEWER CORPORATION, an Arizona corporation

By: 

Its: ANDREW T. HILL  
PRESIDENT

BOULDERS JOINT VENTURE,  
an Arizona general partnership

By: PAH GP, INC.  
A Delaware corporation  
Its: general partner

By: 

Fred J. Kleisner, President  
John R. Bahlmann, Vice President