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ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION
EXCEPTION

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AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED

OCT - 2 2009

DOCKETED *mm*

- 2 KRISTIN K. MAYES
- 3 CHAIRMAN
- 4 GARY PIERCE
- 5 COMMISSIONER
- 6 SANDRA D. KENNEDY
- 7 COMMISSIONER
- 8 PAUL NEWMAN
- 9 COMMISSIONER
- 10 BOB STUMP
- 11 COMMISSIONER
- 12

IN THE MATTER OF THE APPLICATION OF
 CHAPARRAL CITY WATER COMPANY,
 INC., AN ARIZONA CORPORATION, FOR A
 DETERMINATION OF THE FAIR VALUE OF
 ITS UTILITY PLANT AND PROPERTY AND
 FOR INCREASES IN ITS RATES AND
 CHARGES FOR UTILITY SERVICE BASED
 THEREON.

Docket No. W-02113A-07-0551

EXCEPTIONS OF THE RESIDENTIAL UTILITY CONSUMER OFFICE

The Residential Utility Consumer Office ("RUCO") makes the following Exceptions to the Recommended Opinion and Order ("ROO") on Chaparral City Water Company's ("Chaparral" or "Company") application for a rate increase.

1. The Commission should allow rate base treatment of no more than 35% of the additional Central Arizona Project ("CAP") allocation because the remainder is not used and useful.

The Company paid \$1.28 million for an additional allocation of water from the CAP. The Staff and the Company recommended 100% rate base treatment. RUCO disagreed because the additional allocation is not entirely used and useful to current ratepayers and was procured, in part, to satisfy the needs of future development.

1 The ROO concludes that the acquisition of the additional CAP allocation was prudent.
2 RUCO does not take issue with this conclusion. The issue is not whether the decision to buy
3 the additional allocation was prudent, but who should pay for it and when. RUCO disputes
4 that 100% of the additional allocation is used and useful to current ratepayers to meet current
5 water demands, but agrees that 35% of the additional allocation could serve as a drought
6 buffer. RUCO is not proposing that the Company be barred recovery of the costs for the
7 remaining 65% of additional allocation. RUCO recommends the Company recover the cost
8 when the remaining 65% of the CAP allocation becomes used and useful.

9 The ROO suggests that such an approach would discourage the Company from
10 making prudent decisions if it was not allowed to recover the entire cost of the investment.
11 Again, RUCO is not suggesting the Company be barred from recovering its costs. RUCO
12 understands that the Commission may be persuaded by the policy arguments. RUCO is also
13 sensitive to the issue that the Company should be encouraged to take advantage of
14 opportunities to obtain water resources when they become available. Accordingly, even
15 though the additional CAP allocation is not needed to meet the needs of the Company's
16 current ratepayers, RUCO has agreed to allow 35% of the additional CAP allocation into rate
17 base as a drought buffer. In light of the Company's admissions regarding limited growth, and
18 the negative growth indicated by the Company's most recent Arizona Department of Water
19 Resources ("ADWR") report, RUCO's position is fair and reasonable. RUCO's
20 recommendation is also fair because it balances the risk. Ratepayers should not bear all the
21 risk of future growth based on what the Company believed at the time was a prudent
22 investment.

1 There are many facts on this record that support RUCO's argument. Mr. Hanford
 2 testified that the Company's future water demand for 2010 and 2016 based on the
 3 Company's 2007 ADWR Annual report. Mr. Hanford estimated that the population of
 4 Fountain Hills would grow by 1,997 in 2010 to approximately 27,388,¹ which would result in
 5 an additional 978 accounts.² Mr. Hanford further estimated that the additional demand in
 6 2010 would be an additional 351 acre-feet.³ In 2016, he estimated the population of Fountain
 7 Hills would grow by 3,452 to approximately 28,843,⁴ which would result in an additional 1,692
 8 accounts.⁵ Based on the Company's estimate of the average acre-feet/account/year of .359,
 9 ⁶ Mr. Hanford estimated that the additional demand in 2016 would be 607 acre-feet.⁷ Mr.
 10 Hanford's calculations can be summarized as follows:

	2010	2016
11		
12	1. Current Population:	25,391
13	2. Number of Residential Accounts:	12,416
14	3. Number People/ Account: (1÷2=3)	2.04
15	4. Anticipated Population:	27,388
16	5. Minus current population	25,391
17	6. Increased Growth Anticipated: (4-5=6)	1,997
18	7. Divided by No/Account	2.04
19	8. Equal no. of new Accounts (6÷7=8)	978
20	9. Multiply Avg. ac/ft/yr	.359
21	10. Additional ac/ft/yr (8x9=10)	351ac/ft/yr
22		607ac/ft/yr ⁸

18 By Mr. Hanford's calculations, the Company will have a need for 18.17% of the
 19 additional CAP allocation by 2010 and 31.43% by 2016. In light of Mr. Hanford's testimony,
 20

21 ¹ T: 80-82, ll.23-17.

22 ² Id. Mr. Hanford estimated the number of people per account by dividing his estimates of the current
 23 population of Fountain Hills by the number of existing accounts. 25,391÷12,416=2.045.

24 ³ T: 83, ll.17-23.

⁴ T: 83-84, ll. 23-17

⁵ Id.

⁶ T: 74

⁷ T: 83-84, ll. 23-17

⁸ Id.

1 RUCO's agreement to provide for the immediate rate base treatment for 35% of the
2 additional CAP allocation is reasonable.

3 The comments of Mayor Jay Schlum and the Company's 2008 ADWR report filed on
4 March 31, 2009 further support RUCO's position. During the public comment, Fountain Hills'
5 Mayor, Jay Schlum, spoke strongly against the rate hike stating that the rate increase as
6 proposed would have an adverse effect on the community.⁹ He stated that the Town of
7 Fountain Hills had issued zero single-family home permits in the current fiscal year.¹⁰ Mayor
8 Schlum's view of future growth is born out in the Company's 2008 ADWR Annual Report.¹¹
9 The 2008 Annual Report reflects a reduction in residential ratepayers. The number of
10 residential ratepayers decreased from 12,416 as reported in the Company's 2007 Annual
11 Report to 12,363 as reported in its 2008 Annual ADWR Report. Mayor Schlum's statements
12 contradict the Company's estimates of future growth and demand and further demonstrate
13 the reasonableness of RUCO recommendation. Based on the foregoing RUCO recommends
14 the changes set forth in Exhibit A, Amendment 1.

15 The ROO concludes that the additional CAP allocation is not for future use. The
16 record indicates otherwise. Given that no more than 35% of the allocation is used and useful
17 as a drought buffer for current ratepayers, than the remaining allocation has to be for future
18 use. Moreover, Ellman Company, a/k/a the Fountain Hills Investment Company, LLC
19 purchased approximately 1300 acres of land from the State Land Department ("Ellman or
20 "Ellman Property").¹² Ellman contemplates development of 1,350 residential units on an
21 unspecified future date. To do so, Ellman must secure a Designation of Assured Water

22 ⁹ T: 8-9

23 ¹⁰ Id.

24 ¹¹ Attached hereto as Exhibit F.

¹² See Payment Extension Agreement between State Land Department and Fountain Hills Investment Company, LLC dated April 1, 2009 and attached hereto as Exhibit G.

1 Supply ("Designation") from Chaparral. In Docket W-0211A-0178, the Company seeks
2 expansion of its CC&N to include the Ellman Property and proposed development. In its
3 Order Preliminary, Decision No. 68238, the Commission conditioned its approval of the
4 CC&N extension on Staff's recommendation that the Company procure additional water
5 sources. Based on the Order Preliminary, the additional CAP water is necessary to provide
6 an expansion of the CC&N and the Designation. Because no more than 35% of the
7 additional CAP allocation is for useful to current ratepayers, the remaining 65% is for future
8 development, i.e. the Ellman Property. Accordingly, the Commission should deny rate base
9 treatment for 65% of the additional allocation until it is used and useful. Current ratepayers
10 should not have to bear the risk of the future development of the Ellman Property. Based on
11 the foregoing, RUCO recommends the following changes set forth in Exhibit 2, Amendment
12 B.

13 The ROO states that RUCO's position on the CAP allocation is that:

14 "The additional CAP allocation should not be put in rate base at all, because
15 doing so would allow the Company to expand its service area as requested in
16 Decision No. 68238 (October 25, 2005) for the benefit of the State Land
17 Department or a developer at the expense of current ratepayer."

18 The wording of the ROO accurately paraphrases part of RUCO's brief, but the
19 characterization might leave one with the mistaken impression that RUCO opposes the
20 development of land purchased from the State Land Department or that RUCO is opposed to
21 expansion of the Company's CC&N. RUCO did not intend to convey such an impression.
22 RUCO takes no position on the propriety of the expansion of the Company's CC&N or the
23 development of State Trust land. RUCO's concern is limited to issue of who should pay for
24 the cost associated with providing the water necessary for future development of lands

1 purchased from the State Land Trust. RUCO opposes cross-generation subsidization, which
2 would require current ratepayers to pay the cost of the additional CAP allocation if the water
3 is intended for the benefit of future ratepayers. By permitting rate base treatment of 100% of
4 the additional CAP allocation as land and land rights in a non-depreciable account, the ROO
5 would disallow amortization expense, but permit the Company to recover one-half of the
6 annual water service capital charge and provide a return on rate base in perpetuity.¹³ RUCO
7 requests that the Commission clarify that RUCO has not opposed the expansion of the
8 Company's service area or development of land purchased from State Trust. Based on the
9 foregoing, RUCO recommends the changes set forth in Amendment 3 in Exhibit C.

10 **2. Although the Commission should allow the shareholders to**
11 **reimbursement its attorneys' fees and costs associated with the**
12 **FHSD settlement, the remainder of the proceeds should be allocated**
13 **to ratepayers.**

14 Fountain Hills Sanitation District ("FHSD") contaminated Chaparral Wells 8 and 9.
15 The Company sued FHSD and FHSD paid the Company \$1.52 million in settlement. The
16 issue here is the distribution of the settlement proceeds. The ROO recommends the
17 shareholders share 50% of the recovery of the FHSD settlement proceeds. For the following
18 reasons, RUCO objects to the ROO's proposed treatment of the FHSD proceeds.

19 Marvin Milsap, a certified public accountant and Staff's expert witness, testified that
20 the compensation for Wells 8 and 9 is not a gain on sale in which both ratepayers and
21 shareholders should share.¹⁴ He correctly pointed out that the assets are fully depreciated
22 and therefore, the shareholders already recovered the full cost of their investment through
23 depreciation expense and received a full return on their investment.¹⁵ He testified that the

23 ¹³ T: 338

24 ¹⁴ Exhibit S-2 at 5-6, 11-15.

¹⁵ T: 416-417, Exhibit S-2, Milsap Direct Testimony at 13. See also, R-10 MEM DR 7.3.

1 shareholders were entitled to no more under the law and RUCO's witness, Tim Coley
2 concurred.¹⁶

3 Pursuant to Bluefield Water Works & Improvement Co. v. Public Service Commission
4 of West Virginia and Federal Power Commission v. Hope Natural Gas Company, a public
5 utility that is efficiently and economically managed is entitled to recover the cost of its
6 investment and a reasonable return thereon.¹⁷ In this case, the Company has received the
7 full return of its investment through depreciation expense. Although Robert N. Hanford, the
8 Company's witness, may have testified inconsistently on the issue,¹⁸ in his response to the
9 Staff Data Request MEM 7.3, Mr. Hanford admitted unequivocally:

10 *...both wells were constructed over 36 years ago and have been fully*
11 *depreciated and have no impact on rate base in the instant case.*¹⁹

12 Moreover, the Company acknowledged that it has been receiving a return on its
13 investment in Wells 8 and 9 for more than a 30-year depreciation period.²⁰ Mr. Hanford
14 admitted that both wells are fully depreciated; the Company has received its return on and of
15 the investment.²¹ Mr. Hanford admitted that the \$1.52 million dollars was compensation for
16 the cost to replace the amount Well 9 would have produced over the remainder of its useful
17 life.²²

18 It would be contrary to the law and unfair to ratepayers to permit the shareholders to
19 continue to recover on an investment for which they have been fully compensated. The

20
21 ¹⁶ T: 255-278, Exhibit R-8, Coley Surrebuttal Testimony at 19.

¹⁷ Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia, 262 U.S.
22 679(1923) and Federal Power Commission v. Hope Natural Gas Company 320 U.S. 391(1944)

¹⁸ T: 105, ll.3-13

¹⁹ T: 255-278, 416-417, Exhibit S-2 at 13. See also, Exhibit R-10 MEM DR 7.3.

²⁰ T: 106, Exhibit R-10 MEM 7.3.

²¹ T: 97, ll.11-25, T: 106, Exhibit A-2 Hanford's Rebuttal Testimony, p. 4, ll. 19-23.

²² T: 100, Exhibit A-1, Hanford's Direct Testimony, p. 10, ll. 11-13, Exhibit S-2, Millsap's Direct
24 Testimony, p. 13, T: 416-417.

1 Company claims that consistent with the Decision No. 66849, involving Arizona Water
2 Company's Eastern Group, the Commission should split the recovery 50/50.²³ RUCO and
3 the Staff disagree with the Company. In Decision No. 66849, there was no evidence that the
4 contaminated wells were fully depreciated as they have been in this case.²⁴ In Decision No.
5 66849, the Commission noted the settlement included the drilling of replacement wells
6 assuring that ratepayers would be provided with the benefit of future quantities of water for a
7 number of years.²⁵ In this case, Chaparral ratepayers did not receive replacement wells or
8 an assurance of the benefit of future quantities of water.²⁶ Indeed, Chaparral's ratepayers will
9 have to pay for replacement water.²⁷ Given these differences, it is only fair that Chaparral's
10 ratepayers receive the full benefit of the settlement minus the \$30,000 necessary to
11 reimburse the Company for its attorneys' fees and costs incurred in prosecuted the matter.
12 Based on the foregoing RUCO recommends the changes set forth in Amendment 4 in Exhibit
13 D.

14
15
16 **3. The Commission should not compel ratepayers pay for the**
17 **shareholders' appeal.**

18 The ROO grants the Company \$100,000 in compensation for attorney's fees and
19 costs for both the appellate and remand proceedings. RUCO respectfully disagrees with any
20 award of fees as compensation for the appellate court action Chaparral City Water v. ACC, et
21 al., Case No. CC-CA 05-0002 because it would undermine good public policy and is patently

22 ²³ T: 30, Exhibit A-9, ACC Decision No. 66849.

23 ²⁴ Exhibit A-9.

24 ²⁵ Id. at 34, ll. 23-28

²⁶ T: 275-276.

²⁷ Id.

1 unfair to ratepayers. The pursuit of the appeal was discretionary. The Company's goal on
2 appeal as it continues to be in the Company's second appeal, to force the Commission to
3 apply the weighted average costs of capital to the Fair Value Rate Base. The Company's
4 goal is to increase shareholder returns. This goal is contrary to ratepayers' interests.
5 Ratepayers already pay the litigation expense associated with Staff and RUCO's defense of
6 these multiple appeals. Ratepayers should not also have to pay for the Company's pursuit of
7 greater shareholder returns. RUCO objects to rate case expense associated with appeal
8 actions when the sole function of the action was the pursuit of additional returns for
9 shareholders.

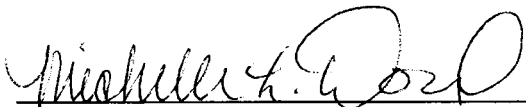
10 The Company purports to have spent \$500,000 to pursue the appeal and remand.
11 The Company sought the appeal on multiple grounds. The cumulative intent of the litigation
12 was to achieve a greater rate of return for shareholders. The Court of Appeals denied relief
13 on all grounds and did not issue a final judgment based on a full adjudication on the merits.
14 Instead, the Court remanded the matter to the Commission for redetermination of the fair
15 value rate of return. After remand proceedings concluded, the Company's shareholders
16 derived an additional \$12,000 in required revenue.

17 Permitting utilities to recover its rate case expense for an appeal intended solely to
18 benefit shareholders leaves utilities with the expectation that they can pursue any lawsuit
19 with no worry of the costs associated therewith because captive ratepayers will pick up the
20 tab. A policy which compensates utilities for the pursuit of shareholder lawsuits, encourages
21 a lack of restraint and undermines the appropriate cost benefit analysis of the risks and
22 benefits of litigation. The fact that the Company spent \$500,000 to recover an additional
23 \$12,000 in required revenue could not be clearer proof of RUCO's concerns. RUCO believes
24

1 that, consistent with good public policy, the Company should pay the costs for its business
2 decision to pursue an appeal for its shareholders and its request for rate case expense
3 associated with the appeal should be denied.

4 Last, the Company did not recover an award of attorneys' fees and costs on appeal.
5 RUCO submits that if the Company was unable to recover attorneys' fees and costs from the
6 Court of Appeals, it should not be allowed to do so as rate case expense. Based on the
7 foregoing RUCO recommends that the Order be modified to reduce the \$100,000 for the
8 amount the Commission feels is attributable to the appellate action. RUCO's recommended
9 changes are set forth in Amendment 5, Exhibit E attached hereto.

10 RESPECTFULLY SUBMITTED this 2nd day of October, 2009

11
12
13 
14 Michelle L. Wood
15 Counsel

16 AN ORIGINAL AND THIRTEEN COPIES
17 of the foregoing filed this 2nd day
18 of October 2009 with:

19 Docket Control
20 Arizona Corporation Commission
21 1200 West Washington
22 Phoenix, Arizona 85007
23
24

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COPIES of the foregoing hand delivered/
mailed this 2nd day of October 2009 to:

Teena Wolfe
Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Janice Alward, Chief Counsel
Legal Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Steve Olea, Director
Utilities Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

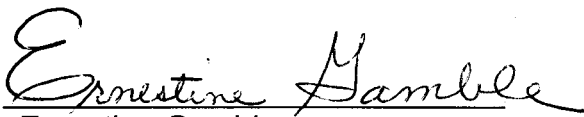
Robin Mitchell, Counsel
Legal Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Norman D. James
Jay L. Shapiro
Fennemore Craig , P.C.
3003 N. Central Avenue, Suite 2600
Phoenix, Arizona 85012

Phil Green
OB Sports F.B Management (EM), LLC
7025 E. Greenway Parkway, suite 550
Scottsdale, AZ 85254

Dale E. Hawley, Assistant Vice
President
Counsel, Law Department
Pacific Life Insurance Company
700 Newport Center Drive
Newport Beach, CA 92660-6397

Craig A. Marks
Craig A. Marks, PLC
10645 N. Tatum Blvd.
Suite 200-676
Phoenix, AZ 85028

By 
Ernestine Gamble

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Exhibit A
RUCO's Amendment No. 1

Delete page 16, lines 11-16 and insert the following:

RUCO argues that to reach the Staff's projection, CCWC would have to establish 334 new accounts per year from 2007 through 2012. In fact, the Company's 2007 and 2008 annual ADWR reports demonstrate that the Company is not meeting its expected growth and demand estimates and is actually experiencing negative growth. Given the foregoing, we do not agree with Staff that the 50% of the CAP allocation would be used and useful by 2012.

Delete page 17, line 10-20 and insert the following:

The application process for the available additional CAP allocations was a competitive one that considered the applicants' needs under the Third Management Plan. Of fifty-three applicants seeking a portion of the 65,647 acre-feet of CAP water available for reallocation, only twenty-six applicants were considered in the first round, and CCWC was one of twenty who were subsequently given the opportunity to purchase an additional CAP allocation. Based on the factual record in this case, we agree that CCWC acted prudently under the circumstances in purchasing the \$1.28 million additional CAP allocation.

Although the expenditure was prudent, the additional CAP allocation is not used and useful to current ratepayers. The evidence demonstrates that by the most favorable estimates, the Company may need 18% to 31% of the water by year 2016. The Company's estimates are undermined by their most recent annual ADWR reports that reflect negative growth. Although we agree with Staff that the additional CAP allocation may serve as a drought buffer, we do not agree that 50% of the allocation will be used and useful by 2012 or that 100% of the allocation is needed as a drought buffer.

The Company is not meeting its expected growth and demand. The Company has experienced negative growth between 2007 and 2008 as evidenced by its ADWR annual reports. Accordingly, we agree with RUCO that 35% of the additional CAP allocation may be included in rate base as a drought buffer and classified as a plant-in-service component of Land and Land Rights, not subject to amortization. The Company may defer 65% of the CAP M & I charges subject to the requirements and conditions set forth herein.

Make all conforming changes.

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Exhibit B
RUCO's Amendment No. 2

Delete the language on page 13, line 18 through page 14, line 6 and insert:

In Docket No. W-02113A-05-0178, the Company seeks to expand its CC&N to include 1,350 residential units purchased by the Ellman Company, a/k/a the Fountain Hills Investment Company from the State Land Trust. In its Order Preliminary, Commission adopted Staff's recommendation and conditioned approval on the Company's procurement of additional water sources. To the extent that the additional CAP allocation is for future development, it should not be provided rate base treatment until it is used and useful. Although current ratepayers do not need the additional CAP allocation to meet current water demands, an argument could be made that some portion of the additional allocation could be useful as a drought buffer. For the reasons more fully set forth below, we agree with RUCO that 35% of the additional CAP allocation may be included in rate base as a drought buffer and classified as a plant-in-service component of Land and Land Rights, not subject to amortization. The Company may defer 65% of the CAP M & I charges subject to the requirements and conditions set forth herein.

Make all conforming changes.

Exhibit C
RUCO's Amendment No. 3

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Add the following language to page 13, line 2:

RUCO argues that the Order Preliminary indicated that the Company had sufficient source and storage capacity to serve up to 18,000 customers and is concerned that current ratepayers will bear the full cost of the additional CAP allocation "while the true beneficiaries, the subdivision developer and/or the State, receive the benefit." RUCO takes no position on the propriety of the CC&N expansion or the development of State Land. While additional water may be necessary to provide a Designation of Assured Water Supply ("Designation") to develop the State Land, RUCO disagrees that the expense of doing so should fall on the shoulders of current ratepayers. If the extension is for the benefit of the State Land Department to achieve a higher sales price on the land, all taxpayers will benefit and therefore all taxpayers, not just Chaparral's ratepayers, should bear the cost. If the purpose of the Designation is to benefit an individual subdivision developer to develop the land, the costs should fall upon the developer. If the Commission adopts the position suggested by Staff and the Company, Chaparral's ratepayers will bear the full cost and risk of future development while the true beneficiaries pay nothing and receive the full benefit.

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**Exhibit D
RUCO's Amendment No. 4**

Delete paragraph beginning at page 9, line 2 and ending at page 10, line 5 and insert the following:

As RUCO points out and the Company admits Wells 8 and 9 are fully depreciated. The Company and its shareholders have received the full return of and on their investment in Wells 8 and 9 and are entitled to no more. Under these facts permitting the shareholders to share in the proceeds of the settlement would amount to an impermissible windfall. We are cognizant that the Company spent \$30,000 in attorneys' fees and costs in pursuing the resolution with the FHSD. Although the Company indicated it would be willing to waive its right to compensation of fees, we hereby grant \$30,000 of the proceeds to the Company in compensation for reimbursement of the attorneys' fees and costs incurred in pursuing the matter on behalf of ratepayers and allocate the remaining settlement proceeds to the ratepayers.

Make all conforming changes.

Exhibit E
RUCO's Amendment No. 5

Delete page 28, line 11 through page 29, line 10 and insert the following

In its appeal of Decision No. 68176 in the Company's prior rate case, the Company sought additional operating income based on multiple theories. The Court of Appeals did not reach a final adjudication on the merits. The Court of Appeals denied all requested relief, except with regard to the manner in which the Commission computed its fair value rate of return. With regard to that issue, the Court of Appeals remanded the matter for determination by the Commission. A remand is not a final adjudication on the merits.

Although the Commission has the authority to award rate case expense in rate proceedings, it declines to do so under the circumstances of this case. RUCO asserts that compensating a utility for unfettered pursuit of shareholder lawsuits without consideration of the costs and benefits associated therewith encourages a lack of restraint. Chaparral's expenditure of \$500,000 to recover and an additional \$12,000 in operating income could not be clearer proof of the concerns raised by RUCO. But for its status as a regulated monopoly and the existence of its captive ratepayers, we doubt the Company would have pursued a \$500,000 lawsuit for the potential benefit of an additional \$12,000 in required revenue. Granting rate case expense for the pursuit of the shareholder lawsuit, on these circumstances, undermines the appropriate analysis of the risks and benefits of litigation. Moreover, we are cognizant of the fact that the Court did not award attorneys' fees and costs to the Company. Accordingly, if the Company could not or did not recover fees and costs on appeal, we see no reason to grant recovery on remand. We therefore grant the Company \$_____rate case expense for the remand proceeding and nothing for the appeal action.

Make all conforming changes.

Exhibit F

ARIZONA DEPARTMENT OF WATER RESOURCES, 3550 NORTH CENTRAL AVENUE, PHOENIX, AZ 85012-2105
ANNUAL WATER WITHDRAWAL AND USE REPORT
PROVIDER SUMMARY 2008

A
A
E
F1
F2
W

OWNER OF GROUNDWATER RIGHT

CHAPARRAL CITY WATER CO.
 ATTN: ROBERT HANFORD
 12021 N PANORAMA
 FOUNTAIN HILLS AZ 85268

MAR 31 2009

TYPE OF RIGHT
 LARGE MUNICIPAL PROVIDER

RIGHT / PERMIT NO.
 56-002011.0000



PHOENIX AMA (602) 771-8585

REPORTING PARTY
 56-002011.0000
 HANFORD, ROBERT
 12021 N PANORAMA
 FOUNTAIN HILLS AZ 85268

CC
 \$3,249.00

If any of the information preprinted on this report is incorrect, please make the necessary changes.

PART I GROUNDWATER WITHDRAWN

From Box 14. Schedule A attached

1083 X \$ 3.00 = \$ 3,249

ACRE - FEET X Withdrawal Fee =

PART II WATER DELIVERED TO OTHER RIGHTS

From Box 24 Schedule D attached

0 ACRE - FEET

PART III WATER RECEIVED FROM OTHER RIGHTS

Total from Schedule E attached

5,684 ACRE - FEET

PART IV LATE FEES

Complete if filing after March 31. NOTE: A portion of a month after March 31 is counted as a full month.

—

1) Enter number of months late
 (Maximum of 6)

\$ —

2) Calculate Late Report Fee
 (\$25.00 X number of months late)

\$ —

3) Calculate Late Payment Fee
 (10 % X number of months late X
 withdrawal fee calculated in Part I)

PART V TOTAL FEES DUE

Add amounts from Parts I and IV

\$ 3,249

Mail or hand deliver this report, together with the appropriate schedules, worksheets and fees to the Arizona Department of Water Resources. If mailed, the report must be postmarked no later than March 31, 2009. If hand delivered, the report must be received by the Department's Records Management Unit or local AMA office no later than 5:00 PM on March 31, 2009.

REPORTS FILED AFTER MARCH 31, 2009 ARE SUBJECT TO LATE FEES (A.R.S. § 45-632) AND PAYMENT OF PREVIOUSLY WAIVED MONETARY PENALTIES ASSOCIATED WITH PRIOR GROUNDWATER CODE VIOLATIONS.

I hereby certify, under penalty of perjury, that the information contained in this report is, to the best of my knowledge and belief, true, correct and complete.

X Robert Hanford District Manager 3/31/09
 AUTHORIZED SIGNATURE TITLE DATE
Robert Hanford
 PRINTED NAME
 480-837-3411
 TELEPHONE NUMBER

SCHEDULE F-1 PART 1

POPULATION

ANNUAL REPORT 2008

PROVIDER NAME

1

CHAPARRAL CITY WATER CO

RIGHT/PERMIT NO.

56-002011.0000

Pursuant to the Third Management Plan, municipal water providers are required to supply the following information. This information is used to determine actual and target GPCD numbers for Large Municipal Providers and for planning information for Small Municipal Providers.

DEFINITION OF A HOUSING UNIT

A housing unit means a group of rooms or a single room occupied as separate living quarters. Examples of a housing unit include a single-family home, a townhouse, a condominium, an apartment, a permanently setup mobile home or a unit in a multi-family complex. A housing unit may be occupied by a family, a family and unrelated persons living together, two or more unrelated persons living together, or by one person. The number of housing units is *not* the number of service connections. Mobile homes in an overnight or limited-stay mobile home park or a unit in a campground, motel, hotel, or other temporary lodging facility are not considered housing units.

SINGLE-FAMILY HOUSING

A single-family housing unit is a detached dwelling. Include mobile homes *not* located in a mobile home park.

Single-Family Housing	Housing Units
Single-family housing units (<i>not service connections</i>) as of July 1, 2007 .	2 8,156
Indicate the net change (added and deleted) of single-family housing units (<i>not service connections</i>) in your service area between July 1, 2007 and July 1, 2008 .	3 —
Total single-family housing units (<i>not service connections</i>) as of July 1, 2008 .	4 8,156

MULTI-FAMILY HOUSING

A multi-family housing unit is a mobile home in a mobile home park or any permanent housing unit having one or more common walls with another housing unit located in a multi-family residential structure, including a unit in a duplex, triplex, four-plex, condominium development, townhouse development or apartment complex. Include mobile homes if they are located in a mobile home park. Do not include mobile homes that are located in an overnight or limited stay mobile home park.

Multi-Family Housing	Housing Units
Multi-family housing units (<i>not service connections</i>) as of July 1, 2007 .	5 4,207
Indicate the net change (added and deleted) of multi-family housing units (<i>not service connections</i>) in your service area between July 1, 2007 and July 1, 2008 .	6 —
Total multi-family housing units (<i>not service connections</i>) as of July 1, 2008 .	7 4,207

Please contact your local Active Management Area if you need assistance completing this form.

SCHEDULE AWS

**ASSURED WATER SUPPLY SUPPLEMENT
FOR DESIGNATED PROVIDERS
ANNUAL REPORT 2008**

Designated Provider

CHAPARRAL CITY WATER CO

Right No.

56-002011.0000

PART 4 - TOTAL WATER WITHDRAWN, DIVERTED OR RECEIVED - PHYSICAL AVAILABILITY REQUIREMENT

Please show all sources of water withdrawn, received or diverted in 2008. Refer to Schedule A for the total volume of water withdrawn in 2008. Subtract out deliveries to other rights in the rows indicated below. Water received should match Schedule E. Water delivered should match Schedule D. The total volume of water pumped as reported on Schedule A should match the total water withdrawn on line D.1 in the table below.

The total physically, legally and continuously available supply listed below is provided for your reference:

1. Total water physically, legally and continuously available per designation order	9828	af
---	------	----

A. CAP Water:

1. CAP received directly (do not include CAP storage credits recovered or CAP stored)	5,684	af
2. CAP delivered directly to other rights (do not include individual user deliveries)	-	af
3. Part 4.A.1 - Part 4.A.2 (total CAP for use within the service area in 2008)	5,684	af

B. Surface Water:

1. Surface water received directly (do not include surface water storage credits recovered or surface water stored)	-	af
2. Surface water delivered directly to other rights (do not include individual user deliveries)	-	af
3. Part 4.B.1 - Part 4.B.2 (total surface water for use within the service area in 2008)	-	af

C. Effluent:

1. Effluent received directly (do not include effluent storage credits recovered or effluent stored)	-	af
2. Effluent delivered directly to other rights (do not include individual user deliveries)	-	af
3. Part 4.C.1 - Part 4.C.2 (total effluent for use within the service area in 2008)	-	af

D. Water Withdrawn and Groundwater Received for Use in the Service Area in 2008:

1. Total Water Withdrawn (include water storage credits recovered and exchange water)	1,083	af
2. Groundwater Received from other rights	-	af
3. Groundwater delivered to other rights (do not include individual user deliveries)	-	af
4. Part 4.D.1 + Part 4.D.2 - Part 4.D.3 (total withdrawn water and groundwater received 2008)	1,083	af

Note: Pursuant to the Assured and Adequate Water Supply Rules the director shall consider recovered storage credits when determining physical availability of groundwater.

PART 5 - GROUNDWATER WITHDRAWALS - CONSISTENCY WITH GOAL REQUIREMENT

A. Total Groundwater for Use within the Service Area in 2008:

1. Total from Part 4.D.4 above	1,083	af
2. Water Withdrawn as Recovered Long-Term Storage Credits	-	af
3. Water Withdrawn as Recovered Annual Storage Credits	-	af
4. Part 5.A.1 - Part 5.A.2 - Part 5.A.3 (total groundwater for use in 2008)	1,083	af

B. Groundwater Exemptions:

1. Total Groundwater from Part 5.A.4 above	1,083	af
2. Poor Quality Groundwater Withdrawn *	-	af
3. Water Logged Groundwater Withdrawn *	-	af
4. Drought Exemption Groundwater Withdrawn **	-	af
5. Part 5.B.1 above - sum of Parts 5.B.2 through 5.B.4 above	1,083	af
6. Amount from line 5.B.5 above reported to the CAGRD as Excess Groundwater	72.6	af
7. Part 5.B.5 above - Part 5.B.6 (groundwater subtracted from allowance account) ***	357	af

* Note: Poor quality groundwater and water logged groundwater must be listed on the designation order to qualify for subtraction here.

** Note: Drought exemption groundwater must be applied for in writing for each year in which the exemption is requested.

*** Note: For information on your groundwater account balance, contact the Office of Assured and Adequate Water Supply.

Please contact the Office of Assured and Adequate Water Supply if you need assistance completing this form.

Exhibit G

copy

**PAYMENT EXTENSION AGREEMENT
(CERTIFICATE OF PURCHASE NO. 53-110233)**

This Payment Extension Agreement (the "Extension Agreement") dated as of April 1, 2009 in respect of Certificate of Purchase No. 53-110233 dated March 15, 2007 (the "CP"), is made by and between Fountain Hills Investment Company, LLC, a Delaware limited liability company ("Purchaser"), and the State of Arizona (the "State"), acting by and through the State Land Department of the State of Arizona (the "ASLD"), acting by and through the State Land Commissioner.

WITNESSETH:

WHEREAS, Purchaser is the holder of the CP, which was executed by Ellman Holdings, Inc., an Arizona corporation (the "Original Purchaser"), as purchaser thereunder, and assigned by the Original Purchaser to Purchaser on August 6, 2007;

WHEREAS, pursuant to A.R.S. § 37-247(C), the State Land Commissioner has authority to enter into this Extension Agreement to extend the time for payment of amounts due under the CP on the terms and conditions set forth in this Extension Agreement.

NOW, THEREFORE, for good and valuable consideration, the legal sufficiency of which is hereby acknowledged, the Purchaser and the State agree as follows:

1. Conditions for Payment Extension. Subject to Purchaser's compliance with the terms and provisions of this Extension Agreement, the payments which are due by Purchaser under the CP are hereby revised as follows:

(a) March 15, 2009 Principal Payment. The March 15, 2009 Principal Payment of \$960,531.45 shall be due and payable concurrently with the execution of this Extension Agreement.

(b) March 15, 2009 Interest Payment. The March 15, 2009 interest payment of \$10,854,236.89 shall be payable in three (3) equal installments of \$2,713,559.22 each on the following dates: March 15, 2011, March 15, 2012, and March 15, 2013, and on March 15, 2014, a final installment of \$2,713,559.23.

(c) March 15, 2010 Principal Payment. The March 15, 2010 Principal Payment of \$1,066,643.08 shall be due and payable on March 15, 2010.

(d) March 15, 2010 Interest Payment. The March 15, 2010 interest payment of \$10,748,125.26 shall be payable in three (3) equal installments of \$2,687,031.32 each on the following dates: March 15, 2011, March 15, 2012, and March 15, 2013, and on March 15, 2014, a final installment of \$2,687,031.30.

2. Waiver. Provided each of the above payments set forth in Paragraph 1 are paid as and when due pursuant to the terms and provisions of Paragraph 1, the execution of this Extension Agreement by State shall constitute a waiver of any default by Purchaser under the CP relating to the March 15, 2009 Interest Payment and the March 15, 2010 Interest Payment,

provided, however, this waiver shall not constitute a waiver of any rights of the State to enforce the terms and conditions of the CP or this Extension Agreement hereafter.

3. Entitlements.

(a) Definitions. Each of the following terms shall have the meaning ascribed thereto:

"Ancillary Documents" shall mean each of the following: (i) a development agreement between the Town of Fountain Hills (the "Town") and Purchaser, as authorized pursuant to Town Resolution No. 2008-24; (ii) an agreement between Purchaser and the Chaparral City Water Company for the extension of water utilities to the Property, together with a final order from the Arizona Corporation Commission permitting water service to the Property to meet the needs of the development of the Property pursuant to the Town Rezoning Approvals; (iii) an annexation agreement between Purchaser and the Fountain Hills Sanitary District; (iv) a reclaimed water distribution agreement(s) between Purchaser and each of the Fountain Hills Sanitary District and the Fountain Hills Unified School District; and (v) any and all plats of subdivision submitted by Purchaser with respect to the development of the Property pursuant to the Entitlements and Ancillary Documents listed in clauses (i) through (iv) of this definition.

"Appellate Determination Date" means the date on which the Arizona Supreme Court issues its mandate order confirming that it has ruled in favor of Plaintiff/Appellee/Petitioner, Sherry Sklar ("Sklar") and against Intervenor/Appellants/Respondent, Save Our Small Town of 2008-RF-001-01, et al. ("SOST") on all issues raised in the SOST's Petition for Review in Arizona Supreme Court No. CV-08-0400-PR (the "Petition for Review"), such that Fountain Hills Resolution No. 2008-25 and Fountain Hills Ordinance No. 08-12 are no longer subject to the referendum challenge that is the subject of the Petition for Review and that the time for further appeal(s) or motion(s) for reconsideration has expired and the matter fully concluded, provided, however, that if the Arizona Supreme Court remands any portion of the dispute to a lower court for further proceedings, then the "Appellate Determination Date" shall mean the date on which that such further proceedings and all subsequent appeals (if any) are concluded with finality in favor of Sklar and against SOST on all issues.

"Election Determination Date" means the date on the results of an election by the voters of the Town approving Town Council's 2008 adoption of Fountain Hills Resolution No. 2008-25 and Fountain Hills Ordinance No. 08-12 have been duly certified and the time for any legal challenge to such election results has expired according to applicable law.

"Entitlements" shall mean the development of the Property in accordance with the terms and provisions of the following (collectively, the "Town Rezoning Approvals"): (i) Town Resolution No. 2008-25; (ii) Town Ordinance No. 08-12; and (iii) Town Resolution No. 2008-2; and (iv) the Ancillary Documents, all of the foregoing for the purpose of developing the Property with 1,350 residential units, increased open space, the relocation of a public park to a central location adjacent next to the existing middle school to the south of the Property, and the relocation of the existing major road to the center of the Property, all as more graphically depicted on the preliminary plan attached hereto as Exhibit E.

"Entitlement Application Materials" shall mean all studies, plans and specifications (including by way of illustration and not limitation all environmental, hydrologic and traffic studies and engineering, lighting, landscaping and water/sewer plans) submitted by Purchaser to the Town in support of Purchaser's obtaining the Entitlements.

"Estimated Entitlement Costs" shall mean the estimated costs to pursue the Entitlements, totaling \$2,075,000.00, as more fully set forth on Exhibit A attached hereto; "Entitlement Costs" shall mean the amounts expended by Purchaser (as applied towards categories itemized on Exhibit A) after the date of this Extension Agreement in order to obtain the Entitlements.

"Property" shall mean the real estate which is the subject of the CP.

(b) Notice of Appellate Determination Date or Election Determination Date. Purchaser shall provide written notice to ASLD no later than ten (10) days after the occurrence of the Appellate Determination Date or Election Determination Date, whichever occurs first.

(c) Review of Entitlement Application Materials. Commencing on the first day of the first calendar quarter following the first to occur of the Appellate Determination Date or Election Determination Date, Purchaser shall deliver to ASLD a report (the "Quarterly Entitlement Report") setting forth the status of the Entitlements and itemizing the Entitlement Application Materials prepared during the then expiring calendar quarter. ASLD shall have the right to request copies of any of the Entitlement Application Materials listed in the applicable Quarterly Entitlement Report for review, which review may in all cases at ASLD's election be waived in whole or in part from time to time. In no event shall ASLD be deemed to be a partner or joint venturer with Purchaser in any capacity with respect to the Entitlements. ASLD's review shall be performed for the sole purpose of determining that Purchaser is pursuing the Entitlements in accordance with the Town Rezoning Approvals.

4. Letter of Credit. As consideration for the payment extensions provided to Purchaser under this Extension Agreement, Purchaser shall, within sixty (60) days following the Appellate Determination Date or the Election Determination Date, whichever first occurs, deposit with the ASLD an irrevocable evergreen letter of credit (the "Letter of Credit") in a form that complies with this Section 4.

(a) Amount and Form of Letter of Credit. The Letter of Credit shall be in an amount equal to \$2,000,000 and shall be in the form attached hereto as Exhibit B, payable to the ASLD. The Letter of Credit shall be issued by a lending institution that is insured by the Federal Deposit Insurance Corporation and either (a) has a branch office located in Phoenix, Arizona where draws can be presented, or (b) has established a confirming bank relationship with a bank having a branch located in Phoenix, Arizona (an "Issuer").

(b) Draw on Letter of Credit. In the event that Purchaser has received a notice of default from ASLD pursuant to A.R.S. §37-247(A) (a "Default Notice"), and should such Default Notice result in a final cancellation of the CP under §37-247(B) after the expiration of all statutory notice, cure and appeal periods provided under A.R.S. §37-247, ASLD may, from and after such final cancellation of the CP, and without further notice to Purchaser, draw upon the Letter of Credit (or replacement Letter of Credit, as applicable) in the then full amount thereof. ASLD shall have the right in its sole discretion to apply the amount drawn against the Letter of Credit (or replacement Letter of Credit, as applicable) either: (x) to pay such Entitlement Costs as ASLD in its sole discretion elects to pay; or (y) apply such funds as ASLD may otherwise

determine in its sole and absolute discretion, including but not limited to any payments of principal and interest then outstanding under the CP in such order as ASLD in its sole election determines (including but not limited to any amounts for which payment has been extended pursuant to this Extension Agreement). In no event shall ASLD be required to complete any Entitlements.

(c) Reduction of Letter of Credit. Purchaser shall be entitled to reduce the amount of the Letter of Credit by providing written notice (the "Reduction Notice") to ASLD of the amount expended by Purchaser for the Entitlement Costs (each, a "Reduction Amount"). The Reduction Notice shall be certified by an authorized officer of Purchaser and shall: (A) set forth the amount of the reduction, which shall be equal to the amount expended by Purchaser for the Entitlement Costs, less any prior reductions in the Letter of Credit, and (B) include evidence reasonably satisfactory to ASLD that Purchaser has expended such funds. Each reduction in the amount of the Letter of Credit shall be in an amount no less than \$100,000, save and except that if the remaining amount of the Letter of Credit after giving effect to all previous reductions is less than \$100,000, then the amount of any subsequent reduction(s) may be less than \$100,000. Within ten (10) business days following Purchaser's delivery of a Reduction Notice, ASLD shall execute and deliver to the issuer of the Letter of Credit a reduction certificate in the amount set forth in such Reduction Notice in a form reasonably acceptable to such issuer of the Letter of Credit.

(d) Release of Letter of Credit. Once Purchaser has paid at least \$2,000,000 in Entitlement Costs (as confirmed in writing from Purchaser to ASLD, certified by an officer of Purchaser and containing an itemization reasonably satisfactory to ASLD), the Letter of Credit shall be released and upon Purchaser's request ASLD shall execute and deliver a written release in a form reasonably acceptable to the issuer of the Letter of Credit.

(e) Expiration: Renewal. If the Letter of Credit has not been renewed and has not been replaced by a new letter of credit (with an expiration date that is at least one (1) year later than the then-existing expiration date) by the date that is fifteen (15) days prior to the scheduled expiration date of the Letter of Credit (the "Presentation Date"), then ASLD is hereby irrevocably authorized and directed to present the Letter of Credit for full payment prior to its expiration date, and at its election apply the all such drawn funds drawn from the Letter of Credit either (i) to the payment of any remaining Entitlement Costs; or (ii) any payments of principal and interest then outstanding under the CP in such order as ASLD in its sole election determines (including but not limited to any amounts for which payment has been extended pursuant to this Extension Agreement); provided, however, that in the event that a Default Notice has been received by Purchaser and the expiration of all statutory notice and cure periods associated with such Default Notice will not have expired by the Presentation Date, Purchaser shall have the right to elect in its sole and unfettered discretion, in writing to ASLD on or before ten (10) days prior to the Presentation Date, to either:

(1) renew the Letter of Credit or replace the Letter of Credit with a new letter of credit(s) (with ASLD authorized to draw upon the same in accordance with Paragraph 4(b), above); or

(2) direct ASLD to draw upon the Letter of Credit in the then full amount thereof, with ASLD (concurrently therewith) directing the Issuer in writing (with copy delivered to Purchaser) to place the full amount drawn into an interest-bearing escrow account (the "Escrow Account") with First American Title Insurance Company (Attention: Carol Peterson), 2425 East Camelback Road, Suite 300, Phoenix, Arizona 85016 ("Escrow Agent"), with Escrow Agent directed in writing to administer and disburse said funds at

the direction of the ASLD as though it were the Issuer of the Letter of Credit. For the avoidance of doubt, disbursements from the Escrow Account shall be made in the same manner as provided for in Paragraphs 4(b), 4(c) and 4(d), above, and whenever Paragraph 4(c) or Paragraph 4(d) call for a reduction in a Letter of Credit or a cancellation of the Letter of Credit, that (but for the establishment of the Escrow Account) would have resulted in the ASLD issuing a "Reduction Certificate" or "Cancellation Certificate" under the Letter of Credit, then the ASLD shall instead issue disbursement directions to Escrow Agent directing Escrow Agent to in the first instance release to Purchaser the funds that would have reduced the Letter of Credit pursuant to a "Reduction Certificate", or in the second instance (in lieu of a "Cancellation Certificate") release to Purchaser all remaining funds in the Escrow Account.

In the event that Purchaser for whatever reason fails to timely make the election as called for above, then Purchaser shall be deemed to have elected item (2), above.

5. Security Interest in Plans and Specifications. The term "Plans and Specifications" shall mean the plans and specifications prepared by Purchaser's architects and engineers (each, an "Architect/Engineer") in connection with achieving the Entitlements. As additional consideration for the State's agreements set forth in this Extension Agreement, Purchaser hereby grants the State a security interest in the Plans and Specifications (the "Security Interest") to secure the obligations of Purchaser under this Extension Agreement and the CP. The State shall be deemed a secured party under the Arizona Uniform Commercial Code, as in effect from time to time, or under the Uniform Commercial Code in force in any other state to the extent the same is applicable law. Purchaser shall within ten (10) days after the date of this Agreement file a UCC-1 Financing Statement with the Arizona Secretary of State, all for the purpose of granting the State a security interest in the Plans and Specifications and containing the collateral description attached hereto as Exhibit C (the "Financing Statement"). Concurrently with the execution of this Agreement, Purchaser shall deliver to ASLD an executed Assignment of Plans and Specifications in the form attached hereto as Exhibit D. Purchaser shall obtain countersigned copies of the Assignment of Plans and Specifications wherein indicated from Purchaser's Architects/Engineers. Upon Purchaser's payment of all principal and interest outstanding under the CP (including but not limited to any amounts for which payment has been extended pursuant to this Extension Agreement), the Security Interest and Financing Statement shall be promptly released by the State.

6. Representations and Warranties: Purchaser hereby represents and warrants to the State as follows:

(a) No other person or entity that is related to or affiliated in any way with Purchaser has any interest in the claims, demands, obligations, or causes of action referred to in this Extension Agreement, Purchaser has the sole right and exclusive authority to execute this Agreement, and Purchaser has not sold, assigned, transferred, conveyed, or otherwise disposed of any of its rights and obligations under the CP.

(b) In entering into this Extension Agreement, Purchaser represents that Purchaser has relied on the legal advice of Purchaser's attorneys, who are attorneys of Purchaser's own choice, Purchaser has read and understood all terms of this Extension Agreement, the legal consequences of this Extension Agreement have been explained to Purchaser by Purchaser's attorneys and those terms were fully understood and voluntarily accepted by Purchaser.

(c) Purchaser is organized and in good standing in the State of Delaware and authorized to conduct business in the State of Arizona.

7. Default. Purchaser's failure to perform any of the obligations under this Extension Agreement shall be deemed a default under the CP and under A.R.S. §37-247(A).

8. Miscellaneous.

(a) Notices. All notices or other communications required or provided to be sent by the State or Purchaser pursuant to this Extension Agreement shall be in writing, shall be addressed to the party at the address appearing for such party herein below, and shall be sent by: (i) United States Postal Service, postage prepaid, certified, return receipt requested; (ii) any nationally known overnight delivery service; (iii) courier; or (iv) in person. All notices shall be deemed to have been given upon delivery to the appropriate address:

STATE Arizona State Land Department
 1616 West Adams
 Phoenix, AZ 85007
 Attn: Arizona State Land Commissioner

With a copy to: Attorney General's Office
 Natural Resources Section
 1275 West Washington
 Phoenix, Arizona 85007
 Attn: Assistant Attorney General

PURCHASER: Fountain Hills Investment Company, LLC
 c/o Ellman Management Group, Inc.
 2850 East Camelback Road, Suite 110
 Phoenix, AZ 85016
 Attn.: Bob Kaufman, Executive Vice President & CLO

With a copy to: Ellman Management Group, Inc.
 2850 East Camelback Road, Suite 110
 Phoenix, AZ 85016
 Attn.: Ty Fields, General Counsel

or to such other addresses as any party hereto may from time to time designate in writing and deliver in a like manner. Notices, approvals and other communications provided for herein shall be deemed delivered upon personal delivery, within twenty-four (24) hours following deposit with a nationally recognized overnight courier, or within forty-eight (48) hours following deposit with the United States mail, certified with return receipt requested, as hereinabove provided, prepaid and addressed as set forth above.

(b) Choice of Law/Venue. This Agreement and the will be governed by and will be construed in accordance with the laws of the State of Arizona, without giving effect to any conflicts of law principles. Purchaser agrees that the exclusive venue for any litigation or disputes arising under or with respect to the CP or this Extension Agreement will be in Maricopa County.

(c) Dispute Resolution. In the event of a dispute, the parties agree to arbitrate the dispute to the extent that A.R.S. § 12-1518 is applicable.

(d) Non-Availability of Funds. Every obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Extension Agreement, this Extension Agreement may be terminated by the State at the end of the period for which funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any damages as a result of termination under this paragraph.

(e) Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may, within three years after its execution, cancel this Extension Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Extension Agreement on behalf of the State is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to this contract in any capacity, or a consultant to any other party to this contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice from the Governor is received by all other parties to the contract of the cancellation, unless the notice specifies a later time.

(f) Successors and Assigns. The provisions of this Extension Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, provided, however, that Purchaser may not assign its rights and obligations under this Extension Agreement or the CP unless otherwise permitted under the CP and all applicable laws, rules and regulations.

(g) Enforcement Expenses. Purchaser will pay or reimburse the State for all costs, expenses and reasonable attorneys' fees paid or incurred by the State in endeavoring to collect and enforce this Extension Agreement and the CP.

(h) Counterparts. This Extension Agreement may be signed in any number of counterparts. Facsimile or electronically transmitted PDF signatures will be deemed acceptable as original signatures.

(i) Exhibits. Each of the following exhibits is attached hereto and made a part hereto:

Exhibit A	Estimated Entitlement Costs
Exhibit B	Form of Letter of Credit
Exhibit C	Collateral Description
Exhibit D	Form of Assignment of Plans and Specifications
Exhibit E	Graphic Depiction of Proposed Entitlement Development

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Extension Agreement to be duly executed as of the date first written above and has affixed his/her/its signature at the City of Phoenix, State of Arizona.

THE STATE OF ARIZONA, by and through
THE ARIZONA STATE LAND
DEPARTMENT

By: 
Mark Winkleman
The Arizona State Land Commissioner

Purchaser:

Fountain Hills Investment Company, LLC,
a Delaware limited liability company

By: Ellman Management Group, Inc.
Its: ~~Manager~~

By: 
Name: Bob Kaufman
Its: Executive Vice President & CLO

EXHIBIT A
ESTIMATED ENTITLEMENT COSTS

[See Attached]

FOUNTAIN HILLS - ESTIMATED POST DETERMINATION DATE DEVELOPMENT BUDGET

	Q1	Q2	Q3	Q4	Q6	Q7	Q8	Totals
ENGINEERING & DESIGN Chix Engineering, Inc. Other	\$ 100,000.00	\$ 200,000.00	\$ 250,000.00	\$ 250,000.00	\$ 250,000.00	\$ 100,000.00	\$ 100,000.00	\$ 1,250,000.00
SPECIALTY CONSULTING Groundwater/Water Waste Water School District Dry Utilities	\$ 37,500.00	\$ 37,500.00	\$ 37,500.00	\$ 37,500.00	\$ 37,500.00	\$ 37,500.00	\$ 37,500.00	\$ 262,500.00
PROJECT LEGAL Zoning & Planning Water Resources	\$ 30,000.00	\$ 45,000.00	\$ 70,000.00	\$ 70,000.00	\$ 70,000.00	\$ 15,000.00	\$ 15,000.00	\$ 315,000.00
CONTINGENCY	\$ 17,500.00	\$ 17,500.00	\$ 17,500.00	\$ 17,500.00	\$ 17,500.00	\$ 17,500.00	\$ 17,500.00	\$ 122,500.00
MISCELLANEOUS FEES Impact Fees Plan Review Other	\$ -	\$ -	\$ -	\$ 75,000.00	\$ -	\$ 50,000.00	\$ -	\$ 125,000.00
Totals	\$ 185,000.00	\$ 300,000.00	\$ 375,000.00	\$ 450,000.00	\$ 375,000.00	\$ 220,000.00	\$ 170,000.00	\$ 2,275,000.00

* NOTE: The above figures are estimates only - actual expenditures per quarter will vary from quarter to quarter among the general line items.