

Suggested amendment to Resolution 2098...

Change the contract so that:

1. The \$750,000 to be paid to R&H, will not be paid at the rate of \$93,750 immediately plus \$93,750 per year for seven years, but will be paid after the water is received. With payments being prorated based on 130 gallons per minute, 24 hours per day, and 365 days per year at the annual cost of \$93,750.
2. Provide that if the water table in any part of the Town of Diamond Star/Star Valley is lowered by more than ten (10) feet, after normalized for the effect of drought, the contract is void.
3. Require that the 1000 ERU's be also tied to the actual delivery of water for a period of years... I would suggest 200 be given at the start of each year for five years if water is still flowing.

MAR 23 2006 K.1

RESOLUTION NO. 2098

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH TERRA-PAYSON 40, L.L.C., AND TERRA-STAR VALLEY 40, L.L.C., AND AN AGREEMENT WITH R & H BOULDER & GRANITE LLC, RELATING TO DEVELOPMENT OF A NEW WATER SOURCE.

WHEREAS, on or about April 18, 2005, the Town of Payson entered into a Water Agreement with Terra-Payson 40, L.L.C., and Terra-Star Valley 40, L.L.C. (collectively, "Terra"), and said Water Agreement remains in full force and effect; and

WHEREAS, the parties to said April 18, 2005 Water Agreement desire to enter into a second Water Agreement for the development of a second identified well site located south of State Route 260 in Star Valley and owned by R & H Boulder & Granite LLC ("R&H"); and

WHEREAS, for such purposes, a Water Agreement between the Town and Terra, and a Water Agreement between the Town and R&H have been drafted,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

Section 1. That the Water Agreement between the Town of Payson and Terra-Payson 40, L.L.C., and Terra-Star Valley 40, L.L.C., attached hereto marked Exhibit "A" and made a part hereof by this reference, be and is hereby approved in substantially the form attached.

Section 2. No development approvals, including, but not limited to, rezonings, preliminary plats, final plats, or building permits, shall be given based on the ERU Credits contemplated in the Agreement attached as Exhibit "A" until there has been full performance of the Exhibit "A" Agreement and the April 18, 2005 Water Agreement referenced therein, including, but not limited to, the delivery of 530 gallons per minute of unencumbered new water into the Town's water system.

Section 3. That the Water Agreement between the Town of Payson and R & H Boulder & Granite LLC, attached hereto marked Exhibit "B" and made a part hereof by this reference, be and is hereby approved in substantially the form attached.

Section 4. That Barbara G. Brewer, Mayor of the Town of Payson, be and is hereby authorized to execute said Water Agreement between the Town of Payson and Terra-Payson 40, L.L.C., and Terra-Star Valley 40, L.L.C., in substantially the form attached as Exhibit "A".

Prepared by Town of Payson Legal Department

SIS:drs August 19, 2005 (10:35AM)

C:\MyFiles\Resolutions\2098 Star Valley Well Agreements.wpd

AUG 25 2005 9.1

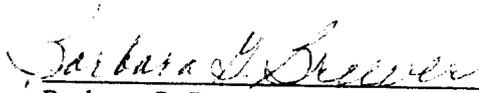
Page 1

Section 5. That Barbara G. Brewer, Mayor of the Town of Payson, be and is hereby authorized to execute said Water Agreement between the Town of Payson and R & H Boulder & Granite LLC in substantially the form attached as Exhibit "B".

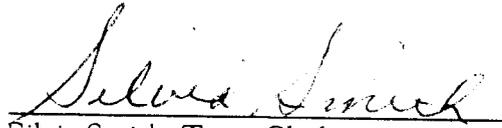
Section 5. That the Town of Payson be and is hereby authorized to take and perform such other and further actions as are necessary or appropriate to carrying out the purposes provided for in this Resolution Number 2098.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this 25th day of August, 2005, by the following vote:

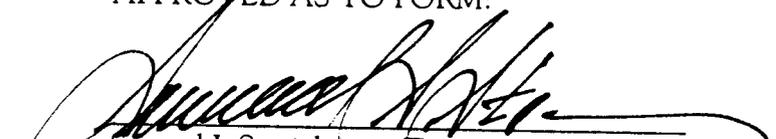
AYES 4 NOES 2 ABSTENTIONS 1 ABSENT 0


Barbara G. Brewer, Mayor

ATTEST:


Silvia Smith, Town Clerk

APPROVED AS TO FORM:


Samuel I. Streichman, Town Attorney

WATER AGREEMENT

THIS WATER AGREEMENT ("Agreement") is entered into this _____ day of _____, 2005 (the "Effective Date"), by and among the Town of Payson, a municipal corporation organized under the laws of the State of Arizona ("Town"), and Terra-Payson 40, L.L.C., an Arizona limited liability company ("TP"), and Terra-Star Valley 40, L.L.C., an Arizona limited liability company ("TSV") (TP and TSC collectively, "Terra").

RECITALS

- A. The Town and Terra are parties to that certain Water Agreement, dated April 15, 2005, approved by the Town Council on April 24, 2005 (the "April 2005 Water Agreement"), which shall remain in full force and effect.
- B. Terra has identified a potential well site located south of SR-260 in Star Valley (the "RH-2 Well"), as more particularly described on the attached Exhibit A, capable of producing 530 gallons per minute or "gpm".
- C. Terra and R&H Boulder & Granite, LLC, an Arizona limited liability company ("R & H"), have entered into or are in the process of entering into an agreement pursuant to which Terra will acquire from R&H (i) a 40 foot by 40 foot pad, more particularly described on Exhibit B attached hereto ("RH-2 Well Site"), upon which Terra will drill, develop, construct and equip the RH-2 Well, and (ii) a 20 foot- wide easement, more particularly described on Exhibit C attached hereto ("Pipeline Easement"), upon which Terra will install and construct a 8-inch water pipeline connecting the RH-2 Well and the RH-2 Well Site to the Town's existing water supply ("Pipeline"), more particularly described and depicted on Exhibit D attached hereto.
- D. The Town is willing to accept ownership of the RH-2 Well Site and the RH-2 Well to serve as a Town water supply well so long as the RH-2 Well has been constructed and equipped to the Town's standards and Terra has complied with all terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, the Parties hereto state, confirm, and agree as follows:

AGREEMENT

1. **Recitals.** The recitals set forth above are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.
2. **Hydrogeologic Data.** On or before December 31, 2005, Terra shall submit a hydrogeologic report containing all data regarding the RH-2 Well necessary to meet and satisfy the requirements contained in the Town's "Guidelines for Documenting Available Groundwater Resources for new Developments within the Town of Payson" as described in Town Code, Section 50.06 (the "Hydrogeologic Report"). The data must demonstrate that the production

capacity of RH-2 is at least 530 gpm in a 24-hour cycle. The Town will review the Hydrogeologic Report within seven (7) working days of receipt and shall approve or disapprove RH-2 Well. If the Town disapproves the Hydrogeologic Report, this Agreement shall terminate.

3. **RH Agreement**. If the Town approves the Hydrogeologic Report, Terra shall, if it has not already done so, promptly enter into an agreement with R & H to acquire the RH-2 Well, the RH-2 Well Site, and the Pipeline Easement (the "**RH Agreement**"). The RH Agreement shall contain, among others, the following terms and conditions:

- a. R & H shall agree to execute and deliver Covenants, Conditions and Restrictions ("**CC&Rs**") in the form attached to this Agreement as **Exhibit E**, which shall be recorded in the Official Records of Gila County, Arizona;
- b. R & H shall agree that in the event of a default by Terra, R & H shall provide notice of the default to the Town specifying in reasonable detail the facts of the default;
- c. R & H shall agree that the Town shall be a third party beneficiary to the RH Agreement and that in the event of any uncured default by Terra, R & H shall grant the Town a reasonable period within which to elect to assume Terra's interest in the RH Agreement and proceed to cure the default (the Town shall have the right to cure, but not the obligation). In the event the Town assumes Terra's interest in the RH Agreement, the Town shall be liable to R & H for any remaining obligations of Terra to R & H under the RH Agreement; and
- d. The parties shall agree that the RH Agreement is subject to the approval of the Town.

4. **Water Facilities**. Subject to the terms and conditions contained in this Agreement, Terra shall drill, construct, and equip the RH-2 Well to produce a minimum of 530 gallons per minute and in compliance with Town Requirements; provided, however, so long as Terra is not in default of any other obligations under this Agreement, the eighteen month period shall be automatically extended to thirty-six months following the Effective Date if construction is delayed as a result of factors outside Terra's reasonable control.

5. **Term**. The term of this Agreement shall commence on the Effective Date and shall automatically terminate on the fourth (4th) anniversary of such date, except as may terminate earlier as provided herein.

6. **Pipeline**. Paragraph 5 (Water Pipeline) of the April 2005 Water Agreement is hereby deleted in its entirety. No later than eighteen (18) months following the Effective Date, Terra shall commence construction and diligently pursue through to completion the installation and construction of the Pipeline connecting the RH2 Well to the Town's current water system along the route identified in **Exhibit C** and **Exhibit D**. Terra shall be responsible for all costs associated with the installation, construction and equipping of the Pipeline, including without limitation, obtaining the Pipeline Easement and any and all necessary or required easements or permits from the Arizona Department of Transportation ("**ADOT**"), as applicable, the cost of all design and engineering and all federal, state, county and Town permits required in connection

with the design, construction and conveyance of the Public Infrastructure Improvements (defined below). The Pipeline shall be constructed in accordance with all State and local laws, rules, and regulations, and shall be inspected by the Town's Engineer.

7. **Acquisition of Easements.** At the time of conveyance of the RH-2 Well and RH-2 Well Site, Terra shall also convey to the Town the Pipeline Easement, which shall be substantially in the form of easement attached as Exhibit C, and all other necessary or required easements or permits from ADOT. The Pipeline Easement and ADOT easements or permits shall be recorded in the Official Records of Gila County, Arizona.

8. **Covenants, Conditions and Restrictions.** At the time of the conveyance of the RH-2 Well and the RH-2 Well Site, Terra shall deliver to the Town fully executed Covenants, Conditions and Restrictions ("CC&Rs"), which shall be in substantially the form attached to the Agreement as Exhibit E. The CC&Rs shall be recorded in the Official Records of Gila County, Arizona.

9. **Well Sites to be Dedicated or Conveyed to the Town.** Terra shall convey the RH-2 Well and the RH-2 Well Site to the Town in marketable fee title, free of liens and encumbrances, together with all well equipment, pumps, valves, pipelines, electrical devices, and any other fixtures and equipment located thereon ("Public Infrastructure Improvements"). Prior to commencement of construction of the Public Infrastructure Improvements, Terra shall pay the Town or include in the construction financial assurances a construction observation fee in the amount of 3% of the construction cost. Terra shall notify the Town at least 24 hours prior to starting any new construction phase of the Public Infrastructure Improvements. The Town will provide construction observation for this project and will notify Terra of deficiencies in a timely manner. Any construction that does not meet applicable State and local laws, rules and regulations as determined by the Town is subject to removal and replacement at Terra's expense. Upon completion of the construction and after receiving final acceptance from the Town, Terra shall provide the Town with two (2) sets of record drawings certified as such by their Engineer. Terra shall also provide the Town an "Approval of Construction" from the Arizona Department of Environmental Quality ("ADEQ"). Upon acceptance by the Town of the Record Drawings and Approval of Construction, Terra shall thereafter convey to the Town the Public Infrastructure Improvements, the Pipeline, the Pipeline Easement, and ADOT easements or permits, free of monetary liens or encumbrances, and the Town shall be solely responsible for the operation, maintenance, and repair of the Public Infrastructure Improvements and Pipeline. The Town shall not reject the Public Infrastructure Improvements or Pipeline if, after approving and accepting the Public Infrastructure Improvements and Pipeline, the Town revises or amends Town Requirements regarding flow rates or water supply characteristics.

10. **April 2005 Water Agreement.** The Town agrees that upon, and only upon, the (i) timely, satisfactory completion, dedication, and acceptance of the Public Infrastructure Improvements and Pipeline, (ii) the conveyance of the Pipeline Easement and any and all necessary or required easements or permits from ADOT, (iii) recordation of the CC&Rs (as defined below), and (iv) the flow of five hundred thirty (530) gpm of water into the Town's water system as provided in this Agreement, Terra shall have satisfied the requirements in Section 9 of the April 2005 Water Agreement.

11. **Water Quality.** If at any time prior to the expiration of this Agreement, water withdrawn from the RH-2 Well is determined by ADEQ to be contaminated by the old Gila County landfill located east of Star Valley requiring the Town to treat the water to remediate it to potable standards, then Terra shall, at Terra's sole expense and in cooperation with the Town, (i) design and construct water treatment facilities sufficient to treat the water to remove such contamination to comply with any and all applicable federal, state, and local rules and regulations pertaining to drinking water (the "Water Plant"), and (ii) acquire a site for the Water Plant acceptable to the Town (the "Plant Site"). Upon completion of construction in accordance with State and local laws, rules, and regulations, and after inspection and acceptance by the Town, Terra shall convey the Water Plant and Plant Site to the Town free and clear of any liens or monetary encumbrances, and thereafter the Town shall be solely responsible for the operation, maintenance, and repair of the Water Plant. The obligations of this Section 11 shall survive expiration or termination of this Agreement.

12. **Financial Assurance.** Terra shall provide the Town with surety bonds, letters of credit, third party builder financial assurances or other agreeable assurances in such form and substance acceptable to the Town to assure completion of the Public Infrastructure Improvements, the Pipeline, and the Water Plant (if a Water Plant is required pursuant to Section 11 above) in an amount consistent with the Town's requirements (the "Financial Assurance"). The Financial Assurance obligations with respect to the warranties described in Section 14 shall survive expiration or termination of this Agreement.

13. **Title.** The RH-2 Well, the RH-2 Well Site, the Pipeline Easement, and ADOT easements or permits shall be conveyed by Terra to the Town by warranty deed, free and clear of all liens and encumbrances. No less than thirty (30) days but no more than ninety (90) days prior to the conveyance of the RH-2 Well, the RH-2 Well Site, the Pipeline Easement, and ADOT easements or permits, Terra, at Terra's expense, shall direct a title company qualified in Arizona to prepare and deliver to the Town a commitment to issue a standard owner's policy of title insurance covering the RH-2 Well Site, the Pipeline Easement, and ADOT easements or permits, containing all exceptions and objections which would appear on an Owner's Policy of Title Insurance if issued, and including copies of all documents creating said objections or exceptions. If the Town objects to title based upon any exceptions or objections contained in the commitment, Terra shall cure such exceptions or objections to the Town's satisfaction prior to conveying the RH-2 Well, the RH-2 Well Site, the Pipeline Easement, and ADOT easements or permits to the Town.

14. **Warranty.** Terra shall warrant to the Town the construction of the Public Infrastructure, the Pipeline, and the Water Plant (if the Water Plant is constructed as provided above) against defective workmanship and/or defective materials for a period of two (2) years from the date of Town acceptance of the Public Infrastructure, the Pipeline, and/or the Water Plant (the "Developer's Warranty Period").

15. **Development Rights.** This Agreement grants only the rights specifically stated herein. The rights addressed herein only extend to the provision of a new water supply pursuant to Section 50.30 of the Town Code. The Parties understand that any development within the Town requires zoning approvals, subdivision approvals, compliance with the Town Code, including the Unified Development Code and various other permits, all of which must be

obtained independent of this Agreement in accordance with state and Town codes, rules, and regulations. The Parties understand the Town will issue no building permits or certificates of occupancy until the Town accepts the RH-2 Well, the RH-2 Well Site, the CC&Rs, the Pipeline Easement, ADOT easements or permits, and the Pipeline identified in Exhibits A through E, as provided in this Agreement.

16. **Notices and Filings.** All notices, filings, consents, approvals, and other communications provided for herein or given in connection herewith shall be validly given, filed, made, delivered, or served if in writing and delivered personally or sent by certified United States mail, postage prepaid, return receipt requested, if to:

Town of Payson
Colin P. Walker, Public Works Director
Town of Payson
303 North Beeline Highway
Payson, Arizona 85541

Terra-Star Valley 40, L.L.C.
7975 North Hayden Rd., Ste. A-205
Scottsdale, AZ 85258

Terra-Payson 40, L.L.C.
7975 North Hayden Rd., Ste. A-205
Scottsdale, AZ 85258

with a copy to:

Samuel I. Streichman, Town Attorney
303L North Beeline Highway
Payson, Arizona 85541

with a copy to:

Mike Horton
P. O. Box 279
Payson, Arizona 85547-0279

and to:

Fred Carpenter, Town Manager
303 North Beeline Highway
Payson, Arizona 85541

16. **Default.** Terra's failure to perform any obligation under this Agreement within 30 days after notice of nonperformance shall constitute an event of default under this Agreement; provided, however, if the default is of such a nature that it cannot be cured within 30 days, no event of default shall be deemed to have occurred by reason of the default if cure is commenced promptly and diligently pursued to completion within a period not longer than 90 days.

17. **Mediation.** If a dispute arises out of or relates to this Agreement or the breach thereof, and if the dispute cannot be settled through negotiation, the Parties agree to first try to settle the dispute through non-binding mediation before resorting to some other dispute resolution procedure. In the event that the Parties cannot agree upon the selection of a mediator within fourteen (14) days, either party may request the presiding judge of the Superior Court of Gila County to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool.

18. **Dispute Resolution.** This Agreement shall be governed and construed in accordance with the internal laws of the State of Arizona. In particular, this Agreement is subject to the provisions of A.R.S. § 38-511, the terms of which are incorporated herein, and

which provides for cancellation of contracts by the municipality for certain conflicts of interest. The venue for any dispute regarding this Agreement shall be Gila County, Arizona, and both Parties consent in advance to such venue and jurisdiction and waive any right to object that Gila County is an inconvenient or improper forum. Neither Party shall be entitled to recover from the other party any of its attorneys' fees, costs, or expert witness fees incurred in any dispute, controversy, claim, or cause of action arising from this Agreement, and each party shall bear its own attorneys' fees, costs, and expert witness fees without contribution from the other party, whether the same is resolved through mediation, litigation, or otherwise.

19. **Waiver**. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Town or Terra of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

20. **Counterparts**. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

21. **Headings**. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

22. **Further Acts**. Each of the Parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

23. **Time of Essence and Successors**. Time is of the essence of this Agreement. All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto; provided, however, that Terra may not assign its interest in or obligations under this Agreement without the prior written approval of the Town.

24. **No Partnership; Third Parties**. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between Terra and the Town. No term or provision of this Agreement is intended to, nor shall, be for the benefit of any person, firm, organization, or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.

25. **Entire Agreement**. This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter of this Agreement. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, are hereby superseded and merged herein.

26. **Amendment**. No change or addition is to be made to this Agreement except by a written amendment executed by the Town and Terra.

27. **TSV Good Standing; Authority**. TSV represents and warrants that (a) it is an Arizona limited liability company fully organized, validly existing, and in good standing under

the laws of the State of Arizona; and (b) the execution, delivery, and performance of this Agreement has been duly authorized by TSV.

28. **TP Good Standing; Authority.** TP represents and warrants that (a) it is an Arizona limited liability company fully organized, validly existing, and in good standing under the laws of the State of Arizona; and (b) the execution, delivery, and performance of this Agreement has been duly authorized by TP.

29. **Town Authority.** The Town represents and warrants that (a) its execution, delivery, and performance of this Agreement has been duly authorized and entered into in compliance with the Town Code of the Town of Payson; and (b) the individual(s) executing this Agreement on behalf of the Town are authorized and empowered to bind the Town.

30. **Recordation.** This Agreement may be recorded in its entirety in the Official Records of Gila County, Arizona.

31. **Non-Availability of Funds.** Every payment obligation of the Town 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 Agreement, this Agreement may be terminated by the Town at the end of the period for which funds are available. No liability shall accrue to the Town pursuant to this Agreement in the event this provision is exercised and the Town shall not be obligated or liable for any future payments or for any damages as a result of termination under this Section.

32. **Exhibits.** Any exhibit attached hereto shall be deemed to have been incorporated herein by this reference with the same force and effect as if fully set forth in the body hereof

Exhibit A	RH-2 Well (legal description)
Exhibit B	RH-2 Well Site
Exhibit C	Pipeline Easement
Exhibit D	Pipeline
Exhibit E	CC&Rs

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

TERRA-STAR VALLEY 40, L.L.C.
an Arizona limited liability company

TOWN OF PAYSON,
an Arizona municipal corporation

By: Terra Capital Group, Inc.
Its: Manager

By _____
Barbara G. Brewer, Mayor

By: _____
Mike Horton
Its: President

TERRA-PAYSON 40, L.L.C., an
Arizona limited liability company

By: Terra Capital Group, Inc.
Its: Manager

By: _____
Mike Horton
Its: President

STATE OF ARIZONA)
) ss.
Gila County)

The foregoing Water Agreement between the Town of Payson, Terra-Payson 40, L.L.C., and Terra-Star Valley 40, L.L.C. was acknowledged before me this _____ day of _____, 2005, by Mike Horton, President of Terra Capital Group, Inc., the Manager of Terra-Star Valley 40, L.L.C. and Terra-Payson 40, L.L.C.

Notary Public

My commission expires:

STATE OF ARIZONA)
) ss.
County of Gila)

The foregoing Water Agreement between Terra-Payson 40, L.L.C., Terra-Star Valley 40, L.L.C. and the Town of Payson was acknowledged before me this _____ day of _____, 2005, Barbara G. Brewer, Mayor of the Town of Payson, on behalf of the Town.

My commission expires:

Notary Public

ATTEST:

Silvia Smith, Town Clerk

APPROVAL AS TO FORM

The Town of Payson Legal Department has reviewed this Agreement and approved it as to form. When reviewing this Agreement for form, the Legal Department considers whether the following situations have been addressed:

Identification of parties;

Offer and acceptance;

Existence of consideration (we do not review to determine if consideration is adequate);

That certain provisions specifically required by statute are included (i.e., provisions concerning conflict of interest, A.R.S. § 38-511).

We have not reviewed the Agreement for other issues. Therefore, approval as to form should not be considered as approval of the appropriateness of the terms or conditions of the Agreement or the underlying transaction. In addition, approval as to the form should not be considered approval of the underlying policy considerations addressed by the Agreement.

Dated this _____ day of _____, 2005.

By _____
Samuel I. Streichman, Town Attorney

EXHIBIT A

RH-2 WELL

EXHIBIT B
RH-2 WELL SITE

LEGAL DESCRIPTION
40' x 40' WELL SITE

That portion of Government Lot 2, lying in Section 32, Township 11 North, Range 11 East of the Gila and Salt River Meridian, Gila County, Arizona, more particularly described as follows:

Commencing at the WEST Corner of Parcel Three of Record of Survey / Minor Land Division, Map No. 1624, Gila County Records, said Corner being a point on the North line of Parcel One of said Map No. 1624 and being a 5/8" Rebar with brass tag, L.S. #18436;

Thence: S 00° 07' 40" W leaving said North line, 312.02 feet to a point on the South line of said Parcel One;

Thence: S 89° 52' 20" E, (Record = S 89° 53' 00" E), along the South line of said Parcel One and Parcel Three, a distance of 576.76 feet;

Thence: N 00° 07' 40" E, leaving said South line, 54.52 feet to the POINT OF BEGINNING;

Thence: N 89° 52' 20" W, 30.00 feet;

Thence: N 00° 07' 40" E, 40.00 feet;

Thence: S 89° 52' 20" E, 40.00 feet;

Thence: S 00° 07' 40" W, 40.00 feet;

Thence: N 89° 52' 20" W, 10.00 feet to the POINT OF BEGINNING.

WELLSITE Encloses 1,600. SQ. FT.

All as shown on attached Exhibit "A" made a part hereof by this reference.

(Basis of Bearings = N 01° 16' 00" W, (distance = 1227.90 feet) line between Corner No. 9 of H.E.S. No. 418 and a P.K. nail w/ brass tag #18436 along the East line of said H.E.S. No. 418).

Project No. 02-041WELLSITE / 2005

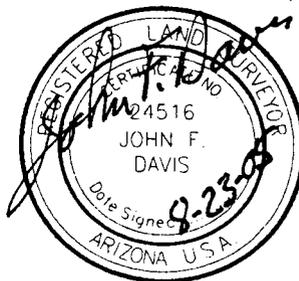


EXHIBIT C

PIPELINE EASEMENT

WHEN RECORDED, RETURN TO:

PIPELINE EASEMENT

FOR AND IN CONSIDERATION of the sum of \$10.00 (ten dollars) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned _____ a _____ ("Grantor"), whose address is _____, does hereby grant unto _____ a _____, whose address is _____ ("Grantee"), its successors and assigns, a twenty (20) foot wide non-exclusive easement and right-of-way to construct, install, lay, maintain, alter, repair, operate, replace, change the size of and remove one underground (1) pipeline and appurtenances thereto, including, but not limited to, fittings, tie-overs, valves, taps and meters, thrust blocks, corrosion equipment and other apparatus ("Improvements") below ground, for the transportation of water and to construct meter houses, and install underground appliances, fixtures and other appurtenances within said Easement (defined below), if same shall be found necessary or convenient under certain lands owned by Grantor, situated in the State of Arizona, more particularly described on Exhibit "A" ("Easement Area"), attached hereto and made a part hereof for all purposes.

Grantee shall (a) have the right to use temporary work space as needed for normal construction practices, but shall repair damages, if any, to such extra work areas; (b) have the free right of ingress and egress to and from the Easement Area herein granted, (c) have the duty to dispose of all brush and debris cleared from the Easement Area during construction by removal from the Easement Area such that the Easement Area is left in a clean and orderly condition; (d) have all other rights contemplated, reasonably implied or necessary for the full enjoyment or use of the rights herein granted, including, but not limited to, the right from time to time to cut all trees and undergrowth and remove other obstructions that may injure, endanger or interfere with the use of said pipeline or the Easement; and (e) have the right to transfer and assign this grant in whole or in part without Grantor's consent.

TO HAVE AND TO HOLD the Easement Area unto Grantee, its successors and assigns, as provided by law, subject to taxes and assessments not yet delinquent, reservation in patents and all easements, rights of way, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record.

Grantor shall have the right to fully use and enjoy the land except for the rights hereinabove granted to Grantee, provided that Grantor shall not construct, plant or place, nor authorize others to construct, plant or place any house, structures trees or other obstructions on or over the Easement Area which would interfere with Grantee's quiet enjoyment of or maintenance of the Easement or the Improvements.

Grantee and Grantee's licensees, invitees, agents, contractors and employees shall comply with all applicable governmental laws, regulations and rules with respect to the construction, use and repair of the Improvements. Grantee shall be responsible for and hereby agrees to indemnify, defend and hold Grantor, its successors and assigns harmless for, from and against all loss, costs, damage, expense, liability, cause of action and suit arising out of Grantee's use, repair, construction and/or maintenance of the Easement Area and Improvements by Grantee and its licensees, invitees, agents, contractors and employees ("Grantee's Acts").

After Grantee's initial construction and any and all subsequent repair to the Improvements, Grantee agrees to use its reasonable efforts to: (a) fill and grade the affected property so as to restore the same to its original

condition to the fullest extent and as soon as practicable, including, but not limited to, replenishment of the soil nutrients and amendments, correcting subsidence and land leveling; (b) remove from the premises all broken or discarded material, machinery, trash and debris; and (c) replace any fence taken down or removed with a fence of like quality and design.

In the event of any breach, violation or failure to comply with any of the covenants and agreements contained in this document which have not been cured within thirty (30) days after written notice from Grantor to do so, or if any such breach, violation or failure cannot be fully cured within such thirty day period, then upon failure of Grantee to commence such cure within such period and thereafter to diligently and continuously pursue completion of such cure to Grantor's reasonable satisfaction, then Grantor shall be entitled to specifically enforce the performance of the covenants contained herein, including but not limited to the indemnity obligations of Grantee hereunder. Notwithstanding the foregoing, it is agreed that Grantor shall not have the right to terminate this Easement for any such default.

Except for the purposes for which this Easement is granted, and the rights contained herein for the construction of the Improvements and the maintenance, repair, replacement and operation thereof, Grantee shall not engage in any activity that materially interferes with Grantor's (and its successors or assigns) or Grantor's tenants, licensees, agents, contractors, suppliers and employees use and enjoyment of its property, or any portion thereof, outside of the Easement or Grantor's permitted uses of the Easement Area.

All rights and obligations contained herein, including without limitation the indemnity provisions thereof, shall extend to and be binding upon Grantor and Grantee, their respective heirs, devisees, legal representatives, successors and assigns.

The recordation of this Easement in the records of the county in which the Easement Area is located shall constitute an acceptance by the Grantee of all rights and obligations set forth in this agreement.

This Easement may be executed in multiple counterparts, each of which shall be deemed an original. Such counterparts shall together constitute but one single instrument.

IN WITNESS WHEREOF, the Parties have executed and delivered this Pipeline Easement on the _____ day of _____, 2005.

GRANTEE:

_____ a _____

By: _____

By: _____
Name: _____
Title: _____

GRANTOR:

_____ a _____

By: _____

By: _____
Name: _____
Title: _____

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing instrument was acknowledged before me, the undersigned Notary Public, on _____, 200__ by _____, the _____ of _____, a _____, on behalf of the corporation and company.

WITNESS my hand and official seal.

Notary Public

My Commission Expires:

STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me, the undersigned Notary Public, on _____, 200__ by _____, the _____ of _____, a _____, on behalf of the corporation and company.

Notary Public

My Commission Expires:

EXHIBIT "A"
(To Pipeline)

This Exhibit "A" is attached to and forms a part of that certain Pipeline Easement by and between and
_____ and _____

**LEGAL DESCRIPTION
EASEMENT NO. 2 – PUBLIC UTILITY EASEMENT**

That portion of Government Lots 2 and 3, lying in Section 32, Township 11 North, Range 11 East of the Gila and Salt River Meridian, Gila County, Arizona, more particularly described as follows:

BEGINNING at the WEST Corner of Parcel Three of Record of Survey / Minor Land Division, Map No. 1624, Gila County Records, said Corner being a point on the North line of Parcel One of said Map No. 1624 and being a 5/8" Rebar with brass tag, L.S. #18436;

Thence: S 89° 52' 23" E (Record= S 89° 52' 48" E) along said North line, 20.00 feet;

Thence: S 00° 07' 40" W leaving said North line, 292.02 feet;

Thence: S 89° 52' 20" E, parallel with the South line of said Parcel One and Parcel Three, a distance of 536.76 feet;

Thence: N 00° 07' 40" E, 34.52 feet;

Thence: S 89° 52' 20" E, parallel with the South line of said Parcel Three, a distance of 20.00 feet;

Thence: S 00° 07' 40" W, 54.52 feet to a point on the South line of said Parcel Three, where the SE Corner of said Parcel Three bears S 89° 52' 20" E, 97.85 feet;

Thence: N 89° 52' 20" W, (Record = N 89° 53' 00" W) along the South line of said Parcel Three and Parcel One, a distance of 576.76 feet;

Thence: N 00° 07' 40" E, leaving said South Line, 312.02 feet to the POINT OF BEGINNING. Easement Encloses 18,066. SQ. FT.

All as shown on attached Exhibit "A" made a part hereof by this reference.
(Basis of Bearings = N 01° 16' 00" W, (distance = 1227.90 feet) line between Corner No. 9 of H.E.S. No. 418 and a P.K. nail w/ brass tag #18436 along the East line of said H.E.S. No. 418).

Project No. 02-041PUE / 2005

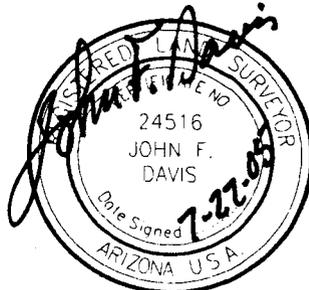
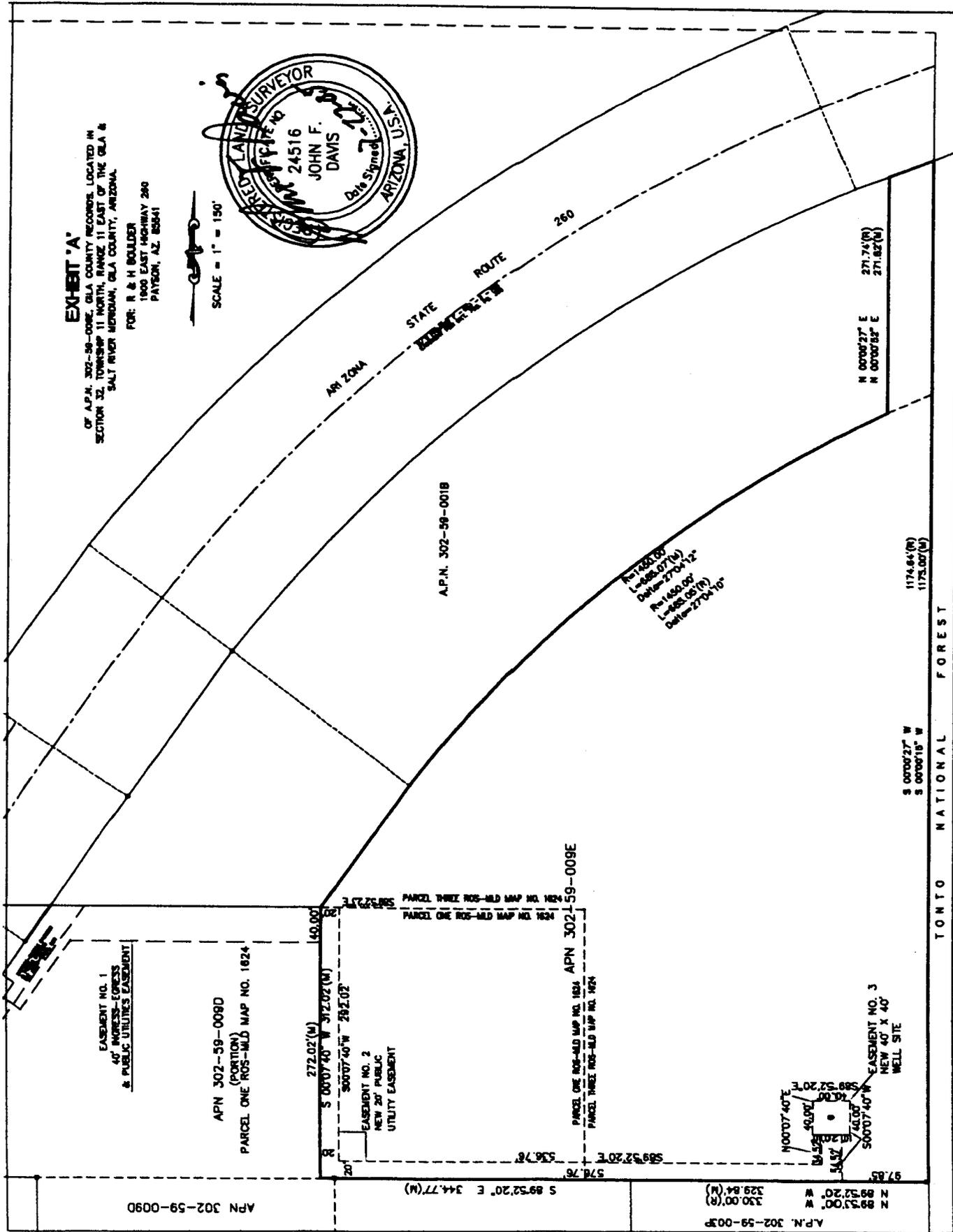
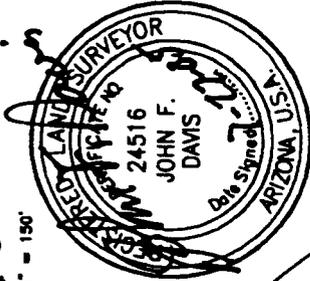


EXHIBIT 'A'

OF A.P.N. 302-59-009E, GILA COUNTY RECORDS, LOCATED IN SECTION 32, TOWNSHIP 11 NORTH, RANGE 11 EAST OF THE GILA & SALT RIVER MERIDIAN, GILA COUNTY, ARIZONA.

FOR: R & H BOLDER
1900 EAST HIGHWAY 260
PAYSON, AZ 85541

SCALE = 1" = 150'



EASEMENT NO. 1
40' BUSINESS-EXPRESS
& PUBLIC UTILITIES EASEMENT

APN 302-59-009D
(PORTION)
PARCEL ONE ROS-MLD MAP NO. 1624

272.02(M)
S 00°07'40" W 312.02(M)
300°07'40" W 292.02'

EASEMENT NO. 2
NEW 20' PUBLIC
UTILITY EASEMENT

APN 302-59-009E
PARCEL ONE ROS-MLD MAP NO. 1624
PARCEL THREE ROS-MLD MAP NO. 1624

PARCEL ONE ROS-MLD MAP NO. 1624
PARCEL THREE ROS-MLD MAP NO. 1624

EASEMENT NO. 3
NEW 40' X 40'
WELL SITE

A.P.N. 302-59-009F
N 89°53'00" W 320.00'(R)
S 29°54' W 329.84'(R)

S 89°52'20" E 344.77'(M)

A.P.N. 302-59-001B

A=1624.00
L=688.07(M)
D=27°04'12"
A=1460.00
L=688.08'(R)
D=27°04'10"

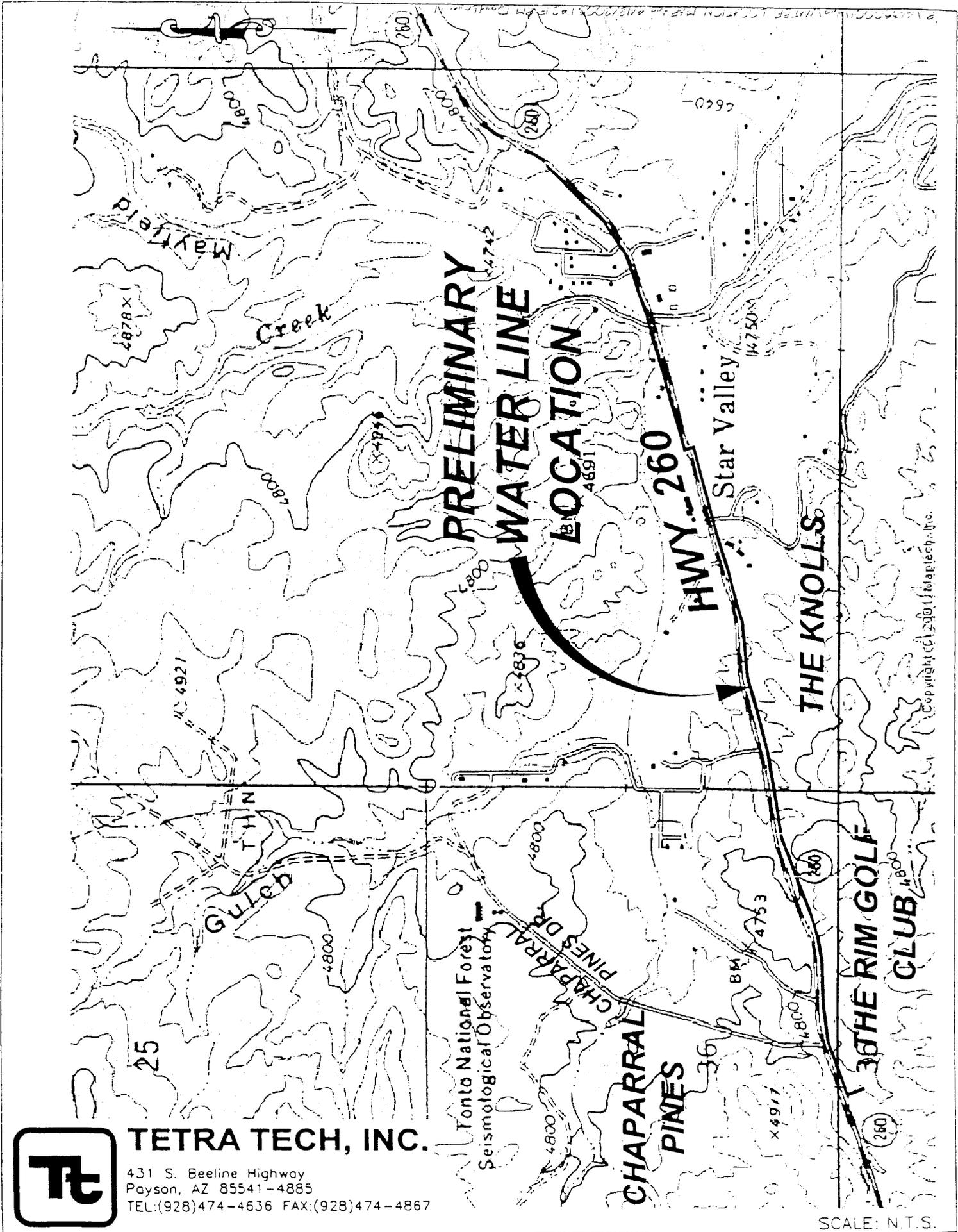
N 00°02'27" E 271.74'(R)
N 00°00'55" E 271.82'(M)

1174.64'(R)
1175.00'(M)

S 00°02'27" W
S 00°00'15" W

TONTO NATIONAL FOREST

EXHIBIT D
PIPELINE



**PRELIMINARY
WATER LINE
LOCATION**

HWY. 260

THE KNOLLS

**THE RIM GOLF
CLUB**

**CHAPARRAL
PINES**

TETRA TECH, INC.

431 S. Beeline Highway
Payson, AZ 85541-4885
TEL: (928) 474-4636 FAX: (928) 474-4867



SCALE: N.T.S.

EXHIBIT E

CC&Rs

When recorded return to:

DECLARATION

(INCLUDING COVENANTS, RESTRICTIONS, AND ESTABLISHMENT OF EASEMENTS AND RIGHTS)

R & H BOULDER & GRANITE, LLC, an Arizona limited liability company ("R & H") as the sole owner of all of the property described in Exhibit A and the Town of Payson, a municipal corporation organized under the laws of the State of Arizona ("Town"), as the sole owner of all of the property described in Exhibit B hereto, (the property described in Exhibit A, the "Property"; and the property described in Exhibit B, the "Well Site"), hereby declare that all of the Property and the Well Site shall be subject to all of the covenants, conditions, restrictions, easements, rights and other provisions set forth in this Declaration ("Declaration").

1. PURPOSE AND DEFINITIONS.

1.1 Purpose. The purpose of this Declaration is to provide for the long-term operation and maintenance of the Water Well and Pipeline as the property is divided into separate parcels and sold to multiple Owners.

1.2 Definitions. For the purposes of this Declaration:

"Owner" means the owner, from time to time, of the Property or any portion thereof.

"Owner's Parcel" means all portions of the Property owned by a particular Owner. The land included within an Owner's Parcel automatically changes from time to time if the Owner buys an additional portion of the Property or sells a portion of the Owner's Parcel, and includes all land then owned by such Owner.

"Pipeline" means the 12-inch pipeline connecting the Water Well and transporting water to the Town's water system and located within the easement described below and on the Exhibit C attached hereto.

"Water Well" means the water well owned and operated by the Town and situated on the Well Site, which well will be equipped with mechanized pumps and which will operate twenty-four (24) hours per day seven (7) days per week.

Each capitalized term used in this Declaration shall have the meaning set forth herein for such term.

2. EASEMENTS ON PROPERTY AND WELL SITES AND PIPELINE.

2.1 Easements and Rights. There are hereby created for the benefit of, and use by, the Town all of the permanent, nonexclusive easements and rights in, to, over, under, through and across the Property for the construction, existence, operation, maintenance, repair and replacement of the Pipeline. The easement shall extend to any additional adjacent areas reasonably needed in connection with the operation, maintenance, repair and replacement of the Water Well and the Pipeline.

2.2 No Interference. No Owner shall use this easement in any manner that interferes with the operation, maintenance, repair or replacement of any of the Water Well or Pipeline.

2.3 Exercise of Certain Powers by Town. In connection with the construction installation, maintenance repair or replacement to be located on any Owner's Parcel, the Town shall take reasonable measures to prevent unreasonable damage to such Owner's Parcel as set forth in this Section. The work, and any facilities or equipment installed pursuant thereto, shall not unreasonably interfere with the Owner's use of the Owner's Parcel. Upon completion of the work, the Town shall promptly restore the surface of the Owner's Parcel to at least as good condition as it was in prior to the work, and shall indemnify the Owner against and reimburse the Owner for any injuries or damage arising from or related to the work, however, no payment to the Owner shall be required for the use of the Owner's Parcel.

3. LIMITATIONS ON WELL DRILLING.

The Town shall have the exclusive right to pump the Water Well on the property and to construct and pump replacement Wells, however, the Owner or Owners of the Property may from time to time drill one or more wells thereon with the Town's consent, provided that any such well or combination of wells has a maximum capacity of thirty (30) gallons per minute ("gpm") or less, no more than forty-nine (49) acre feet of water is withdrawn from all wells in any calendar year, and no well may be located within one hundred (100) feet of the Water Wells. If the Town determines that the drilling and use of such wells will interfere with the Water Wells, the Town may withhold consent to the location of such wells. The drilling and use of any such new wells shall be subject to any well spacing, monitoring or other reasonable requirements and conditions determined by the Town. Except as specifically provided herein, no well shall be drilled on the Property without the Town's prior written consent, and no Owner shall drill or install a new replacement well in violation of this Section.

4. COVENANT RUNNING WITH THE LAND / THIRD PARTY BENEFICIARY.

This Declaration and all provisions hereof shall constitute covenants running with the land and shall be binding upon and inure to the benefit of the Property and the Well Site and Pipeline and all persons from time to time having any interest in all or any portion of the Property or the Well Site and Pipeline, however such interest may be acquired. The provisions of this Declaration shall be the personal obligation of each Owner as well as binding upon the Property itself, and by accepting an interest in the Property each Owner or holder of any other interest agrees to be bound by all of the provisions hereof.

5. ENFORCEMENT.

Any provision of this Declaration that imposes any obligation or restriction upon an Owner or an Owner's Parcel may be enforced by any other Owner or the Town. Any provision of this Declaration relating to the Water Well or Pipeline may be enforced by the Town. In the event of a default by any Owner with respect to any provision of this Declaration, each other Owner and the Town shall have all rights and remedies provided by this Declaration and applicable law, including without limitation the right to seek damages, injunctive relief or specific performance, and all such rights and remedies are cumulative and not exclusive.

6. TERM.

6.1 Initial Term. The term of this Declaration shall commence as of the date of its recording in the public records of Gila County, Arizona (the "Effective Date"), and shall expire upon the fiftieth anniversary of the Effective Date, unless the term is extended or shortened pursuant to the provisions hereof.

6.2 Automatic Extensions of Term. Upon the expiration of the initial fifty (50) year term, this Declaration shall be automatically renewed for successive additional terms of ten (10) years each until terminated pursuant to the provisions hereof.

6.3 Termination. This Declaration may be terminated at any time by an instrument executed by the Owners owning 100% of the Property. This Declaration shall not be terminated except in the manner specifically allowed herein, and any purported termination in violation of the provisions of this Section shall be void and of no effect. The termination instrument shall be recorded in the public records of Gila County, Arizona.

7. AMENDMENTS.

This Declaration may be amended from time to time and at any time by an instrument executed by the Owners owning at least 75% of the Property and by the Town.

8. LIMITATION ON LIABILITY.

The Town shall not be liable to any Owner for any act or failure to act, for any decision made by the Town, or for any damages, injuries, losses, costs or expenses of any kind or nature

whatsoever arising from or related to any of the obligations or rights of the Town under this Declaration, and each Owner hereby waives any and all claims or causes of the Town for all of the same; provided, however, that nothing limits the liability of each such party for its own gross negligence or intentional misconduct. For purposes of this Section, "the Town" shall include its officers, members, employees, agents, contractors and representatives.

9. DISPUTE RESOLUTION.

9.1 Amicable Resolution. The parties shall attempt to settle any dispute related to this Declaration between them amicably. To this end, senior management personnel for all parties shall consult and negotiate to try in good faith to reach a resolution. However, nothing in this clause shall preclude any party from commencing arbitration if said negotiations do not reach a resolution of the dispute within 60 days after written notice that the negotiations have commenced. The parties agree that any applicable statute of limitations will be tolled and extended during this period of attempted amicable resolution.

9.2 Mediation. If a dispute, controversy, or claim arises out of or relates to this Declaration or the breach, termination or invalidity hereof, and if the dispute cannot be settled through amicable resolution, the parties agree to try in good faith to settle the dispute by non-binding mediation before resorting to arbitration. The party seeking to have the dispute resolved shall propose at least five neutral mediators, each of whom shall be a lawyer experienced in mediation and licensed to practice by the State of Arizona for at least 15 years. The other party shall select the mediator from the proposed list. The parties shall split the cost of the mediator equally. The parties agree that no documents or testimony prepared for the mediation will thereby be discoverable in any subsequent arbitration or litigation between the parties. The parties further agree that any applicable statute of limitations will be tolled and extended during this period of mediation. The parties agree that nothing in this clause shall preclude any party from commencing arbitration if said mediation does not reach a resolution of the dispute within sixty (60) days after notice that the mediation period has been commenced.

9.3 Arbitration. Any dispute, controversy, or claim arising out of or relating to this Declaration, or the breach, termination or invalidity hereof, shall be finally resolved by binding arbitration administered by the American Arbitration Association pursuant to the Commercial Arbitration Rules as in force at the time the arbitration is commenced, except as modified by the specific provisions of this Section. The party requesting arbitration shall deliver a written notice of request for arbitration (the "Request for Arbitration") to the other party(ies) in accordance with the notice provisions in this Declaration. The Request for Arbitration shall include a brief description of the basis of the dispute, the maximum monetary judgment (excluding attorneys' fees, arbitration fees and other professional fees and pre-judgment and post-judgment interest) requested, if applicable, and a list of six (6) arbitrators satisfying the requirements set forth herein and acceptable to such party.

9.4 Parties to Arbitration. The parties to any arbitration proceeding shall include the parties to the dispute. In addition, the Town shall have the right, but no obligation, to join in any arbitration relating to the interpretation of this Declaration.

9.5 Forum Selection. The parties agree that the courts located in the State of Arizona shall have exclusive jurisdiction over an action brought to enforce the rights and obligations created in or arising from this Section to arbitrate, and each of the parties hereto irrevocably submits to the jurisdiction of said courts. Notwithstanding the above, application may be made by a party to any court of competent jurisdiction wherever situated for enforcement of any judgment and the entry of whatever orders are necessary for such enforcement.

9.6 Appointment of Arbitrator(s). The matter to be arbitrated shall be resolved by one arbitrator. If the relief requested in the Request for Arbitration is a monetary judgment of more than \$500,000 (or the aggregate relief of all parties joined in the arbitration could exceed \$500,000) or non-monetary relief is requested, the matter shall be resolved by a panel of three (3) arbitrators. Unless the parties are able to mutually agree upon an arbitrator within 30 days of the filing of a Request for Arbitration, either party may request that the American Arbitration Association appoint the arbitrator(s) from the Arizona Commercial Arbitration panel of the American Arbitration Association. Each arbitrator selected shall have at least 10 years experience in the purchase, sale, lease or management of real estate.

9.7 Governing Substantive Law. The arbitrator(s) shall determine the rights and obligations of the parties according to the substantive laws of the State of Arizona (excluding conflicts of laws principles) as though acting as a court of the State of Arizona. The parties expressly prohibit the arbitrator(s) from reaching decisions as amiable compositeur.

9.8 Written Opinion. The arbitration award shall be based on and accompanied by a signed, written opinion containing findings of fact and conclusions of law.

9.9 Governing Arbitration Law. The law applicable to the validity of the arbitration clause, the conduct of the arbitration, including any resort to a court for provisional remedies, the enforcement of any award and any other question of arbitration law or procedure shall be the Federal Arbitration Act.

9.10 Place of Arbitration. The place of arbitration shall be Phoenix, Arizona and all proceedings shall be conducted in the English language.

10. GENERAL.

Except to the extent inconsistent with the express language of the foregoing provisions of this Declaration, the following provisions shall govern the interpretation of this Declaration.

A. Notices. Any notice to any party under this Declaration shall be in writing and shall be effective on the earlier of (i) the date when delivered in care of the party's address, or (ii) the date which is three (3) days after mailing (postage prepaid) by certified or registered mail, return receipt requested, to the party's address, or (iii) the date on which sent by facsimile to the party's address with electronic confirmation of receipt thereof and with a copy sent on the same date to the party utilizing one of the other methods of notice specified in this section. Each Owner shall designate to the Town their address (including telephone and facsimile numbers) for notices and may change their address for notices at any time by giving notice in writing in accordance with

the provisions of this paragraph. The Town shall make all current address information available to each other Owner. If an Owner does not designate their address, then any party may use any address for such Owner believed in good faith by such party to be an address of such Owner.

B. Severability; Further Negotiations. If any provision of this Declaration is declared void or unenforceable, such provision shall be deemed modified to the minimum extent necessary to make it enforceable, the Declaration shall otherwise remain in full force and effect. In the event applicable laws, including any future statutes or rules, prevent or interfere with the consummation of the transactions contemplated hereby in the manner so contemplated, or any provision of this Declaration is declared void or unenforceable, all Owners shall promptly negotiate in good faith to the end that they will agree upon an appropriate amendment of this Declaration to comply with applicable laws, in a manner that preserves and implements to the maximum extent possible the economic terms and conditions and the purposes of this Declaration.

C. Additional Acts and Documents. Each party hereto agrees to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of this Declaration.

D. Authority. Each of the Owners represents and warrants to each other party hereto that each instrument delivered hereunder by such Owner, when so delivered, will have been duly authorized by all necessary action, constitutes and will constitute a binding obligation of each such party, and has been duly and validly executed on behalf of such party.

E. Attorneys' Fees. In the event suit is brought (or arbitration instituted) or an attorney is retained by any party to this Declaration to enforce the terms of this Declaration or to collect any monies due hereunder, or to collect money damages for breach hereof, the substantially prevailing party shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, arbitration and court costs, costs of investigation and other related expenses reasonably incurred in connection therewith.

F. Successors and Assigns. This Declaration shall be binding upon and inure to the benefit of the Owners, the Town, and their respective successors in interest and permitted assigns.

G. Time. Time is of the essence of this Declaration and each and every provision hereof.

H. Governing Law. This Declaration shall be deemed to be made under, and shall be construed in accordance with and shall be governed by, the laws of the State of Arizona applicable to contracts executed within and wholly performable within such State, and (subject to any provision in this Declaration providing for mandatory mediation or arbitration) suit to enforce any provision of this Declaration or to obtain any remedy with respect hereto may be brought in Superior Court, Gila County, Arizona, and for this purpose each Owner and the Irrigation District hereby expressly and irrevocably consents to the jurisdiction of said court.

I. Remedies. Except as otherwise specifically provided herein, the Irrigation District and each Owner shall have all rights and remedies permitted by this Declaration or applicable law for a

breach by any Owner of any provisions of this Declaration, including without limitation specific performance and/or injunctive relief.

J. No Joint Venture. No Owner shall be deemed to be a partner, joint venturer or agent with or of any other Owner or otherwise liable for the acts or omissions of any other Owner by reason of being an Owner under this Declaration.

K. Captions. Captions and paragraph headings used herein are for convenience only and are not a part of this Declaration and shall not be deemed to limit or alter any provisions hereof and shall not be deemed relevant in construing this Declaration.

L. Exhibits. Each Exhibit referred to in this Declaration is a part of this Declaration and is incorporated herein by this reference as if fully set forth herein.

EXECUTED as of the Effective Date above.

R & H BOULDER & GRANITE, LLC,
an Arizona limited liability company

By: _____
Printed Name: _____
Title: _____

TOWN OF PAYSON,
an Arizona municipal corporation

By: _____
Barbara G. Brewer
Mayor

WATER AGREEMENT

THIS WATER AGREEMENT ("Agreement") is entered into this _____ day of _____, 2005 (the "Effective Date"), by and between the Town of Payson, a municipal corporation organized under the laws of the State of Arizona ("Town") and R & H Boulder & Granite, LLC, an Arizona limited liability company ("R&H") (collectively, the "Parties").

RECITALS

- A. R&H owns approximately 10.69 acres parcel of real property located in Gila County, State of Arizona, more particularly described on Exhibit A attached hereto ("Property").
- B. Terra-Payson 40, L.L.C., an Arizona limited liability company ("TP"), Terra-Star Valley 40, L.L.C., an Arizona limited liability company ("TSV") (collectively, "Terra"), and R&H have entered into or are in the process of entering into an agreement pursuant to which Terra will acquire from R&H (i) a 40 foot by 40 foot pad, more particularly described on Exhibit B attached hereto ("RH-2 Well Site"), upon which Terra will drill, develop, construct and equip a water well capable of supplying 530 gallons per minute or "gpm" ("RH-2 Well"), and (ii) a 20 foot- wide easement, more particularly described on Exhibit C attached hereto ("Pipeline Easement"), upon which Terra will install and construct a 8-inch water pipeline connecting the RH-2 Well and the RH-2 Well Site to the Town's existing water supply ("Pipeline"), more particularly described on Exhibit D attached hereto.
- C. R & H is willing to enter into an agreement with Terra provided the Town compensates R & H for a portion of the water production capacity of the RH-2 Well.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, the Parties hereto state, confirm, and agree as follows:

AGREEMENT

1. **Recitals**. The recitals set forth above are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.
2. **Term**. The term of this Agreement shall commence on the Effective Date and shall terminate upon the payment to R & H of \$750,000.00 on the schedule set forth in Section 4 below. If the Conditions Precedent (defined below) are not fully and completely satisfied as determined by the Town, in the Town's sole and absolute discretion on or before the fourth (4th) anniversary of the Effective Date, this Agreement shall terminate and neither party shall have any further obligation to the other.
3. **RH Agreement**. If R & H and Terra enter into an agreement pursuant to which Terra is granted the right to acquire the RH-2 Well, the RH-2 Well Site, and the Pipeline Easement (the "RH Agreement"), the RH Agreement shall contain, among others, the following terms and conditions:

EXHIBIT B TO RESOLUTION 2098

- a. R & H shall agree to execute and deliver Covenants, Conditions and Restrictions (“CC&Rs”) in the form attached to this Agreement as Exhibit E, which shall be recorded in the Official Records of Gila County, Arizona;
- b. R & H shall agree that in the event of a default by Terra, R & H shall provide notice of the default to the Town specifying in reasonable detail the facts of the default;
- c. R & H shall agree that the Town shall be a third party beneficiary to the RH Agreement and that in the event of any uncured default by Terra, R & H shall grant the Town a reasonable period within which to elect to assume Terra’s interest in the RH Agreement and proceed to cure the default (the Town shall have the right to cure, but not the obligation). In the event the Town assumes Terra’s interest in the RH Agreement, the Town shall be liable to R & H for any remaining obligations of Terra to R & H under the RH Agreement; and
- d. The parties shall agree that the RH Agreement is subject to the approval of the Town.

4. **Conditions Precedent; Consideration.** Upon, and only upon, the (i) timely, satisfactory completion, dedication, and acceptance of the RH-2 Well, the RH-2 Well Site and the Pipeline by the Town, (ii) conveyance of the Pipeline Easement and ADOT easements or permits by Terra to the Town, (iii) the execution and delivery of the CC&Rs by R & H to the Town; and (iv) the flow of five hundred thirty (530) gallons per minute or “gpm” into the Town’s water system (collectively, “Conditions Precedent”), the Town will pay R & H the sum of \$93,750.00 and a like amount annually thereafter for seven (7) consecutive years for a total payment of \$750,000.00. The first payment shall be made by the Town within sixty (60) days of satisfaction of all Conditions Precedent and remaining payments shall be made annually thereafter on the anniversary of the first payment.

5. **Notices and Filings.** All notices, filings, consents, approvals, and other communications provided for herein or given in connection herewith shall be validly given, filed, made, delivered, or served if in writing and delivered personally or sent by certified United States mail, postage prepaid, return receipt requested, if to:

Town of Payson
 Colin P. Walker, Public Works Director
 Town of Payson
 303 North Beeline Highway
 Payson, Arizona 85541

with a copy to:

Samuel I. Streichman, Town Attorney
 303L North Beeline Highway
 Payson, Arizona 85541

and to:

Fred Carpenter, Town Manager
303 North Beeline Highway
Payson, Arizona 85541

6. **Mediation.** If a dispute arises out of or relates to this Agreement or the breach thereof, and if the dispute cannot be settled through negotiation, the Parties agree to first try to settle the dispute through non-binding mediation before resorting to some other dispute resolution procedure. In the event that the Parties cannot agree upon the selection of a mediator within fourteen (14) days, either party may request the presiding judge of the Superior Court of Gila County to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool.

7. **Dispute Resolution.** This Agreement shall be governed and construed in accordance with the internal laws of the State of Arizona. In particular, this Agreement is subject to the provisions of A.R.S. § 38-511, the terms of which are incorporated herein, and which provides for cancellation of contracts by the municipality for certain conflicts of interest. The venue for any dispute regarding this Agreement shall be Gila County, Arizona, and both Parties consent in advance to such venue and jurisdiction and waive any right to object that Gila County is an inconvenient or improper forum. Neither Party shall be entitled to recover from the other party any of its attorneys' fees, costs, or expert witness fees incurred in any dispute, controversy, claim, or cause of action arising from this Agreement, and each party shall bear its own attorneys' fees, costs, and expert witness fees without contribution from the other party, whether the same is resolved through mediation, litigation, or otherwise.

8. **Waiver.** No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Town or R & H of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

9. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10. **Headings.** The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

11. **Further Acts.** Each of the Parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

12. **Time of Essence and Successors.** Time is of the essence of this Agreement. All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto.

13. **No Partnership; Third Parties.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between R & H and the Town. No term or provision of this Agreement is intended to, nor shall, be for the benefit of any person, firm, organization, or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.

14. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter of this Agreement. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, are hereby superseded and merged herein.

15. **Amendment.** No change or addition is to be made to this Agreement except by a written amendment executed by the Town and R & H.

16. **R & H Good Standing; Authority.** R & H represents and warrants that (a) it is an Arizona limited liability company fully organized, validly existing, and in good standing under the laws of the State of Arizona; and (b) the execution, delivery, and performance of this Agreement has been duly authorized by R & H.

17. **Town Authority.** The Town represents and warrants that (a) its execution, delivery, and performance of this Agreement has been duly authorized and entered into in compliance with the Town Code of the Town of Payson; and (b) the individual(s) executing this Agreement on behalf of the Town are authorized and empowered to bind the Town.

18. **Recordation.** This Agreement may be recorded in its entirety in the Official Records of Gila County, Arizona.

19. **Non-Availability of Funds.** Every payment obligation of the Town 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 Agreement, this Agreement may be terminated by the Town at the end of the period for which funds are available. No liability shall accrue to the Town pursuant to this Agreement in the event this provision is exercised and the Town shall not be obligated or liable for any future payments or for any damages as a result of termination under this Section.

20. **Exhibits.** Any exhibit attached hereto shall be deemed to have been incorporated herein by this reference with the same force and effect as if fully set forth in the body hereof

Exhibit A	Property
Exhibit B	RH-2 Well Site
Exhibit C	Pipeline Easement
Exhibit D	Pipeline
Exhibit E	CC&Rs

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

R & H BOULDER & GRANITE LLC,
an Arizona limited liability company

TOWN OF PAYSON,
an Arizona municipal corporation

By: _____
Its: Manager

By _____
Barbara G. Brewer, Mayor

STATE OF ARIZONA)
) ss.
Gila County)

The foregoing Water Agreement between the Town of Payson and R & H Boulder & Granite LLC, was acknowledged before me this _____ day of _____, 2005, by _____, _____ of R & H Boulder & Granite LLC.

Notary Public

My commission expires:

STATE OF ARIZONA)
) ss.
County of Gila)

The foregoing Water Agreement between R & H Boulder & Granite LLC. and the Town of Payson was acknowledged before me this _____ day of _____, 2005, by Barbara G. Brewer, Mayor of the Town of Payson, on behalf of the Town.

My commission expires: _____
Notary Public

ATTEST:

Silvia Smith, Town Clerk

APPROVAL AS TO FORM

The Town of Payson Legal Department has reviewed this agreement and approved it as to form. When reviewing this agreement for form, the Legal Department considers whether the following situations have been addressed:

1. Identification of parties;
2. Offer and acceptance;
3. Existence of consideration (we do not review to determine if consideration is adequate);
4. That certain provisions specifically required by statute are included (i.e., provisions concerning non-availability of funds and conflict of interest, A.R.S. § 38-511).

We have not reviewed the agreement for other issues. Therefore, approval as to form should not be considered as approval of the appropriateness of the terms or conditions of the agreement or the underlying transaction. In addition, approval as to form should not be considered approval of the underlying policy considerations addressed by the agreement.

Dated: _____, 2005.

By _____
Samuel I. Streichman, Town Attorney

EXHIBIT A

PROPERTY

LEGAL DESCRIPTION
APN 302-59-009E

That portion of Government Lots 2 and 3, lying in Section 32, Township 11 North, Range 11 East of the Gila and Salt River Meridian, Gila County, Arizona, more particularly described as follows:

That **Parcel Three** as shown on Record of Survey / Minor Land Division, Map No. 1624, Gila County Records.
Encloses 374,292. SQ. FT. / 8.59 acres.

AND:

BEGINNING at the NE Corner of Parcel One of said Record of Survey / Minor Land Division, Map No. 1624, Gila County Records;

Thence: S 00° 00' 27" W along the East line of said Parcel One, a distance of 312.00 feet to the SE Corner of said Parcel One;

Thence: N 89° 52' 20" W (Record = N 89° 52' 48" W) along the South line of said Parcel One, 293.34 feet;

Thence: N 00° 07' 40" E, leaving said South line, 312.02 feet to a point on the North line of said Parcel One and also being the West Corner of Parcel Three of said Record of Survey / Minor Land Division, Map No. 1624;

Thence: S 89° 52' 48" E, along said North line, 292.76 feet to the **POINT OF BEGINNING**.

Encloses 91,447. SQ. FT. / 2.10 acres.

Total Area encloses 465,739. SQ. FT. / 10.69 acres.

(Basis of Bearings = N 01° 16' 00" W, (distance = 1227.90 feet) line between Corner No. 9 of H.E.S. No. 418 and a P.K. nail w/ brass tag #18436 along the East line of said H.E.S. No. 418).

Project No. 02-041REMAINDER / 2005

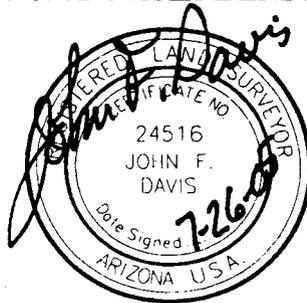
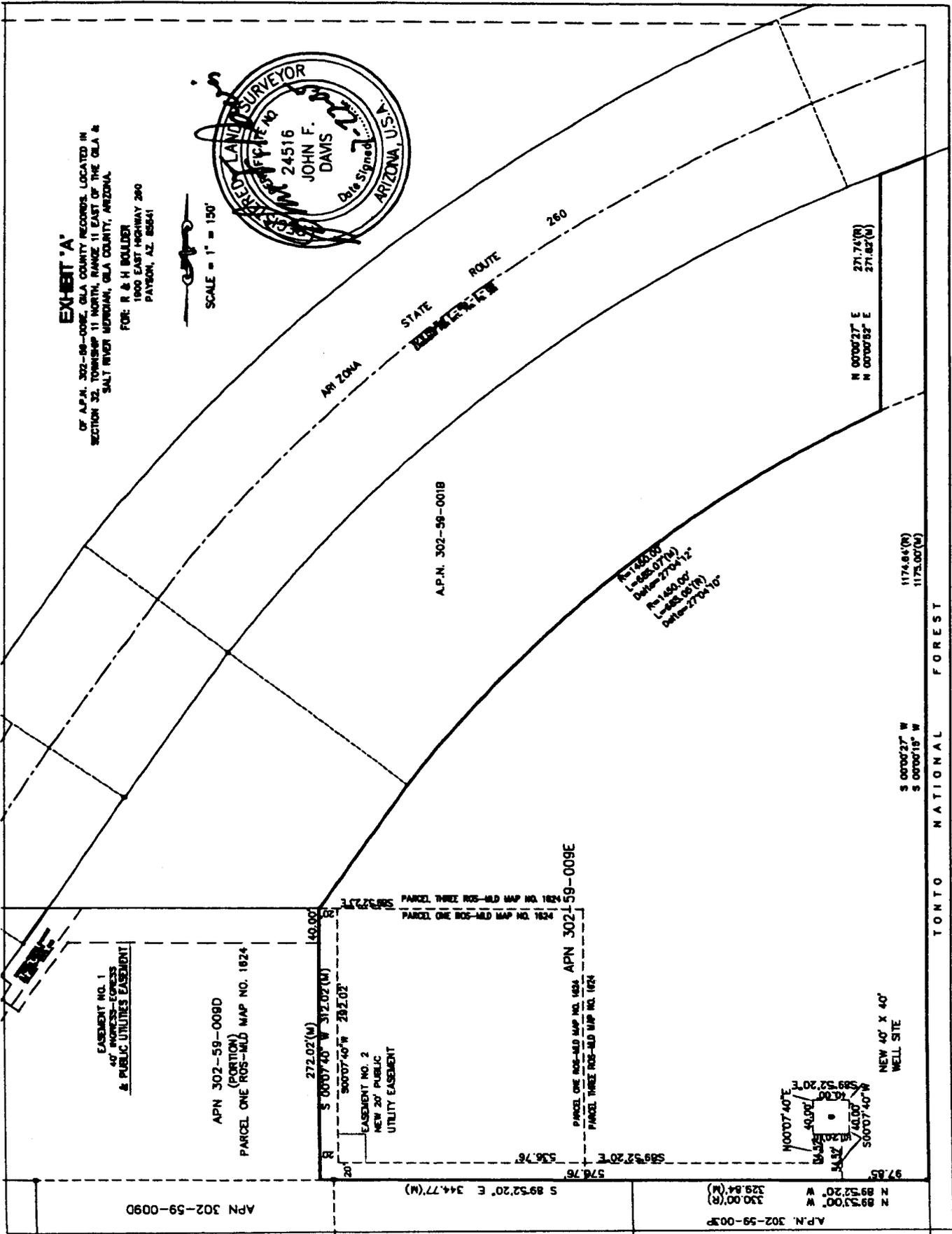
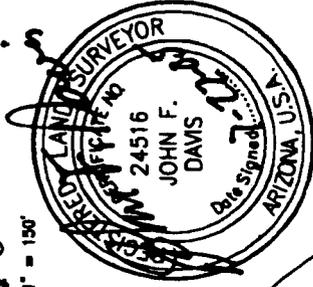


EXHIBIT 'A'

OF A.P.N. 302-98-0098, GILA COUNTY RECORDS, LOCATED IN SECTION 32, TOWNSHIP 11 NORTH, RANGE 11 EAST OF THE GILA & SALT RIVER MERIDIAN, GILA COUNTY, ARIZONA.

FOR: R & H BOLLIER
1900 EAST HIGHWAY 260
PATTON, AZ 85641

SCALE = 1" = 150'



EASEMENT NO. 1
40' PUBLIC UTILITY EASEMENT
A PUBLIC UTILITY EASEMENT

APN 302-59-008D
(PORTION)
PARCEL ONE ROS-MLD MAP NO. 1824

272.02'(M)
S 00°07'40" W 312.02'(M)
S 00°07'40" W 272.02'

EASEMENT NO. 2
NEW 20' PUBLIC
UTILITY EASEMENT

PARCEL ONE ROS-MLD MAP NO. 1824
PARCEL THREE ROS-MLD MAP NO. 1824
APN 302-59-009B

NEW 40' X 40'
WELL SITE

APN 302-59-009D

S 89°52'20" E 344.77'(M)

APN 302-59-003P
N 89°53'00" W 330.00'(R)
N 89°52'20" W 329.84'(M)

S 00°00'27" W
S 00°00'18" W
1174.84'(R)
1175.00'(M)

APN 302-59-001B
N 00°00'27" E 271.74'(R)
N 00°00'52" E 271.82'(M)
N 00°00'27" E 271.74'(R)
N 00°00'52" E 271.82'(M)

TONTO NATIONAL FOREST

EXHIBIT B
RH-2 WELL SITE

LEGAL DESCRIPTION
40' x 40' WELL SITE

That portion of Government Lot 2, lying in Section 32, Township 11 North, Range 11 East of the Gila and Salt River Meridian, Gila County, Arizona, more particularly described as follows:

Commencing at the WEST Corner of Parcel Three of Record of Survey / Minor Land Division, Map No. 1624, Gila County Records, said Corner being a point on the North line of Parcel One of said Map No. 1624 and being a 5/8" Rebar with brass tag, L.S. #18436;

Thence: S 00° 07' 40" W leaving said North line, 312.02 feet to a point on the South line of said Parcel One;

Thence: S 89° 52' 20" E, (Record = S 89° 53' 00" E), along the South line of said Parcel One and Parcel Three, a distance of 576.76 feet;

Thence: N 00° 07' 40" E, leaving said South line, 54.52 feet to the POINT OF BEGINNING;

Thence: N 89° 52' 20" W, 30.00 feet;

Thence: N 00° 07' 40" E, 40.00 feet;

Thence: S 89° 52' 20" E, 40.00 feet;

Thence: S 00° 07' 40" W, 40.00 feet;

Thence: N 89° 52' 20" W, 10.00 feet to the POINT OF BEGINNING.

WELLSITE Encloses 1,600. SQ. FT.

All as shown on attached Exhibit "A" made a part hereof by this reference.

(Basis of Bearings = N 01° 16' 00" W, (distance = 1227.90 feet) line between Corner No. 9 of H.E.S. No. 418 and a P.K. nail w/ brass tag #18436 along the East line of said H.E.S. No. 418).

Project No. 02-041WELLSITE / 2005

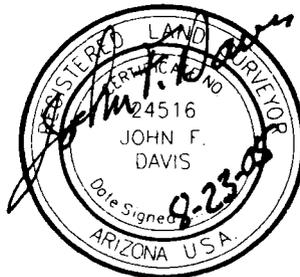


EXHIBIT C

PIPELINE EASEMENT

WHEN RECORDED, RETURN TO:

PIPELINE EASEMENT

FOR AND IN CONSIDERATION of the sum of \$10.00 (ten dollars) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned _____ a _____ ("Grantor"), whose address is _____, does hereby grant unto _____ a _____, whose address is _____ ("Grantee"), its successors and assigns, a twenty (20) foot wide non-exclusive easement and right-of-way to construct, install, lay, maintain, alter, repair, operate, replace, change the size of and remove one underground (1) pipeline and appurtenances thereto, including, but not limited to, fittings, tie-overs, valves, taps and meters, thrust blocks, corrosion equipment and other apparatus ("Improvements") below ground, for the transportation of water and to construct meter houses, and install underground appliances, fixtures and other appurtenances within said Easement (defined below), if same shall be found necessary or convenient under certain lands owned by Grantor, situated in the State of Arizona, more particularly described on Exhibit "A" ("Easement Area"), attached hereto and made a part hereof for all purposes.

Grantee shall (a) have the right to use temporary work space as needed for normal construction practices, but shall repair damages, if any, to such extra work areas; (b) have the free right of ingress and egress to and from the Easement Area herein granted, (c) have the duty to dispose of all brush and debris cleared from the Easement Area during construction by removal from the Easement Area such that the Easement Area is left in a clean and orderly condition; (d) have all other rights contemplated, reasonably implied or necessary for the full enjoyment or use of the rights herein granted, including, but not limited to, the right from time to time to cut all trees and undergrowth and remove other obstructions that may injure, endanger or interfere with the use of said pipeline or the Easement; and (e) have the right to transfer and assign this grant in whole or in part without Grantor's consent.

TO HAVE AND TO HOLD the Easement Area unto Grantee, its successors and assigns, as provided by law, subject to taxes and assessments not yet delinquent, reservation in patents and all easements, rights of way, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record.

Grantor shall have the right to fully use and enjoy the land except for the rights hereinabove granted to Grantee, provided that Grantor shall not construct, plant or place, nor authorize others to construct, plant or place any house, structures trees or other obstructions on or over the Easement Area which would interfere with Grantee's quiet enjoyment of or maintenance of the Easement or the Improvements.

Grantee and Grantee's licensees, invitees, agents, contractors and employees shall comply with all applicable governmental laws, regulations and rules with respect to the construction, use and repair of the Improvements. Grantee shall be responsible for and hereby agrees to indemnify, defend and hold Grantor, its successors and assigns harmless for, from and against all loss, costs, damage, expense, liability, cause of action and suit arising out of Grantee's use, repair, construction and/or maintenance of the Easement Area and Improvements by Grantee and its licensees, invitees, agents, contractors and employees ("Grantee's Acts").

After Grantee's initial construction and any and all subsequent repair to the Improvements, Grantee agrees to use its reasonable efforts to: (a) fill and grade the affected property so as to restore the same to its original

condition to the fullest extent and as soon as practicable, including, but not limited to, replenishment of the soil nutrients and amendments, correcting subsidence and land leveling; (b) remove from the premises all broken or discarded material, machinery, trash and debris; and (c) replace any fence taken down or removed with a fence of like quality and design.

In the event of any breach, violation or failure to comply with any of the covenants and agreements contained in this document which have not been cured within thirty (30) days after written notice from Grantor to do so, or if any such breach, violation or failure cannot be fully cured within such thirty day period, then upon failure of Grantee to commence such cure within such period and thereafter to diligently and continuously pursue completion of such cure to Grantor's reasonable satisfaction, then Grantor shall be entitled to specifically enforce the performance of the covenants contained herein, including but not limited to the indemnity obligations of Grantee hereunder. Notwithstanding the foregoing, it is agreed that Grantor shall not have the right to terminate this Easement for any such default.

Except for the purposes for which this Easement is granted, and the rights contained herein for the construction of the Improvements and the maintenance, repair, replacement and operation thereof, Grantee shall not engage in any activity that materially interferes with Grantor's (and its successors or assigns) or Grantor's tenants, licensees, agents, contractors, suppliers and employees use and enjoyment of its property, or any portion thereof, outside of the Easement or Grantor's permitted uses of the Easement Area.

All rights and obligations contained herein, including without limitation the indemnity provisions thereof, shall extend to and be binding upon Grantor and Grantee, their respective heirs, devisees, legal representatives, successors and assigns.

The recordation of this Easement in the records of the county in which the Easement Area is located shall constitute an acceptance by the Grantee of all rights and obligations set forth in this agreement.

This Easement may be executed in multiple counterparts, each of which shall be deemed an original. Such counterparts shall together constitute but one single instrument.

IN WITNESS WHEREOF, the Parties have executed and delivered this Pipeline Easement on the _____ day of _____, 2005.

GRANTEE:

_____ a _____

By: _____

By: _____
Name: _____
Title: _____

GRANTOR:

_____ a _____

By: _____

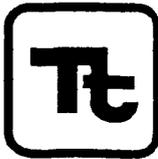
By: _____
Name: _____
Title: _____

EXHIBIT "A"
(To Pipeline)

This Exhibit "A" is attached to and forms a part of that certain Pipeline Easement by and between and
_____ and _____.

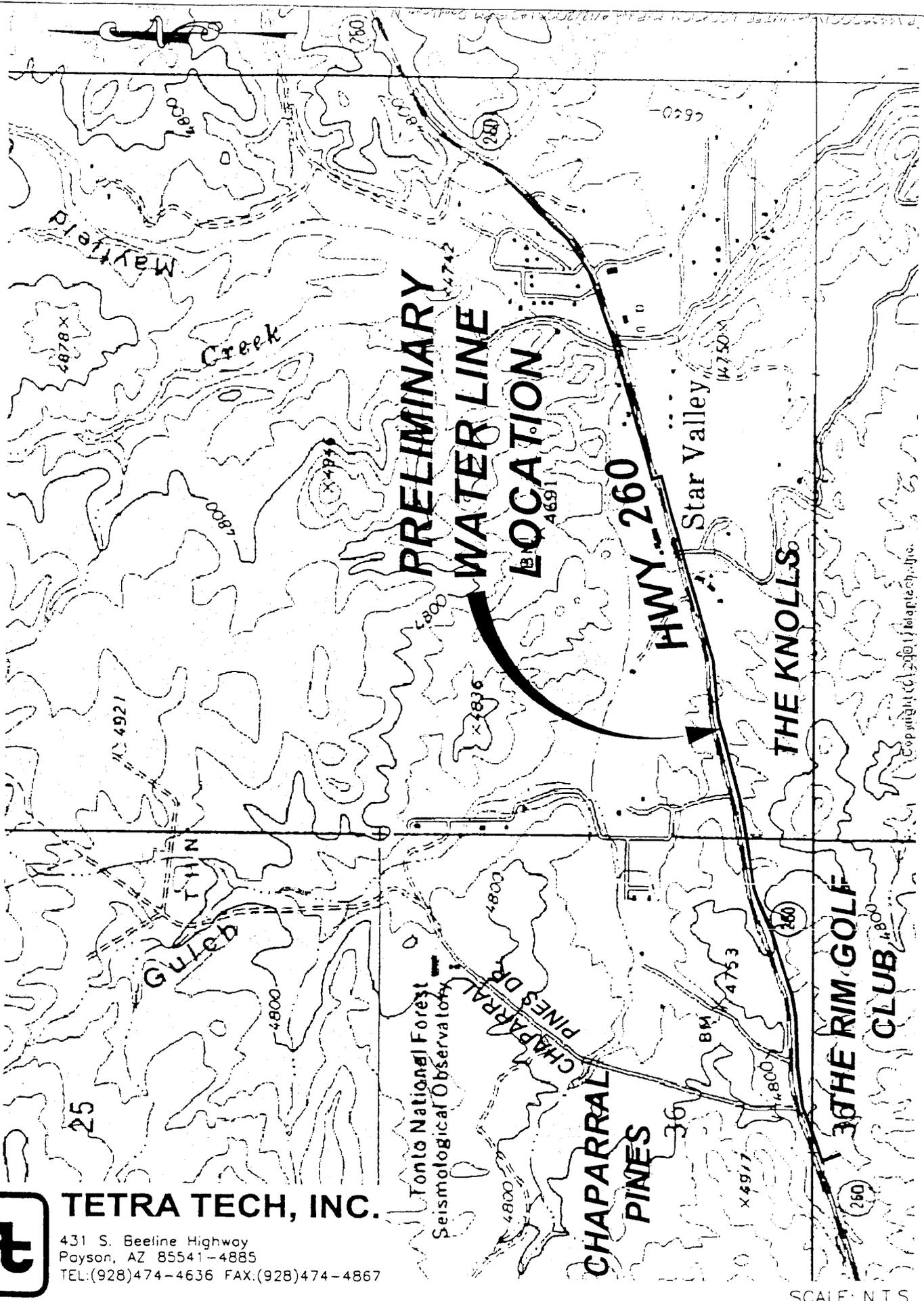
EXHIBIT D

PIPELINE



TETRA TECH, INC.

431 S. Beeline Highway
Payson, AZ 85541-4885
TEL: (928) 474-4636 FAX: (928) 474-4867



SCALE: N.T.S.

EXHIBIT E

CC&RS

EXHIBIT E

CC&Rs

When recorded return to:

DECLARATION

(INCLUDING COVENANTS, RESTRICTIONS, AND ESTABLISHMENT OF EASEMENTS AND RIGHTS)

R & H BOULDER & GRANITE, LLC., an Arizona limited liability company ("R & H") as the sole owner of all of the property described in Exhibit A and the Town of Payson, a municipal corporation organized under the laws of the State of Arizona ("Town"), as the sole owner of all of the property described in Exhibit B hereto, (the property described in Exhibit A, the "Property"; and the property described in Exhibit B, the "Well Site"), hereby declare that all of the Property and the Well Site shall be subject to all of the covenants, conditions, restrictions, easements, rights and other provisions set forth in this Declaration ("Declaration").

1. PURPOSE AND DEFINITIONS.

1.1 Purpose. The purpose of this Declaration is to provide for the long-term operation and maintenance of the Water Well and Pipeline as the property is divided into separate parcels and sold to multiple Owners.

1.2 Definitions. For the purposes of this Declaration:

"Owner" means the owner, from time to time, of the Property or any portion thereof.

"Owner's Parcel" means all portions of the Property owned by a particular Owner. The land included within an Owner's Parcel automatically changes from time to time if the Owner buys an additional portion of the Property or sells a portion of the Owner's Parcel, and includes all land then owned by such Owner.

"Pipeline" means the 12-inch pipeline connecting the Water Well and transporting water to the Town's water system and located within the easement described below and on the Exhibit C attached hereto.

"Water Well" means the water well owned and operated by the Town and situated on the Well Site, which well will be equipped with mechanized pumps and which will operate twenty-four (24) hours per day seven (7) days per week.

Each capitalized term used in this Declaration shall have the meaning set forth herein for such term.

2. EASEMENTS ON PROPERTY AND WELL SITES AND PIPELINE.

2.1 Easements and Rights. There are hereby created for the benefit of, and use by, the Town all of the permanent, nonexclusive easements and rights in, to, over, under, through and across the Property for the construction, existence, operation, maintenance, repair and replacement of the Pipeline. The easement shall extend to any additional adjacent areas reasonably needed in connection with the operation, maintenance, repair and replacement of the Water Well and the Pipeline.

2.2 No Interference. No Owner shall use this easement in any manner that interferes with the operation, maintenance, repair or replacement of any of the Water Well or Pipeline.

2.3 Exercise of Certain Powers by Town. In connection with the construction installation, maintenance repair or replacement to be located on any Owner's Parcel, the Town shall take reasonable measures to prevent unreasonable damage to such Owner's Parcel as set forth in this Section. The work, and any facilities or equipment installed pursuant thereto, shall not unreasonably interfere with the Owner's use of the Owner's Parcel. Upon completion of the work, the Town shall promptly restore the surface of the Owner's Parcel to at least as good condition as it was in prior to the work, and shall indemnify the Owner against and reimburse the Owner for any injuries or damage arising from or related to the work, however, no payment to the Owner shall be required for the use of the Owner's Parcel.

3. LIMITATIONS ON WELL DRILLING.

The Town shall have the exclusive right to pump the Water Well on the property and to construct and pump replacement Wells, however, the Owner or Owners of the Property may from time to time drill one or more wells thereon with the Town's consent, provided that any such well or combination of wells has a maximum capacity of thirty (30) gallons per minute ("gpm") or less, no more than forty-nine (49) acre feet of water is withdrawn from all wells in any calendar year, and no well may be located within one hundred (100) feet of the Water Wells. If the Town determines that the drilling and use of such wells will interfere with the Water Wells, the Town may withhold consent to the location of such wells. The drilling and use of any such new wells shall be subject to any well spacing, monitoring or other reasonable requirements and conditions determined by the Town. Except as specifically provided herein, no well shall be drilled on the Property without the Town's prior written consent, and no Owner shall drill or install a new replacement well in violation of this Section.

4. COVENANT RUNNING WITH THE LAND / THIRD PARTY BENEFICIARY.

This Declaration and all provisions hereof shall constitute covenants running with the land and shall be binding upon and inure to the benefit of the Property and the Well Site and Pipeline and all persons from time to time having any interest in all or any portion of the Property or the Well Site and Pipeline, however such interest may be acquired. The provisions of this Declaration shall be the personal obligation of each Owner as well as binding upon the Property itself, and by accepting an interest in the Property each Owner or holder of any other interest agrees to be bound by all of the provisions hereof.

5. ENFORCEMENT.

Any provision of this Declaration that imposes any obligation or restriction upon an Owner or an Owner's Parcel may be enforced by any other Owner or the Town. Any provision of this Declaration relating to the Water Well or Pipeline may be enforced by the Town. In the event of a default by any Owner with respect to any provision of this Declaration, each other Owner and the Town shall have all rights and remedies provided by this Declaration and applicable law, including without limitation the right to seek damages, injunctive relief or specific performance, and all such rights and remedies are cumulative and not exclusive.

6. TERM.

6.1 Initial Term. The term of this Declaration shall commence as of the date of its recording in the public records of Gila County, Arizona (the "Effective Date"), and shall expire upon the fiftieth anniversary of the Effective Date, unless the term is extended or shortened pursuant to the provisions hereof.

6.2 Automatic Extensions of Term. Upon the expiration of the initial fifty (50) year term, this Declaration shall be automatically renewed for successive additional terms of ten (10) years each until terminated pursuant to the provisions hereof.

6.3 Termination. This Declaration may be terminated at any time by an instrument executed by the Owners owning 100% of the Property. This Declaration shall not be terminated except in the manner specifically allowed herein, and any purported termination in violation of the provisions of this Section shall be void and of no effect. The termination instrument shall be recorded in the public records of Gila County, Arizona.

7. AMENDMENTS.

This Declaration may be amended from time to time and at any time by an instrument executed by the Owners owning at least 75% of the Property and by the Town.

8. LIMITATION ON LIABILITY.

The Town shall not be liable to any Owner for any act or failure to act, for any decision made by the Town, or for any damages, injuries, losses, costs or expenses of any kind or nature

whatsoever arising from or related to any of the obligations or rights of the Town under this Declaration, and each Owner hereby waives any and all claims or causes of the Town for all of the same; provided, however, that nothing limits the liability of each such party for its own gross negligence or intentional misconduct. For purposes of this Section, "the Town" shall include its officers, members, employees, agents, contractors and representatives.

9. DISPUTE RESOLUTION.

9.1 Amicable Resolution. The parties shall attempt to settle any dispute related to this Declaration between them amicably. To this end, senior management personnel for all parties shall consult and negotiate to try in good faith to reach a resolution. However, nothing in this clause shall preclude any party from commencing arbitration if said negotiations do not reach a resolution of the dispute within 60 days after written notice that the negotiations have commenced. The parties agree that any applicable statute of limitations will be tolled and extended during this period of attempted amicable resolution.

9.2 Mediation. If a dispute, controversy, or claim arises out of or relates to this Declaration or the breach, termination or invalidity hereof, and if the dispute cannot be settled through amicable resolution, the parties agree to try in good faith to settle the dispute by non-binding mediation before resorting to arbitration. The party seeking to have the dispute resolved shall propose at least five neutral mediators, each of whom shall be a lawyer experienced in mediation and licensed to practice by the State of Arizona for at least 15 years. The other party shall select the mediator from the proposed list. The parties shall split the cost of the mediator equally. The parties agree that no documents or testimony prepared for the mediation will thereby be discoverable in any subsequent arbitration or litigation between the parties. The parties further agree that any applicable statute of limitations will be tolled and extended during this period of mediation. The parties agree that nothing in this clause shall preclude any party from commencing arbitration if said mediation does not reach a resolution of the dispute within sixty (60) days after notice that the mediation period has been commenced.

9.3 Arbitration. Any dispute, controversy, or claim arising out of or relating to this Declaration, or the breach, termination or invalidity hereof, shall be finally resolved by binding arbitration administered by the American Arbitration Association pursuant to the Commercial Arbitration Rules as in force at the time the arbitration is commenced, except as modified by the specific provisions of this Section. The party requesting arbitration shall deliver a written notice of request for arbitration (the "Request for Arbitration") to the other party(ies) in accordance with the notice provisions in this Declaration. The Request for Arbitration shall include a brief description of the basis of the dispute, the maximum monetary judgment (excluding attorneys' fees, arbitration fees and other professional fees and pre-judgment and post-judgment interest) requested, if applicable, and a list of six (6) arbitrators satisfying the requirements set forth herein and acceptable to such party.

9.4 Parties to Arbitration. The parties to any arbitration proceeding shall include the parties to the dispute. In addition, the Town shall have the right, but no obligation, to join in any arbitration relating to the interpretation of this Declaration.

9.5 Forum Selection. The parties agree that the courts located in the State of Arizona shall have exclusive jurisdiction over an action brought to enforce the rights and obligations created in or arising from this Section to arbitrate, and each of the parties hereto irrevocably submits to the jurisdiction of said courts. Notwithstanding the above, application may be made by a party to any court of competent jurisdiction wherever situated for enforcement of any judgment and the entry of whatever orders are necessary for such enforcement.

9.6 Appointment of Arbitrator(s). The matter to be arbitrated shall be resolved by one arbitrator. If the relief requested in the Request for Arbitration is a monetary judgment of more than \$500,000 (or the aggregate relief of all parties joined in the arbitration could exceed \$500,000) or non-monetary relief is requested, the matter shall be resolved by a panel of three (3) arbitrators. Unless the parties are able to mutually agree upon an arbitrator within 30 days of the filing of a Request for Arbitration, either party may request that the American Arbitration Association appoint the arbitrator(s) from the Arizona Commercial Arbitration panel of the American Arbitration Association. Each arbitrator selected shall have at least 10 years experience in the purchase, sale, lease or management of real estate.

9.7 Governing Substantive Law. The arbitrator(s) shall determine the rights and obligations of the parties according to the substantive laws of the State of Arizona (excluding conflicts of laws principles) as though acting as a court of the State of Arizona. The parties expressly prohibit the arbitrator(s) from reaching decisions as amiable compositeur.

9.8 Written Opinion. The arbitration award shall be based on and accompanied by a signed, written opinion containing findings of fact and conclusions of law.

9.9 Governing Arbitration Law. The law applicable to the validity of the arbitration clause, the conduct of the arbitration, including any resort to a court for provisional remedies, the enforcement of any award and any other question of arbitration law or procedure shall be the Federal Arbitration Act.

9.10 Place of Arbitration. The place of arbitration shall be Phoenix, Arizona and all proceedings shall be conducted in the English language.

10. GENERAL.

Except to the extent inconsistent with the express language of the foregoing provisions of this Declaration, the following provisions shall govern the interpretation of this Declaration.

A. Notices. Any notice to any party under this Declaration shall be in writing and shall be effective on the earlier of (i) the date when delivered in care of the party's address, or (ii) the date which is three (3) days after mailing (postage prepaid) by certified or registered mail, return receipt requested, to the party's address, or (iii) the date on which sent by facsimile to the party's address with electronic confirmation of receipt thereof and with a copy sent on the same date to the party utilizing one of the other methods of notice specified in this section. Each Owner shall designate to the Town their address (including telephone and facsimile numbers) for notices and may change their address for notices at any time by giving notice in writing in accordance with

the provisions of this paragraph. The Town shall make all current address information available to each other Owner. If an Owner does not designate their address, then any party may use any address for such Owner believed in good faith by such party to be an address of such Owner.

B. Severability; Further Negotiations. If any provision of this Declaration is declared void or unenforceable, such provision shall be deemed modified to the minimum extent necessary to make it enforceable, the Declaration shall otherwise remain in full force and effect. In the event applicable laws, including any future statutes or rules, prevent or interfere with the consummation of the transactions contemplated hereby in the manner so contemplated, or any provision of this Declaration is declared void or unenforceable, all Owners shall promptly negotiate in good faith to the end that they will agree upon an appropriate amendment of this Declaration to comply with applicable laws, in a manner that preserves and implements to the maximum extent possible the economic terms and conditions and the purposes of this Declaration.

C. Additional Acts and Documents. Each party hereto agrees to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of this Declaration.

D. Authority. Each of the Owners represents and warrants to each other party hereto that each instrument delivered hereunder by such Owner, when so delivered, will have been duly authorized by all necessary action, constitutes and will constitute a binding obligation of each such party, and has been duly and validly executed on behalf of such party.

E. Attorneys' Fees. In the event suit is brought (or arbitration instituted) or an attorney is retained by any party to this Declaration to enforce the terms of this Declaration or to collect any monies due hereunder, or to collect money damages for breach hereof, the substantially prevailing party shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, arbitration and court costs, costs of investigation and other related expenses reasonably incurred in connection therewith.

F. Successors and Assigns. This Declaration shall be binding upon and inure to the benefit of the Owners, the Town, and their respective successors in interest and permitted assigns.

G. Time. Time is of the essence of this Declaration and each and every provision hereof.

H. Governing Law. This Declaration shall be deemed to be made under, and shall be construed in accordance with and shall be governed by, the laws of the State of Arizona applicable to contracts executed within and wholly performable within such State, and (subject to any provision in this Declaration providing for mandatory mediation or arbitration) suit to enforce any provision of this Declaration or to obtain any remedy with respect hereto may be brought in Superior Court, Gila County, Arizona, and for this purpose each Owner and the Irrigation District hereby expressly and irrevocably consents to the jurisdiction of said court.

I. Remedies. Except as otherwise specifically provided herein, the Irrigation District and each Owner shall have all rights and remedies permitted by this Declaration or applicable law for a

breach by any Owner of any provisions of this Declaration, including without limitation specific performance and/or injunctive relief.

J. No Joint Venture. No Owner shall be deemed to be a partner, joint venturer or agent with or of any other Owner or otherwise liable for the acts or omissions of any other Owner by reason of being an Owner under this Declaration.

K. Captions. Captions and paragraph headings used herein are for convenience only and are not a part of this Declaration and shall not be deemed to limit or alter any provisions hereof and shall not be deemed relevant in construing this Declaration.

L. Exhibits. Each Exhibit referred to in this Declaration is a part of this Declaration and is incorporated herein by this reference as if fully set forth herein.

EXECUTED as of the Effective Date above.

R & H BOULDER & GRANITE, LLC,
an Arizona limited liability company

By: _____
Printed Name: _____
Title: _____

TOWN OF PAYSON,
an Arizona municipal corporation

By: _____
Barbara G. Brewer
Mayor

