

ORIGINAL



BEFORE THE ARIZONA CORPORATION

COMMISSIONERS

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GARY PIERCE - Chairman  
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2013 AUG 13 A 11:50

AZ CORP COMMISSION  
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION OF  
TUSAYAN WATER DEVELOPMENT  
ASSOCIATION, INC. FOR ESTABLISHMENT  
OF RATES FOR WATER SERVICE.

DOCKET NO. W-02350A-10-0163

IN THE MATTER OF THE APPLICATION OF  
ANASAZI WATER CO., LLC FOR  
ADJUDICATION "NOT A PUBLIC SERVICE  
CORPORATION."

DOCKET NO. W-20765A-10-0432

IN THE MATTER OF THE APPLICATION OF  
HYDRO-RESOURCES, INC. FOR  
ADJUDICATION "NOT A PUBLIC SERVICE  
CORPORATION."

DOCKET NO. W-20770A-10-0473

**STAFF'S NOTICE OF FILING**

The Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission"), on behalf of the Signatories to the Proposed Settlement Agreement ("Agreement"), files the Agreement in the above-referenced matter.

RESPECTFULLY SUBMITTED this 13th day of August, 2013.

Robin K. Mitchell, Staff Attorney  
Wesley C. Van Cleve, Staff Attorney  
Attorney, Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007  
(602) 542-3402

Original and thirteen (13) copies  
of the foregoing were filed this  
13 day of August, 2013 with:

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Arizona Corporation Commission

DOCKETED

AUG 13 2013

DOCKETED BY *ne*

1 Copies of the foregoing were mailed and/or  
2 emailed this 13th day of August, 2013,1 to:

3 Russell A. Kolsrud  
4 Ryan J. Lorenz  
5 CLARK HILL PLC  
6 14850 North Scottsdale Road, Suite 500  
7 Scottsdale, Arizona 85254  
8 Attorneys for Tusayan Water Development  
9 Association, Inc.  
10 [RKolsrud@clarkhill.com](mailto:RKolsrud@clarkhill.com)

11 Garry D. Hays  
12 THE LAW OFFICES OF GARRY D. HAYS, P.C.  
13 1702 East Highland Avenue, Suite 204  
14 Phoenix, Arizona 85016  
15 Attorneys for Tusayan Ventures LLC  
16 [ghays@lawgdh.com](mailto:ghays@lawgdh.com)

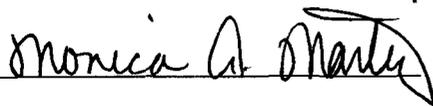
17 Paul L. Brinkmann  
18 SHORALL MCGOLDRICK BRINKMANN  
19 702 North Beaver  
20 Flagstaff, Arizona 86001  
21 Attorney for Anasazi Water Co., LLC  
22 [plb@smbattorneys.com](mailto:plb@smbattorneys.com)

23 Steven A. Hirsch  
24 Rodney W. Ott  
25 BRYAN CAVE LLP  
26 Two North Central Avenue, Suite 2200  
27 Phoenix, Arizona 85004-4406  
28 Attorneys for Hydro-Resources, Inc.  
[sahirsch@bryancave.com](mailto:sahirsch@bryancave.com)

William J. Simms III  
SIMS MURRAY, LTD  
2020 N. Central Ave., Ste. 670  
Phoenix, Arizona 85004  
Attorney for the Town of Tusayan  
[wjsims@simmsmurray.com](mailto:wjsims@simmsmurray.com)

Enrique Medina Ochoa  
Town Manager  
TOWN OF TUSAYAN  
P.O. Box 709  
Tusayan, Arizona 86023

Michael W. Patten  
Timothy J. Sabo  
ROSHKA, DEWULF & PATTEN, PLC  
One Arizona Center  
400 East Van Buren Street, Suite 800  
Phoenix, AZ 85004  
Attorneys for Squire Motor Inns, Incorporated  
[mpatten@rdp-law.com](mailto:mpatten@rdp-law.com)  
[tsabo@rdp-law.com](mailto:tsabo@rdp-law.com)

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## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into as of the \_\_ day of August 2013 by, between and among Tusayan Water Development Association, Inc. ("TWDA"), Anasazi Water Company LLC ("Anasazi"), Hydro-Resources, Inc., ("Hydro"), Arizona Corporation Commission Utilities Division ("Staff"), Town of Tusayan, Arizona ("Town"), and Squire Motor Inns, Inc. ("Squire"). TWDA, Anasazi and Hydro may be referred to collectively as "Applicants." The Town and Squire may be referred to collectively as "Settling Intervenors." Staff, Applicants and Settling Intervenors may be referred to individually as a "Party" or collectively as "Parties."

### RECITALS

On April 29, 2010, TWDA, which holds the Certificate of Convenience and Necessity ("CC&N"),<sup>1</sup> filed with the Arizona Corporation Commission ("Commission" or "ACC"), in Docket No. W-02350A-10-0163 ("Tusayan Docket"), a rate application, which has been suspended by Procedural Order dated January 18, 2011; and

In response to a letter from Staff dated July 21, 2010, on October 21, 2010, Anasazi, which provides water on a wholesale basis to TWDA through Anasazi's water distribution system, filed an Application to be adjudicated "Not A Public Service Corporation" in Docket No. W-20765A-10-0432 ("Anasazi Docket"); and

In response to a letter from Staff dated July 21, 2010, on November 1, 2010, Hydro, which provides water on a wholesale basis to TWDA through Hydro's water distribution system, filed an Application for a Determination that it is not acting as a Public Service Corporation in Docket No. W-20770A-10-0437 ("Hydro Docket"); and

On January 18, 2011, a Procedural Order was issued consolidating the three dockets (i.e. the Tusayan Docket, the Anasazi Docket and the Hydro Docket) which dockets may be referred to collectively as the "ACC Adjudication";<sup>2</sup> and

Tusayan Ventures, LLC, the Town and Squire have all been granted leave to intervene in the ACC Adjudication, however, Tusayan Ventures LLC has decided not to participate in this Settlement; and

Anasazi, Hydro and TWDA, have agreed to the terms and conditions of Anasazi's conveyance to Hydro of certain physical plant and property, and other miscellaneous equipment, and for cancellation of TWDA's CC&N and Hydro's application

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<sup>1</sup> On March 28, 1979, the Arizona Corporation Commission issued Decision No. 49808 in Docket U-2350 with a legal description of the certificated area for the CC&N. That Decision was later re-affirmed in Decision No. 50492, issued on December 13, 1979. A copy of the legal description of the certificated area is attached to this Agreement as Exhibit A ("Certificated Area").

<sup>2</sup> During the Procedural Conference of February 7, 2011, TWDA stated it had no objection to being adjudicated in this proceeding.

for a CC&N covering the same Certificated Area, pursuant to a separate agreement of even date herewith ("Transfer Agreement");

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **PURPOSE.** The purpose of this Agreement is to resolve contested matters in Docket Nos. W-02350A-10-0163, W-20765A-10-0432 and W-20770A-10-0437 in a manner consistent with the public interest. The Parties further recognize that: (a) this Agreement acts as a procedural device to propose the Parties' settlement terms to the Commission; and (b) this Agreement has no binding force or effect until finally approved by an Order of the Commission. Nothing contained in this Agreement is an admission by any Party that any of the positions taken, or that might be taken by each Party in the ACC Adjudication, is unreasonable or unlawful, and the terms and conditions of this Agreement are in compromise of disputed claims and constitute compromise settlement positions. In addition, acceptance of this Agreement by any of the Parties is without prejudice to any position taken by any Party in the ACC Adjudication.

2. **ANASAZI, HYDRO AND TWDA ACTIONS.** By a separate Transfer Agreement of even date herewith ("Transfer Agreement"), Anasazi, Hydro and TWDA have agreed, in pertinent part, that:

2.1 Anasazi will (a) transfer to Hydro certain physical plant and property, including water distribution lines and meters, and the easements and rights-of-way associated with those items that are within Anasazi's control; (b) assist Hydro in obtaining certain easements outside of Anasazi's control which are necessary for Hydro to serve those parcels previously served by Anasazi which are east of Route 64 ("Anasazi Serviced Parcels"); and (c) dissolve, wind up and terminate its existence.

2.2 Within thirty days of the execution of this Agreement, TWDA will apply for deletion/cancellation of its CC&N and Hydro will simultaneously file an application seeking a new CC&N covering the same area and providing for service to TWDA's existing customers in the Certificated Area except for the property owned by Red Feather Properties Limited Partnership, which property is commonly known as Coconino County Assessor parcel numbers 502-17-007L and 502-17-009B ("RFP Campus"), for which the property owners shall provide their own service and shall not receive service from Hydro.

2.3 Hydro will (a) acquire from Anasazi the physical plant and property, and property rights, described in section 2.1 above, (b) provide water service to the various properties currently served by TWDA in the Tusayan area except for the RFP Campus, and (c) transfer to Red Feather Properties Limited Partnership the water distribution lines and fire hydrants located on the Red Feather Properties Limited Partnership property, all in accordance with the terms of the Transfer Agreement.

2.4 The Parties shall immediately commence and diligently proceed to effect the conveyances summarized in sections 2.1 and 2.3 above, but in any event such conveyances shall occur no later than ten (10) days following the date at which the Commission's Decision and Order approving this Agreement and deleting TWDA's CC&N and providing for a new CC&N to Hydro as set forth in section 2.2 above becomes final and non-appealable ("Transfer Date"). Additionally, until the consummation of the conveyances or Commission action, whichever first occurs, Anasazi shall provide the Parties with monthly updates as to the status of the conveyances.

3. **SQUIRE AND HYDRO ACTIONS.** Prior to the Transfer Date, Squire and Hydro shall enter into a new contract or amend their existing water supply contract to ensure that Squire is a private, stand-alone point of service, selling water to Hydro under said contract.

4. **CONTINUED ACC ADJUDICATION PROCEEDINGS.**

4.1 The ACC Adjudication and all proceedings related thereto shall be continued until the Commission approves a new CC&N for Hydro and deletes/cancels the CC&N for TWDA.

4.2 In the event the Commission fails to approve this Agreement and issue an Order deleting TWDA's CC&N and providing for a new CC&N to Hydro as set forth in section 2.2 above, this Agreement shall be deemed terminated and the ACC Adjudication shall thereafter resume. In the event the Commission issues an Order deleting TWDA's CC&N and providing for a new CC&N to Hydro but fails to approve all terms of this Agreement without material change, this Agreement shall be deemed terminated and the ACC Adjudication shall thereafter resume and any CC&N granted shall be null and void after due process.

5. **SETTLEMENT.** The Parties shall proceed with the settlement of the ACC Adjudication as follows:

5.1 TWDA shall file a request to delete/cancel its CC&N and Hydro shall simultaneously file an application for a new Certificate of Convenience and Necessity ("New CC&N") covering the same area as the Certificated Area within the time frames set forth in section 2.2, above.

5.2 Upon filing their respective CC&N requests, the Parties shall also file a request that the dockets associated with the ACC Adjudication be closed and dismissed as moot upon the issuance of an Order by the Commission granting the New CC&N to Hydro and deleting or cancelling the CC&N of TWDA.

5.3 Each Party shall execute and deliver to the other Party and the Commission such documents and perform such acts as reasonably requested by any other Party or required to obtain the Order of the Commission that the ACC Adjudication be closed and dismissed.

5.4 Until the Commission has granted TWDA's request to cancel its CC&N and granted the New CC&N to Hydro, Hydro and Anasazi will continue to supply water to

TWDA and TWDA will continue to provide water service in the Certificated Area. Nothing herein shall preclude Hydro from supplying water to TWDA for TWDA's use in serving the Anasazi Serviced Parcels at Hydro rates upon Anasazi's transfer of the property described in section 2.1 above.

**5.5** Until the Commission grants the New CC&N to Hydro, which Decision is anticipated to provide a Fair Value Rate Base and rates for the New CC&N area, TWDA shall continue to charge its current rates unless such rates are revised by agreement of the Parties and approved by the Commission. Upon Anasazi's transfer of the property described in section 2.1 above and Hydro thereafter supplying water to TWDA so that TWDA may serve the Anasazi Serviced Parcels, TWDA shall charge such customers the Hydro rates.

## **6. COMMISSION EVALUATION OF AGREEMENT.**

**6.1 Staff Authority.** The Parties recognize that (a) the Staff does not have the power to bind the Commission; and (b) for the purposes of settlement, the Staff acts in the same manner as a Party in proceedings before the Commission.

**6.2 Commission Authority to Modify.** Each provision of this Agreement is in consideration and support of all other provisions, and expressly conditioned upon acceptance by the Commission without material change; provided, however, that the Parties further recognize that the Commission will evaluate the terms of this Agreement, and that after such evaluation the Commission may require immaterial modifications to any of the terms hereof before accepting this agreement.

**6.3 Commission Approval.** In the event that the Commission adopts an Order approving all of the terms of this Agreement without material change, such action by the Commission constitutes approval of the Agreement, and thereafter the Parties shall abide by its terms.

**6.4 Effect of Modification by the Commission.** In the event that any Party objects to any modification to the terms of this Agreement made by the Commission in an Order approving this Agreement, such Party shall timely file an Application for Rehearing under A.R.S. § 40-253. In the event that a Party does not file such an application, that Party shall be deemed (a) to have accepted any modifications made by the Commission; and (b) to have conclusively and irrefutably accepted that any modifications to terms of this Agreement were not material and therefore that the Commission Order adopted the terms of this Agreement without material change.

**6.5 Application for Rehearing.** If any Party to this Agreement files an Application for Rehearing and alleges that the Commission has failed to approve all terms of the Agreement without material change, then such application shall be deemed a withdrawal of the Agreement, and the Parties shall request a Procedural Order setting the Parties' Applications for Adjudication for hearing. Such hearing shall be without prejudice to the position of any Parties, and this Agreement and the Transfer Agreement, any of the terms and conditions of this Agreement or the Transfer Agreement, any communications leading up to

the execution of this Agreement or the Transfer Agreement, and any supporting documents relating thereto shall not be admitted into evidence for any purpose nor used by the Commission in its final consideration of the issues raised in this consolidated Docket. If a Party files an Application for Rehearing before the Commission, Staff shall not be obligated to file any document or take any position regarding the withdrawing Party's Application for Rehearing.

**6.6 Appeal of Commission Decision.** If a Party's application for rehearing alleges that the Commission has failed to approve all terms of this Agreement without material change, and the application for rehearing is denied, either by Commission Order or by operation of law, and such Party still objects to any modification to the terms of this Agreement made by the Commission, that Party shall timely file an appeal of the Commission's decision pursuant to A.R.S. § 40-254 or § 40-254.01, as appropriate. In the event that the Party does not file such an appeal, it shall be deemed (a) to have accepted any modifications made by the Commission, and (b) to have conclusively and irrefutably accepted that any modifications to the terms of this Agreement were not material and therefore that the Commission's Order adopted the terms of this Agreement without material change.

**6.7 Limitations.** The terms and provisions of this Agreement apply solely to and are binding only in the context of the provisions and results of this Agreement and neither this Agreement nor any of the positions taken in this Agreement by any of the Parties may be referred to, cited to, or relied upon by any other Party in any fashion as precedent or otherwise in any proceeding before the Commission or any other regulatory agency or before any court of law for any purpose except in furtherance of the purpose and results of this Agreement.

**6.8 Definitive Text.** The 'Definitive Text' of this Agreement shall be the text adopted by the Commission in an Order adopting substantially all the terms of this Agreement including all modifications made by the Commission in such an Order.

**6.9 Severability.** Each of the terms of the Definitive Text of this Agreement is in consideration and support of all other terms. Accordingly, such terms are not severable.

**6.10 Support and Defend.** The Parties shall make reasonable and good faith efforts necessary to obtain a Commission Order approving this Agreement. The Parties further pledge to support and defend this Agreement before the Commission. If this Agreement is approved, the Parties will support and defend this Agreement before any court or regulatory agency in which it may be at issue.

## **7. GENERAL.**

**7.1** This Agreement represents the Parties' mutual desire to compromise and settle disputed issues in a manner consistent with the public interest. The terms and provisions of this Agreement apply solely to and are binding only in the context of the purposes and results of this Agreement.

7.2 No Party is bound by any position asserted in negotiations, except as expressly stated in this Agreement. No Party shall offer evidence of conduct or statements made in the course of negotiating this Agreement before this Commission, any other regulatory agency, or any court.

7.3 To the extent any provision of this Agreement is inconsistent with any existing Commission order, rule, or regulation, this Agreement shall control. Nothing contained in this Agreement is intended to interfere with the Commission's authority to exercise any regulatory authority by the issuance of orders, rules or regulations.

7.4 This Agreement may be executed by facsimile or in any number of counterparts; all such counterparts shall be deemed to constitute one and the same instrument and each of the executed counterparts shall be deemed an original hereof. The individuals executing this Agreement represent and warrant that he or she has the full power and authority to execute this Agreement and to create binding obligations of the Parties in accordance with the terms hereof.

7.5 No change, modification, or waiver of any provision of this Agreement shall be valid or binding unless it is in writing, dated after the date hereof, and signed by the Parties intended to be bound and approved by the Commission.

7.6 To the extent permitted by the context in which used, words in the singular number shall include the plural and vice versa; words in the masculine gender shall include the feminine and neuter and vice versa; and references to "persons" or "Parties" in this Agreement shall be deemed to refer to natural persons, corporations, general partnerships, limited partnerships, trusts, and all other entities. All references to "days" shall mean calendar days unless stated otherwise. If the last day of any time period stated herein shall fall on a Saturday, Sunday, or legal holiday in the State of Arizona, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday, or legal holiday in the State of Arizona.

7.7 Neither this Agreement nor any of the positions taken in this Agreement by any of the Parties may be referred to, cited, or relied upon as precedent in any proceeding before the Commission, any other regulatory agency, or any court for any purpose except in furtherance of securing the approval and enforcement of this Agreement.

7.8 This Agreement shall not be construed for or against any Party as a result of its participation or the participation of its counsel in the preparation and/or drafting of this Agreement or any exhibits hereto.

7.9 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective owners, shareholders, directors, members, principals, agents, heirs, assigns and successors-in-interest.

Anasazi Water Company LLC

By: \_\_\_\_\_

Its: Manager/Member

Arizona Corporation Commission

Utilities Division

By: \_\_\_\_\_

Its: Director

Hydro Resources Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Tusayan Water Development Association, Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Squire Motor Inns, Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Town of Tusayan

By: \_\_\_\_\_

Its: \_\_\_\_\_

Approved Town of Tusayan:

\_\_\_\_\_

Its: General counsel

EXHIBIT "A"

That portion of Coconino County, Arizona, described as follows, to-wit:

Being within Section 23 and 24, T 30 N, R 2 E, G & S R B & M, Coconino County, Arizona, the coterminous exterior boundaries of the entire composite and consolidated territory lying within the following boundaries: Beginning at a point on the north line of said Section 24, said point of beginning being Corner No. 5 of Homestead Entry Survey No. 401 (hereinafter HES 401); thence S 14° W, 1574.76 feet to Corner No. 6, HES 401; thence S 27°30' W, 1769.46 feet; thence N 68°43' W, 656.70 feet to an easterly line of said HES 401; thence along said easterly line S 47°20' W, 593.73 feet to Corner 6-C, HES 401; thence southerly along the easterly boundary of Grand Canyon National Park Airport property 3061.29 feet to a corner of said airport property; thence S 40°40'07" W, 800 feet to a corner of said airport property; thence S 40°40'07" W, 11,515.33 feet to the most southerly corner of said airport property; thence N 49°19'53" W, 2,400 feet to the most westerly corner of said airport property; thence N 40°40'07" E, 15,993.57 feet to the most northerly corner of said airport property; thence N 49°47'W 471.21 feet to Corner 9, HES 401; thence N 48°20' W, 1198.56 feet to Corner 10, HES 401; thence N 48°20'W 1119.36 feet to Corner 11, HES 401; thence North, 330 feet to Corner 12, HES 401; thence S 58°50' E, 972.84 feet to Corner 1, HES 401; thence S 58°50' E, 1506.12 feet to Corner 2, HES 401; thence North 74°18' E, 1077.12 feet to Corner 3, HES 401; thence N 52°02' E, 2092.86 feet to Corner 4, HES 401; a point on said north line of Section 24; thence along said north section line, N 89°32' E, 458.70 feet to the point of beginning;

Together with MOQUI CAMP, lying within the Northeast Quarter of Section 13, and westerly of State Highway 64, and that portion of Grand Canyon National Park Airport lying within Sections 25 and 26, all in Township 30 North, Range 2 East, G & S R B & M, Coconino County, Arizona.

APPENDIX

Anasazi Water Company LLC

By: *Sumela Levin*

Its: Manager/Member

Arizona Corporation Commission

Utilities Division

By: \_\_\_\_\_

Its: Director

Hydro Resources Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Tusayan Water Development Association, Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Squire Motor Inns, Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Town of Tusayan

By: \_\_\_\_\_

Its: \_\_\_\_\_

Approved Town of Tusayan:

\_\_\_\_\_

Its: General counsel

Anasazi Water Company LLC

By: \_\_\_\_\_

Its: Manager/Member

Arizona Corporation Commission

Utilities Division

By: \_\_\_\_\_

Its: Director

Hydro Resources Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Tusayan Water Development Association, Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Squire Motor Inns, Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Town of Tusayan

By: \_\_\_\_\_

Its: \_\_\_\_\_

Approved Town of Tusayan:

\_\_\_\_\_

Its: General counsel

Anasazi Water Company LLC

By: \_\_\_\_\_

Its: Manager/Member

Arizona Corporation Commission

Utilities Division

By: \_\_\_\_\_

Its: Director

Hydro Resources Inc.

By: John W. Ruck

Its: President

Tusayan Water Development Association, Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Squire Motor Inns, Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Town of Tusayan

By: \_\_\_\_\_

Its: \_\_\_\_\_

Approved Town of Tusayan:

\_\_\_\_\_

Its: General counsel

Anasazi Water Company LLC

Arizona Corporation Commission

Utilities Division

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: Manager/Member

Its: Director

Hydro Resources Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Tusayan Water Development Association, Inc.

By: *[Signature]*

Its: BOARD MEMBER

8-12-13

Squire Motor Inns, Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Town of Tusayan

Approved Town of Tusayan:

By: \_\_\_\_\_

\_\_\_\_\_

Its: \_\_\_\_\_

Its: General counsel

Anasazi Water Company LLC

Arizona Corporation Commission

Utilities Division

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: Manager/Member

Its: Director

Hydro Resources Inc.

By: \_\_\_\_\_

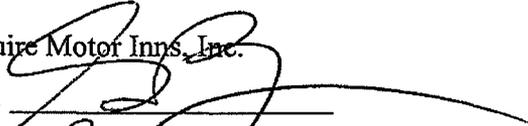
Its: \_\_\_\_\_

Tusayan Water Development Association, Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Squire Motor Inns, Inc.

By:  \_\_\_\_\_

Its: Vice President \_\_\_\_\_

Town of Tusayan

Approved Town of Tusayan:

By: \_\_\_\_\_

\_\_\_\_\_

Its: \_\_\_\_\_

Its: General counsel

Anasazi Water Company LLC

By: \_\_\_\_\_

Its: Manager/Member

Arizona Corporation Commission

Utilities Division

By: \_\_\_\_\_

Its: Director

Hydro Resources Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Tusayan Water Development Association, Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Squire Motor Inns, Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Town of Tusayan

By: AL M. [Signature]

Its: Vice Mayor

Approved Town of Tusayan:  
[Signature]

Its: General Counsel

Town Attorney