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**PERSON TO BE EXAMINED:**

Custodian of Records  
Brown and Caldwell  
201 E. Washington Street  
Phoenix, AZ 85004

**DATE AND TIME OF DEPOSITION:**

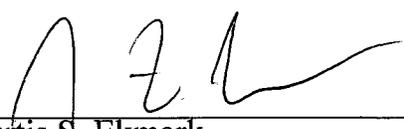
October 17, 2011, at 10:00 a.m.

**PLACE OF DEPOSITION:**

Offices of Ekmark & Ekmark, L.L.C.  
6720 N. Scottsdale Rd., Suite 261  
Scottsdale, AZ 85253

DATED this 3<sup>rd</sup> day of October, 2011.

EKMARK & EKMARK, L.L.C.

  
\_\_\_\_\_  
Curtis S. Ekmark  
Lynn M. Krupnik  
Jason F. Wood  
6720 N. Scottsdale Rd., Suite 261  
Scottsdale, AZ 85253

1 **Certificate of Service**

2 **ORIGINAL** and thirteen (13) copies  
3 of the foregoing filed this 3<sup>rd</sup> day of  
4 October, 2011 with:

4 Docket Control  
5 Arizona Corporation Commission  
6 1200 West Washington Street  
7 Phoenix, AZ 85007

7 **COPY** of the foregoing hand-delivered  
8 this 3<sup>rd</sup> day of October 2011 to:

9 Dwight Nodes, Administrative Law Judge  
10 Legal Division  
11 Arizona Corporation Commission  
12 1200 W. Washington Street  
13 Phoenix, AZ 85007

12 **COPIES** of the foregoing mailed  
13 this 3<sup>rd</sup> day of October 2011 to:

14 Janice Alward, Chief Counsel  
15 Charles Hains, Attorney  
16 Legal Division  
17 Arizona Corporation Commission  
18 1200 West Washington  
19 Phoenix, AZ 85007

17 Steve Olea, Director  
18 Utilities Division  
19 Arizona Corporation Commission  
20 1200 West Washington  
21 Phoenix, AZ 85007

20 Thomas H. Campbell  
21 Michael T. Hallam  
22 Lewis and Roca LLP  
23 40 North Central Avenue  
24 Phoenix, AZ 85004  
25 Attorneys for Arizona-American Water Co.

24 Greg Patterson, Director  
25 Water Utility Association of Arizona  
26 916 West Adams, Suite 3  
Phoenix, AZ 85007

- 1 Joan S. Burke, Esq.  
Law Office of Joan S. Burke  
1650 N. First Avenue  
2 Phoenix, AZ 85003  
Attorney for Corte Bella  
3
- 4 Kenneth Hewitt  
18729 N. Palermo Court  
Surprise, AZ 85387  
5
- 6 Michele L. Van Quathem  
Ryley Carlock & Applewhite, P.A.  
One North Central Avenue, Suite 1200  
7 Phoenix, AZ 85004  
Attorneys for Verrado and DMB White Tank, LLC  
8
- 9 Michelle Wood, Counsel  
Residential Utility Consumer Office  
1110 West Washington Street, Suite 220  
10 Phoenix, AZ 85007
- 11 Lyn Farmer  
Arizona Corporation Commission  
12 1200 W. Washington St.  
Phoenix, AZ 85007-2927  
13
- 14 Jay Shapiro, Esq.  
Fennemore Craig  
3003 N. Central Ave., Suite 2600  
15 Phoenix, AZ 85012  
Attorneys for EPCOR  
16
- 17 Paul Briningstool  
Ashton Ranch HOA  
PO Box 9151  
18 Surprise, AZ 85374
- 19 Jared Evenson, President  
Cross River HOA  
20 1600 W. Broadway Rd., Suite 200  
Tempe, AZ 85282  
21
- 22 Mike Orose  
Crystal Springs Estates HOA  
8407 N. 178<sup>th</sup> Ave.  
23 Waddell, AZ 85355
- 24 Ken Peterson, President  
Jackrabbit Estates HOA  
25 dba Arroyo Mountain Estates HOA  
1600 W. Broadway Rd., Suite 200  
26 Tempe, AZ 85282

- 1 William P. Lipscomb, President  
Kingswood Parke Community Association  
2 14976 W. Bottletree Ave.  
3 Surprise, AZ 85374
- 4 Mike Smith, President  
Sierra Montana HOA  
c/o Rossmar & Graham  
5 15396 N. 83<sup>rd</sup> Ave., Bldg. B – Suite 101  
6 Peoria, AZ 85381
- 7 G. Thomas Hennessy, President  
Surprise Farms 5 Community Association  
1600 W. Broadway Rd., Suite 200  
8 Tempe, AZ 85282
- 9 Frederick G. and Mary L. Botha  
23024 N. Giovota Drive  
10 Sun City West, AZ 85375
- 11 Peter and Rochanne Corpus  
8425 N. 181<sup>st</sup> Drive  
12 Waddell, AZ 85355
- 13 Thomas and Laurie Decatur  
8426 N. 181<sup>st</sup> Drive  
14 Waddell, AZ 85355
- 15 Timothy L. and Cindy J. Duffy  
19997 N. Half Moon Drive  
16 Surprise, AZ 85374-4747
- 17 William and Erin Parr  
18044 W. Georgia Court  
18 Litchfield Park, AZ 85034
- 19 Craig and Nancy Plummer  
17174 W. Saguaro Lane  
20 Surprise, AZ 85388
- 21 Sharon Wolcott  
20117 N. Painted Cove Lane  
22 Surprise, AZ 85387
- 23 Brian O'Neal  
21373 W. Brittle Brush Lane  
24 Buckeye, AZ 85396
- 25
- 26



1           **PURSUANT** to Ariz. Const. Art. 15 § 4, Ariz. Rev. Stat. §§ 40-241, 40-242, 40-244,  
2 Ariz. Admin. Code §§ R14-3-101 and R14-3-109 and Ariz. R. Civ. P. 30 and 45, you are  
3 hereby commanded to appear and give your testimony at the time and place specified below.

4           **YOU ARE COMMANDED** to produce and permit inspection, copying, testing, or  
5 sampling of the designated documents, electronically stored information or tangible things  
6 described in Exhibit A, attached, at the place, date and time specified below:

7           Place of Production:       Ekmark & Ekmark, L.L.C.  
8           Address:                   6720 N. Scottsdale Rd., Suite 261  
9                                       Scottsdale, AZ 85253  
10           Date:                     October 17, 2011  
11           Time:                     10:00 a.m.

12           You have been subpoenaed by Sun City Grand Community Association, whose  
13 attorney's name, address, and telephone number is:

14                   Curtis S. Ekmark  
15                   Ekmark & Ekmark, L.L.C.  
16                   6720 North Scottsdale Road, Suite 261  
17                   Scottsdale, Arizona 85253  
18                   480-922-9292

19                                       **Your Duties in Responding to This Subpoena**

20           **Attendance at a Trial.** If this subpoena commands you to appear at a trial, you must  
21 appear at the place, date and time designated in the subpoena unless you file a timely motion  
22 with the court and the court quashes or modifies this subpoena. *See* Rule 45(b)(5) and Rule  
23 45(e)(2) of the Arizona Rules of Civil Procedure. *See also* "Procedure for Objecting to a  
24 Subpoena for Attendance at a Hearing, Trial or Deposition" section below. Unless a court  
25 orders otherwise, you are required to travel to any part of the state to attend and give  
26 testimony at a trial. *See* Rule 45(b)(3)(A) of the Arizona Rules of Civil Procedure.

**Attendance at a Hearing or Deposition.** If this subpoena commands you to appear at  
a hearing or deposition, you must appear at the place, date and time designated in this  
subpoena unless either: (1) you file a timely motion with the court and the court quashes or  
modifies the subpoena; or (2) you are not a party or a party's officer and this subpoena  
commands you to travel to a place other than: (1) the county in which you reside or you  
transact business in person; or (b) the county in which you were served with the subpoena or

1 within 40 miles from the place of service; or (c) such other convenient place fixed by a court  
2 order. *See* Rule 45(b)(3)(B) and Rule 45(e)(2)(A)(ii) of the Arizona Rules of Civil  
3 Procedure. *See also* "Procedure for Objecting to a Subpoena for Attendance at a Hearing,  
4 Trial or Deposition" section below.

5 ***Production of Documentary Evidence or Inspection of Premises.*** If this subpoena  
6 commands you to produce and permit inspection, copying, testing or sampling of designated  
7 documents, electronically stored information, or tangible things, you must make the items  
8 available at the place, date and time designated in this subpoena, and in the case of  
9 electronically stored information, in the form or forms requested, unless you provide a good  
10 faith written objection to the party or attorney who served the subpoena. *See* Rule 45(c)(5) of  
11 the Arizona Rules of Civil Procedure. *See also* "Procedure for Objecting to a Subpoena for  
12 Production of Documentary Evidence" section below. Similarly, if this subpoena commands  
13 you to make certain premises available for inspection, you must make the designated  
14 premises available for inspection on the date and time designated in this subpoena unless you  
15 provide a good faith written objection to the party or attorney who served the subpoena. *See*  
16 Rule 45(c)(5) of the Arizona Rules of Civil Procedure. *See also* "Procedure for Objecting to  
17 a Subpoena for Production of Documentary Evidence" section below.

18 You should note that a command to produce certain designated materials, or to permit  
19 the inspection of premises, *may* be combined with a command to appear at a trial, hearing or  
20 deposition. *See* Rule 45(b)(2) of the Arizona Rules of Civil Procedure. You do not, however,  
21 need to appear in person at the place of production or inspection unless the subpoena *also*  
22 states that you must appear for and give testimony at a hearing, trial or deposition. *See* Rule  
23 45(c)(3) of the Arizona Rules of Civil Procedure.

24 If the subpoena commands you to produce documents, you have the duty to produce  
25 the designated documents as they are kept by you in the usual course of business, or you may  
26 organize the documents and label them to correspond with the categories set forth in the  
subpoena. *See* Rule 45(c)(4) of the Arizona Rules of Civil Procedure.

***Generally.*** If you have concerns or questions about this subpoena, you should first  
contact the party or attorney who served the subpoena. The party or attorney serving the  
subpoena has a duty to take reasonable steps to avoid imposing an undue burden or expense  
on you. The superior court enforces this duty and may impose sanctions upon the party or  
attorney serving the subpoena if this duty is breached. *See* Rule 45(e)(1) of the Arizona  
Rules of Civil Procedure.

***Procedure for Objecting to a Subpoena for Attendance at a Hearing, Trial or  
Deposition.*** If you wish to object to a subpoena commanding your appearance at a hearing,  
trial or deposition, you must file a motion to quash or modify the subpoena with the court to

1 obtain a court order excusing you from complying with this subpoena. *See* Rules 45(b)(5)  
2 and 45(e)(2) of the Arizona Rules of Civil Procedure. The motion must be filed in the  
3 superior court of the county in which the case is pending or in the superior court of the county  
4 from which the subpoena was issued. *See* Rules 45(e)(2)(A) and (B) of the Arizona Rules of  
5 Civil Procedure. The motion must be filed before the time specified for compliance or within  
6 14 days after the subpoena is served, whichever is earlier. *See* Rule 45(e)(2)(D) of the  
7 Arizona Rules of Civil Procedure. You must send a copy of any motion to quash or modify  
8 the subpoena to the party or attorney who served the subpoena. *See* Rule 45(e)(2)(E) of the  
9 Arizona Rules of Civil Procedure.

10 The court *must* quash or modify a subpoena:

11 (1) if the subpoena does not provide a reasonable time for compliance; or

12 (2) unless the subpoena commands your attendance at a trial, if you are not a party or a  
13 party's officer and if the subpoena commands you to travel to a place other than: (a) the  
14 county in which you reside or transact business in person: (b) the county in which you were  
15 served with a subpoena, or within 40 miles from the place of service; or (c) such other  
16 convenient place fixed by a court order; or

17 (3) if the subpoena requires disclosure of privileged or other protected matter, if no  
18 exception or waiver applies; or

19 (4) if the subpoena subjects you to undue burden.

20 *See* Rule 45(e)(2)(A) of the Arizona Rules of Civil Procedure.

21 The court *may* quash or modify a subpoena:

22 (1) if the subpoena requires you to disclose a trade secret or other confidential  
23 research, development or commercial information; or

24 (2) if you are an unretained expert and the subpoena requires you to disclose your  
25 opinion or information resulting from your study that you have not been requested by any  
26 party to give on matters that are specific to the dispute; or

(3) if you are not a party or a party's officer and the subpoena would require you to  
incur substantial travel expense; or

(4) if the court determines that justice requires the subpoena to be quashed or  
modified.

1           See Rule 45(e)(2)(B) of the Arizona Rules of Civil Procedure.

2           In these last four circumstances, a court may, instead of quashing or modifying a  
3 subpoena, order your appearance or order the production of material under specified  
4 conditions if: (1) the serving party or attorney shows a substantial need for the testimony or  
5 material that cannot be otherwise met without undue hardship; and (2) if your travel expenses  
6 or the expenses resulting from the production are at issue, the court ensures that you will be  
7 reasonably compensated. See Rule 45(e)(2)(C) of the Arizona Rules of Civil Procedure.

8           ***Procedure for Objecting to Subpoena for Production of Documentary Evidence.*** If  
9 you wish to object to a subpoena commanding you to produce documents, electronically  
10 stored information or tangible items, or to permit the inspection of premises, you may send a  
11 good faith written objection to the party or attorney serving the subpoena that objects to: (1)  
12 producing, inspecting, complying, testing or sampling any or all of the materials designed in  
13 the subpoena; (2) inspecting the premises; or (3) producing electronically stored information  
14 in the form or forms requested. You must send your written objection to the party or attorney  
15 who served the subpoena before the time specified for compliance or within 14 days after the  
16 subpoena is served, whichever is earlier. See Rule 45(c)(5)(A)(ii) of the Arizona Rules of  
17 Civil Procedure.

18           If you object because you claim the information requested is privileged, protected, or  
19 subject to protection as trial preparation material, you must express the objection clearly, and  
20 support each objection with a description of the nature of the document, communication or  
21 item not produced so that the demanding party can contest the claim. See Rule 45(c)(5)(C) of  
22 the Arizona Rules of Civil Procedure.

23           If you object to the subpoena in writing, you do not need to comply with the subpoena  
24 until a court orders you to do so. It will be up to the party or attorney serving the subpoena to  
25 first personally consult with you and engage in good faith efforts to resolve your objection  
26 and, if the objection cannot be resolved, to seek an order from the court to compel you to  
provide the documents or inspection requested, after providing notice to you. See Rule  
45(c)(5)(B) of the Arizona Rules of Civil Procedure.

          If you are not a party to the litigation, or a party's officer, the court will issue an order  
to protect you from any significant expense resulting from the inspection and copying  
commanded. See Rule 45(c)(6)(B) of the Arizona Rules of Civil Procedure.

          Instead of sending a written objection to the party or attorney who served the  
subpoena, you also have the option of raising your objections in a motion to quash or modify  
the subpoena. See Rule 45(e)(2) of the Arizona Rules of Civil Procedure. The procedure and

1 grounds for doing so are described in the section above entitled "Procedure for Objecting to a  
2 Subpoena for Attendance at a Hearing, Trial or Deposition."

3 If the subpoena *also* commands your attendance at a hearing, trial or deposition,  
4 sending a written objection to the party or attorney who served the subpoena does not  
5 suspend or modify your obligation to attend and give testimony at the date, time and place  
6 specified in the subpoena. *See* Rule 45(c)(5)(A)(iii) of the Arizona Rules of Civil Procedure.  
7 If you wish to object to the portion of this subpoena requiring your attendance at a hearing,  
8 trial or deposition, you must file a motion to quash or modify the subpoena as described in the  
9 section above entitled "Procedure for Objecting to a Subpoena for Attendance at a Hearing,  
10 Trial or Deposition." *See* Rules 45(b)(5) and 45(c)(5)(iii) of the Arizona Rules of Civil  
11 Procedure.

### 12 **ADA Notification**

13 Requests for reasonable accommodation for persons with disabilities must be made to  
14 the court by parties at least three working days in advance of a scheduled court proceeding.

15 **YOU ARE HEREBY NOTIFIED THAT ANY FAILURE TO OBEY THIS  
16 SUBPOENA, WITHOUT ADEQUATE EXCUSE, MAY BE DEEMED A CONTEMPT OF  
17 THIS COURT, AND A CIVIL ARREST WARRANT MAY BE ISSUED. A CIVIL ARREST  
18 WARRANT IS AN ORDER DIRECTING ANY POLICE OFFICER IN ARIZONA TO  
19 ARREST YOU AND BRING YOU BEFORE THE COMMISSION FOR FUTURE  
20 PROCEEDINGS.**

21 SIGNED AND SEALED this date: \_\_\_\_\_

22 \_\_\_\_\_  
23 Arizona Corporation Commission

24 By: \_\_\_\_\_  
25  
26



1           “Electronic Document” includes but is not limited to any electronically stored data  
2 on magnetic or optical storage media as an “active” file or files (readily readable by one  
3 or more computer applications or forensics software); any “deleted” but recoverable  
4 electronic files on said media; any electronic file fragments (files that have been deleted  
5 and partially overwritten with new data); and slack (data fragments stored randomly from  
6 random access memory on a hard drive during the normal operation of a computer [RAM  
7 slack] or residual data left on the hard drive after new data has overwritten some but not  
8 all of previously stored data).

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