

**NOTICE OF JOINT MEETING OF THE CAREFREE TOWN COUNCIL AND THE
BOARD OF DIRECTORS OF THE TOWN OF CAREFREE, ARIZONA UTILITIES
COMMUNITY FACILITIES DISTRICT**

WHEN: TUESDAY, MARCH 16, 2021

WHERE: ZOOM ONLINE*

TIME: 4:30 P.M.

Pursuant to A.R.S. §§ 38-431.02 and 10-822, notice is hereby given to the general public of the time, place and purposes of a meeting of the members of the Town Council of the Town of Carefree, Arizona and the Board of Directors of the Town of Carefree, Arizona Utilities Community Facilities District. For any item listed on the agenda, the Council or Board may vote to go into an Executive or Confidential Session for advice of counsel and/or to discuss records and information exempt by law or rule from public inspection, pursuant to applicable Arizona statute.

Members of the Town Council and Board of Directors are participating by technological means or methods pursuant to A.R.S. §§38-431(4) and 10-708.

CALL TO ORDER

ROLL CALL

Attendees for this meeting, in addition to Greg Crossman, General Manager of the Carefree Water Company, Gary Neiss, Carefree Town Administrator, Kandace French Contreras, Town Clerk/Treasurer/UCFD Secretary; the Carefree Town Council, and the UCFD Board of Directors, may include:

Michael Wright; Attorney, Sherman & Howard LLC

Brian Imbornoni, Jennings, Strouss & Salmon, P.C.

AGENDA

ITEM #1 Review, discussion, and possible action by the Carefree Town Council to authorize the Mayor to execute an assignment to the Town of Carefree, Arizona Utilities Community Facilities District of the Intergovernmental Agreement between the Town of Carefree and the Town of Cave Creek for the acquisition of the Carefree Service Area System from the Town of Cave Creek.

ITEM #2 Review, discussion, and possible action by the Board of Directors of the Town of Carefree, Arizona Utilities Community Facilities District approving, and authorizing the Chairman of the Board of Directors to execute, the Settlement

Agreement between the Town of Carefree, Arizona Utilities Community Facilities District and the Town of Cave Creek.

ITEM #3 Adjournment

DATED this 12TH day of March, 2021.

CAREFREE TOWN COUNCIL/UTILITIES COMMUNITY FACILITIES DISTRICT

By: *Kandace French Contreras*

Kandace French Contreras, Town Clerk/Treasurer/Secretary

Items may be taken out of order

*Due to the risks to public health caused by the possible spread of the COVID-19 virus at public gatherings, it has been determined that public meetings will be held indefinitely through technological means. Meetings will be also open to the public through technological means. In reliance on, and compliance with, the March 13, 2020 Opinion issued by Attorney General Mark Brnovich, the Town of Carefree Utilities Community Facilities District provides this special advance notice of the technological means through which public meetings may be accessed. While this special notice is in effect, public comment at meetings will only be accepted through written submissions, which may or may not be read aloud during meetings.

Please click the link below to join the webinar or cut and paste to your browser:

<https://us02web.zoom.us/j/3229729660>

(No password required)

Or by telephone: 253.215.8782

Webinar ID: 3229729660



FOR SPECIAL ACCOMMODATIONS

Please contact the Town Clerk, 8 Sundial Circle (PO Box 740), Carefree, AZ 85377; (480) 488-3686, at least three working days prior to the meeting if you require special accommodations due to a disability.

Agenda Item #1

March 16, 2021

Joint Session of the Carefree Town Council and
Board of Directors of the Town of Carefree, Arizona
Utilities Community Facilities District

Assignment Agreement
March 9, 2021

This Assignment Agreement (“Agreement”) is entered into effective as of the above date (“Effective Date”) by and among the Town of Carefree (“Assignor”), the Town of Carefree, Arizona Utilities Community Facilities District (“Assignee”) and the Town of Cave Creek (“Cave Creek”).

Assignor and Cave Creek are parties to that certain Intergovernmental Agreement Relating to Water Utility Service dated August 2, 2005 (“IGA”).

The IGA specifically permits the Assignee to acquire the Carefree Service Area System from Cave Creek by condemnation.

Paragraph 6.3 of the IGA, entitled “Assignment of IGA” prohibits assignment of the IGA or any interest therein except to successors of the Parties.

Assignee and the Town of Cave Creek have entered into a Settlement Agreement which allows for the Assignee to acquire the Carefree Service Area System by condemnation.

The Settlement Agreement provides that, upon the completion of the construction and transfer of accounts to Assignee, the IGA will terminate.

Assignor hereby conveys, transfers, assigns and delivers to Assignee all right, title and interest in and to the IGA.

Cave Creek waives the no assignment provision of Paragraph 6.3 of the IGA and consents to this assignment from Assignor to Assignee.

Assignee irrevocably accepts this assignment.

Assignor, Town of Carefree

By _____

Its _____

Assignee, UCFD

By _____

Its _____

Town of Cave Creek

By _____

Its _____

Agenda Item #2

March 16, 2021

Joint Session of the Carefree Town Council and
Board of Directors of the Town of Carefree, Arizona
Utilities Community Facilities District

SETTLEMENT AGREEMENT

This Settlement Agreement, effective this ___ day of _____, 2021, is by and between the Town of Carefree, Arizona Utilities Community Facilities District, a special purpose tax levying district and a municipal corporation and political subdivision of the State of Arizona, (“Carefree”) and the Town of Cave Creek, a municipal corporation of the State of Arizona (“Cave Creek”) (collectively the “Parties”).

RECITALS

1. On or about August 2, 2005, Cave Creek and the Town of Carefree entered into an Intergovernmental Agreement Relating to Water Utility Service (“IGA”). On or about that same date, Cave Creek and the Carefree Water Company, Inc., entered into the Town of Cave Creek-Carefree Water Company Agreement (“Water Agreement”).

2. Section V of the IGA provided that the Carefree Water Company, the Town of Carefree or Carefree could acquire certain property described as all of the water assets located within the Carefree Service Area System (“CSA”) and the CAP water for the subdivided residential and commercial properties within the CSA from Cave Creek by condemnation and established a basis for determining the amount of compensation to which Cave Creek would be entitled for the property.

3. Section V of the IGA further provided that if the Parties were unable to agree upon the amount of compensation within 120 days after the filing of the condemnation complaint, the amount of compensation would be determined by arbitration before the American Arbitration Association (“AAA”).

4. On January 29, 2019, Carefree filed its Complaint in Condemnation in Maricopa County Superior Court Case No. CV2019-052592 (“Superior Court Action”) to condemn the CSA together with related property outside the boundaries of the CSA, as described in the Complaint and Partial Final Award dated January 14, 2021, pursuant to A.R.S. § 9-511, *et seq* (“Subject Property”). The Parties were unable to agree upon the amount of compensation within 120 days after the filing of the Superior Court Action.

5. On or about June 3, 2019, Carefree filed its Demand for Arbitration in AAA Case No. 01-19-0001-7178 (“Arbitration”). Arbitration hearings were conducted via Zoom on October 26 through 29 and November 3 through 6, 2020.

6. On December 4, 2020, the Arbitration Panel issued a Decision on the Merits in which it determined that Cave Creek was entitled to just compensation in the amount of \$1,464,593.00 (less nominal damages of \$1,000) for the CSA assets. In addition, the Arbitration Panel determined that Carefree was responsible for disconnection of the Subject Property and reintegration of the Cave Creek Water System at its cost. The Arbitration Panel allowed the prevailing party to file a motion for recovery of attorney fees and costs.

7. On January 14, 2021, the Arbitration Panel rendered its Partial Final Award, and on March 2, 2021, the Panel entered its Order Granting Claimant's Motion to Modify Partial Final Award and Modifying Partial Final Award (collectively "Award"). A copy of the Award, including the attachments incorporated therein, is attached hereto as Exhibit A and is incorporated into and made an integral part of this Settlement Agreement.

8. By its terms, the Award is a final and confirmable arbitration award, but also contemplates the entry of a subsequent final award relating to the Supplemental System and Supplemental Compensation pursuant to Sections 5.2 and 5.5 of the IGA.

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

Condemnation and Confirmation of Award

1. The above-stated Recitals are true and correct and are incorporated into this Settlement Agreement.

2. Notwithstanding the amounts awarded to Carefree in the Award, Carefree agrees to reduce the amount awarded for nominal damages, reasonable attorneys' fees, litigation expenses, expert witness fees and reimbursement of AAA expenses to \$464,593.00, and offset that against the amount awarded for just compensation so that the net amount owed to Cave Creek for just compensation for the Subject Property is \$1,000,000.00. Cave Creek waives and releases any further claim for just compensation due to the taking of the Subject Property or any damage to the remainder caused by the taking. Notwithstanding the foregoing, Cave Creek retains the right set forth in Paragraph 8 of the Award.

3. The Parties agree to evenly split any remaining unpaid AAA fees and AAA expenses incurred through the date of the entry of the Stipulated Judgment in the Superior Court Action.

4. Notwithstanding the amount awarded to Cave Creek in the Award, Cave Creek agrees to accept payment in the total amount of \$1,000,000.00 as full, fair and total just compensation for the Subject Property and for any damages to the remainder as claimed in the Arbitration. Payment shall be made within six months after the date of the Award, or by July 14, 2021, as provided in the IGA.

5. Upon confirmation of the Award, payment of the full amount determined as just compensation by Carefree and filing of the Satisfaction of Judgment by Cave Creek, Carefree shall be entitled to a Final Order of Condemnation vesting Carefree with title to the Subject Property, free and clear of all claims, liens and encumbrances, and Cave Creek shall have no further right, title, estate, claim, lien or interest in the Subject Property.

6. The Parties agree that the Award shall be final, binding and enforceable except as expressly modified by the terms of this Settlement Agreement. Cave Creek waives any

and all rights that it has to contest, modify, vacate, appeal or otherwise set aside the Award, Final Judgment or Order of Condemnation entered in the Superior Court Action, in whole or in part.

7. The Parties agree to cause their respective counsel to file a Stipulation for Confirmation of Arbitration Award and for Entry of Judgment, and to lodge a proposed form of Stipulated Judgment, in the forms attached hereto as Exhibits B and C, respectively, in the Superior Court Action. Upon receipt of payment in full, Cave Creek shall file a Satisfaction of Judgment in the form attached hereto as Exhibit D. Upon filing of the Satisfaction of Judgment, Carefree shall be entitled to entry of a Final Order of Condemnation in the form attached hereto as Exhibit E. Upon the completion of construction and transfer of accounts to Carefree, the IGA is terminated.

8. The Parties further agree to cooperate and to work in good faith to secure the confirmation of the Award and the entry of the Stipulated Judgment and Final Order of Condemnation in the Superior Court Action, in accordance with the terms of the Award as modified by this Settlement Agreement.

9. This Settlement Agreement does not affect or impair any of the Parties' rights, obligations, arguments or defenses pursuant to the terms of either the Water Agreement or the Agreement for Treatment and Transportation of Central Arizona Project Water, dated May 1, 2002, between the Carefree Water Company and the Cave Creek Water Company ("Wheeling Agreement"). The Parties acknowledge that any claim or controversy arising out of or related to the Water Agreement and Wheeling Agreement, including claims for enforcement of the provisions in said agreements, shall be resolved pursuant to the alternative dispute resolution provisions in Section 4.2 H of the Water Agreement.

Disconnection and Reintegration

10. The Parties agree to cooperate and to work in good faith to expeditiously execute the disconnection and reconnection necessary to accomplish the separation and/or reintegration of the Cave Creek and Carefree Systems in conjunction with the acquisition by condemnation by Carefree of the Subject Property (the "Project").

11. Carefree will be responsible for the cost, design and construction of disconnection and reintegration of the Project as determined by the Arbitration Panel in the Award. The Project design and construction shall be in accordance with the latest version of the Maricopa Association of Governments Uniform Standards Specification and Details for Public Works Construction and any standards or requirements outlined by Maricopa County Department of Environmental Services.

12. Until such time as Carefree advises Cave Creek, in writing, that it is prepared to provide water service to any portion or portions of the Subject Property, Cave Creek will continue to provide water service to those areas (including ordering and providing CAP water) on the same terms and conditions as provided in the IGA, and Cave Creek will be entitled to the revenue generated by that service as the sole consideration for doing so.

13. Cave Creek agrees to expedite the permitting process and to waive permitting fees in connection with the disconnection and reintegration of the Subject Property. Carefree agrees to expedite the permitting process and to waive permitting fees in connection with the Cave Creek/City of Phoenix interconnect project. Each respective Town will be responsible for returning the roadways and roadside landscaping to their pre-construction condition to the extent reasonably possible.

14. The Parties agree to respond in a timely fashion to permit requests from the other Town, to notify the other Town when doing work on portions of the water system related to the CSA within the geographic boundaries of the other Town, and to comply with all permit requirements.

15. The Parties agree that interconnects between their respective water systems can provide for needed system redundancy in times of emergency; therefore, the Parties agree to explore the development of a separate agreement for such interconnections between the two water systems even after the completion of the Project, but any such agreement must be mutually acceptable to both parties.

Transfer of CAP M&I Priority Water

16. Cave Creek and Carefree agree to take the following actions, in the order below, to effect the transfer of the 378 acre feet (377.83 rounded to 378 acre feet) of CAP M&I Priority Water to Carefree.

17. Carefree and Cave Creek shall compile a Request for Review for submission to the Arizona Department of Water Resources ("ADWR") pursuant to A.R.S. § 45-107(d) and the ADWR Substantive Policy Statement dated February 27, 2006. Cave Creek and Carefree shall cooperate on the preparation of the Request for Review, including the water management plan aspects, and shall cooperate to expedite and facilitate ADWR's review.

18. Upon filing the Request for Review with ADWR, Carefree and Cave Creek shall advise the U.S. Bureau of Reclamation ("Reclamation") and the Central Arizona Water Conservation District ("CAWCD") of the pending request and confer with Reclamation and CAWCD, as necessary, to advise or answer questions regarding the transfer. The consultation shall include a discussion of the necessity for judicial validation.

19. Upon receiving the ADWR Recommendation, Cave Creek and Carefree shall cooperate with Reclamation and CAWCD to review the proposed transfer under applicable federal law, including the National Environmental Policy Act ("NEPA"). Carefree shall timely pay to Reclamation any required funding for federal review.

20. Upon notification that draft forms of amendments to the Carefree M&I Subcontract and the Cave Creek M&I Subcontract are available, Cave Creek and Carefree shall timely review same, understanding and agreeing that such contracts are standard forms prepared by Reclamation that are not subject to negotiation. Cave Creek and Carefree shall approve such drafts if they are accurate and are standard among similarly situated parties.

21. Upon presentation of final forms of contract by Reclamation, Cave Creek and Carefree shall execute same, taking all necessary actions, including Cave Creek Council and Town of Carefree, Arizona Utilities Community Facilities District Board resolutions and approvals.

22. Cave Creek and Carefree shall jointly submit the original documents to Reclamation, Lower Colorado River Region, for formal approval by the Reclamation Regional Director or Phoenix Area Manager, as applicable.

23. Cave Creek will sign, deliver and pursue all actions and documents identified above to process the transfer of the 378 acre feet of CAP M&I Priority Water up to the final execution of the Reclamation/CAWCD contracts.

24. During the pendency of the CAP transfer process, Cave Creek shall be entitled to divert any or all of the 378 acre feet during calendar year 2021. Carefree shall be entitled to place its water order with CAWCD for up to the 378 acre feet of the transferred water in September 2021 for calendar year 2022.

25. Cave Creek shall pay all CAWCD Capital Charges on the 378 acre feet until a final contract is executed transferring the 378 acre feet of water to Carefree. The CAWCD Capital Charges for the year the transfer is made shall be prorated between the Parties as of the date of transfer of the Subject Property to Carefree. Until the Project is complete, each Party shall order and deliver CAP water, as needed, for delivery to the CSA and shall pay CAWCD all water charges for water so ordered and delivered. After the Project is complete, including the transfer of the 378 acre feet, Carefree shall have sole responsibility for ordering, delivering and paying CAWCD for water delivered to the CSA.

26. To the extent required by law or by Reclamation, Cave Creek and Carefree shall be individually responsible to process the judicial validation of its amendatory contract with Reclamation. Cave Creek and Carefree shall pursue any required judicial validation promptly and to completion with diligence. If judicial validation is not required by law or by Reclamation, Carefree, Cave Creek, CAWCD and Reclamation shall so agree.

27. In the event that any of the governmental agencies change their procedures or filing requirements during the pendency of this transfer, Cave Creek and Carefree will cooperate to accommodate and satisfy those changes to effect the transfer as contemplated.

General Provisions

28. This Settlement Agreement is not and shall not be construed as an admission of liability or wrongdoing on the part of any Party hereto, liability being expressly denied, but is the compromise and settlement of disputed claims.

29. Any notice under this Settlement Agreement shall be in writing and shall be deemed to have been duly given if sent by electronic mail to the Party at the email addresses set

forth below and, in addition to such email, is: A) delivered to the Party at the addresses set forth below, or B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the addresses set forth below.

If to Carefree:

Greg Crossman (greg@carefreewatercompany.com)
Carefree Town Hall
8 Sundial Circle
P.O. Box 740
Carefree, AZ 85377

With copy to:

Michael W. Wright (mwright@shermanhoward.com)
Sherman & Howard LLC
7033 East Greenway Parkway, Suite 250
Scottsdale, Arizona 85254

If to Cave Creek:

Carrie Dyrek, Town Manager
37622 N. Cave Creek Road
Cave Creek, AZ 85331

With copy to:

William J. Sims, III (wjsims@simsmackin.com)
Sims Mackin, Ltd.
3101 N. Central Ave., Suite 870
Phoenix, AZ 85012

or at such other address, and to the attention of such other person, as any Party may designate in writing by a notice given pursuant to this paragraph. The Notice is effective when the Party (not its counsel) receives the delivery or the certified registered mail.

30. The provisions of this Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their successors.

31. Upon request, any Party shall execute or cause their counsel to execute such other and further documents as may be reasonably required, appropriate or convenient to carry out the purposes and intent of this Settlement Agreement. By executing in the space provided for any entity listed as a Party hereto, the individual signing represents that he or she is duly authorized to execute this Settlement Agreement for and on behalf of the entity listed as a Party to the present document.

32. The Parties hereto acknowledge that this Settlement Agreement, including the attachments, contains their entire understanding with respect to the matters addressed in this Settlement Agreement, and may not be modified except by a written instrument signed by all Parties hereto.

33. The Parties have been represented by counsel in connection with this dispute and the drafting of this Settlement Agreement. The language of this Settlement Agreement shall be construed as representing their mutual understanding and as having been drafted and approved by counsel for all Parties. The Settlement Agreement shall not be construed against either party by virtue of the drafting of the document.

34. This Settlement Agreement may be executed in one or more counterparts, whether by fax, scan, photocopy or other electronic means, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

35. Any dispute or controversy regarding the interpretation, application or enforcement of the Award or this Settlement Agreement shall be resolved by binding arbitration before a three arbitrator panel pursuant to the Commercial Arbitration Rules of the American Arbitration Association at Phoenix, Arizona. The Parties further agree that the arbitration panel shall include any or all of the members of the Arbitration Panel that rendered the Award to the extent that those Panel members are available and willing to serve in such capacity.

36. Without prejudice to any indemnity rights granted in the IGA, in the event either party is required to employ legal counsel to bring an action or proceeding to enforce any of the terms of this Settlement Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, court costs and litigation-related expenses.

37. This Settlement Agreement shall be governed by the laws of the State of Arizona.

38. Either Party may, within three years after the execution of this Agreement, cancel the Settlement Agreement without further penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of a Party is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of the other Party in any capacity with respect to the subject matter of the Settlement Agreement. The provisions of A.R.S. § 38-511 apply to this Settlement Agreement.

TOWN OF CAREFREE, ARIZONA UTILITIES
COMMUNITY FACILITIES DISTRICT

Dated: _____

By: _____

Its: _____

TOWN OF CAVE CREEK

Dated: _____

By: _____

Its: _____

**THE ARBITRATION TRIBUNALS OF THE
AMERICAN ARBITRATION ASSOCIATION**

In the Matter of an Arbitration Between

Town of Carefree, Arizona Utilities
Community Facilities District,

Claimant,

-and-

Town of Cave Creek, a municipal corporation
of the State of Arizona,

Respondent.

AAA CASE No. 01-19-0001-7178

**ORDER GRANTING
CLAIMANT'S MOTION TO
MODIFY PARTIAL FINAL
AWARD AND MODIFYING
PARTIAL FINAL AWARD**

The Tribunal having entered its Partial Final Award ("Award") on January 14, 2021, Claimant having filed its Motion to Modify Partial Final Award ("Motion") on February 3, 2021, there being no objection thereto, and the parties having approved this form of Order,

IT IS ORDERED GRANTING the Motion and MODIFYING the Award as follows:

1. The formula for computing the System CAP stated in § 1.A. of the Award and § IV.1.A. of the Arbitrator's Decision on the Merits is hereby modified to read: $CD \div CC = CU$.

2. In § 1.A. of the Award and § IV.1.A. of the Arbitrator's Decision on the Merits, the reference to transferring 377.83 acre feet of water per year from the "Cave Creek Water Company" is hereby changed to the "Town of Cave Creek."

3. In Section III.9. of the Arbitrator’s Decision on the Merits, the phrase “which are distribution assets within the boundaries of Cave Creek that exclusively service three Carefree homes and other vacant lots” is hereby replaced with the phrase “which include distribution assets, three homes and other vacant lots within the boundaries of Cave Creek.”

DATED this 2nd day of March 2021.

AMERICAN ARBITRATION
ASSOCIATION

DocuSigned by:
Mark E. Lassiter

001306EA4AFE461...
Mark E. Lassiter, Esq., Chair

DocuSigned by:
Keith S. Burn

C6D8D4B47B024A3...
Keith S. Burn, Esq.

DocuSigned by:
RUDOLPH J GERBER

78903049CC10461...
Hon. Rudolph J. Gerber (Ret.)

Copies sent this via transmittal email
on the date shown thereon to:

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JulieCollins@adr.org

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ckramer@jsslaw.com
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Attorneys for Claimant

/s/ _____

THE COMMERCIAL ARBITRATION TRIBUNALS OF THE AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration between:	)	AAA Case No. 01-19-0001-7178
)	
Town of Carefree, Arizona Utilities	)	Maricopa County Superior Court Case No.
Community Facilities District,	)	CV 2019-052592 [the "Underlying Action"
	)	- STAYED PENDING ARBITRATION]
Carefree/Counter-respondent,)	
	)	PARTIAL FINAL AWARD
-and-)	
)	
Town of Cave Creek, a municipal corporation))	
of the State of Arizona,)	
)	
Cave Creek/Counterclaimant.)	
)	

WE, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with the arbitration agreement entered into between the above-named parties and having been duly sworn, and having duly heard the proofs and allegations of the Parties, do hereby AWARD¹ as follows under Arizona’s Revised Uniform Arbitration Act, which is applicable to this proceeding:

PARTIAL FINAL AWARD ON ALL BUT THE RESERVED CLAIMS²

1. Upon confirmation of this partial final award, Carefree is entitled to judgment in the Underlying Action condemning the Property described in its January 29, 2019 Complaint in Condemnation (the “Complaint”) in Maricopa County Superior Court case number CV2019-052592 (the “Lawsuit”), including:

A. All assets described in Paragraph 6 of the Complaint, incorporating Paragraph 5.1 of the Intergovernmental Agreement (the “IGA”) designated Exhibit D1 in the Arbitration proceedings, as follows:

“5.1 Carefree Service Area System. The Carefree Service Area System (“System”) will consist of 1) the wells, pipelines, pumps, meters and other facilities located in the Carefree Service Area and used to provide water service to the Carefree Service Area on the date of the filing of the condemnation complaint and 2) the portion of the Cave Creek CAP subcontract water used to serve the Carefree Service Area

¹ The parties requested a reasoned award in this matter. We incorporate by reference our Exhibit A December 4, 2020 *Arbitrators’ Decision on the Merits* as our reasoning for this Partial Final Award. ¶¶s 1 – 9 in this partial final award effectively restate the provisions of Sections IV and V of the Exhibit A December 4, 2020 *Arbitrators’ Decision on the Merits*, but we have also included herein our award of attorneys’ fees, costs, and other related relief.

² See ¶ 12 regarding what constitutes “Reserved Claims.”

PARTIAL FINAL AWARD

Town of Carefree adv. Town of Cave Creek

AAA Case No. 01-19-0001-7178

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(“System CAP”). The quantity of the System CAP water shall be the product of the following Formula in which the following symbols have the following meanings:

“CD” = the total water demand, in acre feet, of the retail customers of Cave Creek water utility located in the Carefree Service Area during the calendar year immediately preceding the year in which the condemnation complaint is filed;

“CC” = the total number of retail water customers of the Cave Creek water utility located in the Carefree Service Area on December 31 of the calendar year immediately preceding the year in which the condemnation complaint is filed;

“CU” = Carefree Service Area annual water use per customer

The Formula:

$$CD \pm CC = CU$$

The System CAP will be the product of multiplying the CU by the total number of subdivided lots in the Carefree Service Area on the date of commencement of the arbitration hearing.”

The total water allocation pursuant to the agreement is 377.83 acre feet per year to be transferred from Cave Creek Water Company to the Town of Carefree, Arizona, Utilities Community Facilities District; and

B. All other property condemned in the Complaint in Condemnation, including the real property and improvements thereon described and depicted in Exhibits 5, 6, 7, 8, 9 and 10 of the Complaint, attached and incorporated by reference collectively as Exhibit “1” to the Exhibit A December 4, 2020 *Arbitrators’ Decision on the Merits*; and

C. The Cave Creek Assets.

2. The assets and other property and property rights condemned as described in Paragraph 1, subparts A and B and C, above, are referred to as the “Property.”

3. Upon confirmation of this partial final award, Cave Creek shall have judgment in the Lawsuit for **\$1,464,593.00 (One Million, Four Hundred and Sixty-Four Thousand, Five Hundred and Ninety Three Dollars)** as total just compensation for the Property (the “Just Compensation”)³.

4. Cave Creek is not entitled to further compensation:

(a) by reason of its remaining property’s severance from the Property being taken; or

³ The Panel determines this amount as of the date on which the arbitration hearing commenced, which is the date of valuation under IGA §5.3.

PARTIAL FINAL AWARD

Town of Carefree adv. Town of Cave Creek

AAA Case No. 01-19-0001-7178

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(b) by reason of the construction of the Project in the manner proposed by Carefree.

5. Upon confirmation of this partial final award, and upon payment in full of the amount determined above as Just Compensation, Carefree shall be entitled to a Final Order of Condemnation vesting Carefree with title to all Property condemned, free and clear of all claims, liens and encumbrances, and Cave Creek shall have no further right, title, estate, claim, lien, or interest in the Property.

6. Upon confirmation of this partial final award, Carefree, at its sole cost and expense, on its own schedule, and in a reasonable time, place and manner consistent with its overall project (as determined in its sole discretion), shall have the sole right to separate the condemned Property from the remaining Cave Creek System and shall design, execute, and pay for all disconnection and reconnection necessary to accomplish the separation and/or reintegration of the Cave Creek and Carefree Systems (the "Project") and shall generally follow the Cave Creek permitting approval process for similar projects; provided, however, that if Cave Creek's permitting approval process requires any different or additional design, then any additional costs or expenses occasioned thereby will be borne and paid for by Cave Creek at its sole cost and expense and Cave Creek shall not be entitled to any further compensation (1) by reason of the taking of the Property or its severance from Cave Creek's remaining system, or (2) by reason of the construction of the Project in the manner proposed by Carefree.

7. Upon confirmation of the partial final award, Carefree shall generally follow a reintegration procedure consistent with Cave Creek's established permitting process but is not required to do so.

8. Upon confirmation of this partial final award, Cave Creek retains the right under other provisions of law to separately claim damages, if appropriate, for Carefree's faulty or negligent design or construction of the Project.

9. Cave Creek breached the IGA and also its implied covenant of good faith and fair dealing concerning the IGA, and Carefree is entitled to nominal, collective damages in the amount of **\$1,000.00** for the same.

10. Cave Creek shall pay Carefree's reasonable⁴ attorneys' fees in the sum of **nine hundred and sixty thousand and twenty five dollars and thirty nine cents (\$960,025.39)**, reasonable litigation expenses in the sum of **seventeen thousand and two hundred and forty eight dollars and seventy eight cents (\$17,248.78)**, and reasonable expert fees and expenses in the sum of **three hundred and seventy three thousand and nine hundred and ninety dollars and ninety six cents (\$373,990.96)**, which are awarded against Cave Creek in favor of Carefree

⁴ Our determination of the "reasonableness" of Carefree's attorneys' fees; AAA and Arbitrator Fees, Costs and Expenses; Litigation Expenses; and Expert Fees and Expenses arises, in part, from the fact that Cave Creek's asserted claims for "Just Compensation" exceeded \$16,000,000, an amount not justified by the IGA or Arizona law. We believe that the award of these items is commensurate with a Large and Complex Case such as this one.

PARTIAL FINAL AWARD

Town of Carefree adv. Town of Cave Creek

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pursuant the indemnity provisions of § 6.1 of the IGA, which we find are applicable to this proceeding;⁵ provided, however, that no interest shall accrue on these unpaid attorneys' fees until confirmation of this partial final award, at which time interest on such unpaid fees shall accrue at the rate set forth in A.R.S. § 44-1201 (regarding *Rate of Interest for Loan or Indebtedness; Interest on Judgments*) until paid in full. Nothing in this award shall be construed to prohibit Carefree's recovery of future attorneys' fees incurred in the collection or enforcement of this partial final award after it is reduced to a judgment, but any further award of the same shall be in the sole discretion of the Superior Court in the Lawsuit.

11. The administrative fees and expenses of the American Arbitration Association totaling **twelve thousand nine hundred ninety dollars (\$12,990.00)**, and the compensation and expenses of the arbitrators totaling **two hundred twenty-seven thousand four hundred dollars (\$227,400.00)**, shall be borne and paid by Cave Creek. Therefore, Cave Creek shall reimburse Carefree the sum of **one hundred twenty-six thousand three hundred fifty-seven dollars and fifty cents (\$126,357.50)**, representing that portion of said fees and expenses (and arbitrator compensation and expenses) in excess of that previously apportioned and incurred by Carefree; provided, however, that any postponement fees shall be paid by the party or parties requesting the same; and provided, further, that no post-award interest shall accrue on such unpaid administrative fees and expenses and arbitrator compensation and expenses until confirmation of this partial final award, at which time interest on such unpaid fees shall accrue at the rate set forth in A.R.S. § 44-1201 (regarding *Rate of Interest for Loan or Indebtedness; Interest on Judgments*) until paid in full.

12. The Panel notes the following provisions of the IGA:

5.2 Supplemental System. The Supplemental System will consist of the additions, betterments, improvements and extensions to the System between the date of commencement of the arbitration hearing and the date on which the condemnor takes possession of the System. The Supplemental System will include Supplement System CAP which will be the product of multiplying the CU by the number of new subdivision lots created in the Carefree Service Area between the date of commencement of the arbitration hearing and the date on which the condemnor takes possession....

⁵ The Panel denies Cave Creek's "Request for Reconsideration" of our conclusion regarding the applicability of the indemnity provision contained in § 6.1 of the IGA to this proceeding, as set forth in Point VI of *Cave Creek's Response in Opposition to Carefree's Application for Award of Attorneys' Fees, Costs and Expenses* and we take issue with Cave Creek's assertions therein that "*the substantial weight of the evidence is contrary to the Panel's conclusion*" and that "*[t]he Panel ignored material evidence conclusively demonstrating that the IGA § 6.1 was not intended to apply to a future condemnation proceeding arising under IGA § 5.3.*" We found the weight of the evidence supported the applicability of the indemnity provision contained in § 6.1 of the IGA to this proceeding and we did not ignore any evidence presented in this proceeding.

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5.5 Supplemental Compensation. Within thirty days after the compensation award, Cave Creek shall provide to the condemnor the verified report described in A.R.S. §9-518.E. In the event that the parties cannot agree upon the probable value of the Supplemental System for purposes of the bond or letter of credit, the probable value shall be determined by the arbitrators. If, within thirty days after the condemnor has taken possession, the parties have not agreed upon the compensation to be paid for the Supplemental System, the amount of such compensation shall be determined by the arbitrators. When the compensation for the Supplemental System has been determined, the condemnor shall pay to Cave Creek, within ninety days after the date of such determination, the amount of the compensation plus interest from the date of possession until paid and the bond or letter of credit shall be returned to the condemnor. If the compensation and interest are not paid within ninety days, Cave Creek may draw on the letter of credit or call on the bond to satisfy the indebtedness. In the event that the letter of credit or bond is not sufficient, Cave Creek may, upon application to the Court, have a money judgment against the condemnor in the amount of the deficiency and Cave Creek will be entitled to the costs and attorney's fees incurred in obtaining and collecting on the judgment.

Because of the existence of these Sections in the IGA, this is a partial final award concerning only the *Claims and Issues Presented for Determination* (as defined in Section II of the Exhibit A Arbitrators' Decision on the Merits) and we reserve jurisdiction over any as yet unasserted future claims arising under the above IGA Sections (the "Reserved Claims"); provided, however, that any assertion by the parties of any Reserved Claims shall be commenced in a new and different American Arbitration Association proceeding before this Panel or as otherwise agreed by the parties.

13. Except for the Reserved Claims, this partial final award fully and finally decides all *Claims and Issues Presented for Determination* to this Panel in this arbitration proceeding. All claims and counterclaims (if any) not expressly granted herein are hereby denied.

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PARTIAL FINAL AWARD

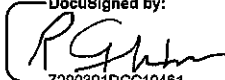
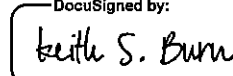

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This partial final award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument. Messrs. Gerber and Burn authorize and execute their signatures hereon via *DocuSign* in accordance with A.R.S. §§ 12-3001(6) (regarding the definition of “*Record*”), 12-3019(A) (regarding the definition of “*Award*”), and 12-3029 of Arizona’s Revised Uniform Arbitration Act (regarding *Relationship to Electronic Signatures in Global and National Commerce Act*).

IT IS SO AWARDED.

Dated: <u>Thursday, January 14, 2021</u>	<p>DocuSigned by:  <small>7200394DCC10483...</small> By: _____ Hon. Rudolph J. Gerber (Ret.), Arbitrator</p>
Dated: <u>Thursday, January 14, 2021</u>	<p>DocuSigned by:  <small>C0D0B4B17B024A3...</small> By: _____ Keith S. Burn, Arbitrator</p>
Dated: <u>Thursday, January 14, 2021</u>	<p> By: _____ Mark E. Lassiter, Arbitrator*</p>

(* Denotes Panel Chair)

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* - Legal Assistants

THE COMMERCIAL ARBITRATION TRIBUNALS OF THE AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration between:) AAA Case No. 01-19-0001-7178
)
 Town of Carefree, Arizona Utilities) Maricopa County Superior Court Case No.
 Community Facilities District,) CV 2019-052592 [the "Underlying Action"
) - STAYED PENDING ARBITRATION]
 Carefree/Counter-respondent,)
) **ARBITRATORS' DECISION**
 -and-) **ON THE MERITS¹**
)
 Town of Cave Creek, a municipal corporation)
 of the State of Arizona,)
)
 Cave Creek/Counterclaimant.)
)

WE, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with the arbitration agreement entered into between the above-named parties and having been duly sworn, and having duly heard the proofs and allegations of the Parties, do hereby DECIDE as follows:

I. GENERAL STATEMENT OF THE CASE, CASE PROCEDURAL HISTORY & ARBITRAL JURISDICTION.

General Statement of the Case and Summary Overview of the Matter.

1. The towns of Carefree and Cave Creek ("Carefree" and "Cave Creek"²) are adjacent suburban municipalities northeast of Phoenix, Arizona. Though each town has its own water

¹ This "Decision on the Merits" is provided pursuant to the provisions of ¶22 of the Arbitration Panel's Initial (and later) *Scheduling and Procedures Order(s)*, which provide (by order of the arbitrators and the stipulation of the parties' counsel), in relevant part:

"22. Special Procedures for the Determination of the "Prevailing Party" and related Attorneys' Fees. ...

(a) Written "Decision on the Merits" by the Arbitrators. Within the period required by the Rules for the rendering of an "award" following the close of an arbitration hearing, the Arbitrators will instead render a written *Decision on the Merits* in this matter, which will include and comprise the 'reasoning' of the Arbitrators' final or partial final award to follow. This *Decision on the Merits* will address the parties' various substantive claims and defenses or items thereof (e.g., breach of contract claims), but will exclude any determination of "the prevailing party" for purposes of any award of attorneys' fees and costs and such Decision will not make any award of attorneys' fees and costs..."

² Stated most accurately, the true parties are the towns' respective water districts. Because of their governmental identities, we refer to them here for convenience as "Carefree" and "Cave Creek."

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system, Cave Creek's water system presently serves 544 Carefree residents, prompting Carefree's effort to condemn that portion of the Cave Creek water system that provides its own water for Carefree's residents living in this "Carefree Service Area" ("CSA").

2. To that end in 2005 these parties executed an Intergovernmental Agreement ("IGA") providing, *inter alia*, that if Carefree decided to invoke a 'friendly condemnation' under the IGA, then the valuation of Cave Creek's water system in the CSA would be determined by the IGA, with that price adjusted pursuant to its terms and the principles of Arizona condemnation law.

3. Each town's expert appraisers have submitted widely differing dollar figures for the value of the CSA, prompting this arbitration, which requires us to determine "Just Compensation" for Carefree's condemnation of the Cave Creek water system serving the CSA, and related issues.

Case Procedural History.

4. On January 29, 2019, Carefree filed its Exhibit 1 Complaint in Condemnation (the "Complaint") to commence its condemnation action in Maricopa County Superior Court case number CV2019-052592 (the "Lawsuit"), which prompted several early law and motion matters addressing the merits of the Lawsuit.

5. On May 30, 2019 Carefree filed its *Notice of Pending Private Arbitration with American Arbitration Association and Motion to Stay the Court's Proceedings*, which prompted more law and motion concerning the disputed arbitrability of the parties' claims before this Tribunal.

6. On June 3, 2019 the American Arbitration Association ("AAA") received Carefree's initial Demand for Arbitration.

7. On September 10, 2019 the Superior Court issued a Minute Entry ruling staying the Lawsuit and ordering the matter to arbitration some nine months after its filing.

Arbitral Jurisdiction.

8. The parties' IGA includes the following arbitration clause:

"5.3 Compensation. ... In the event that the parties are unable to agree upon the compensation within 120 days after the date of the filing of the condemnation complaint, the compensation for the System shall be determined by arbitration under the Procedures for Large, Complex Commercial Disputes and the Commercial Arbitration Rules of the American Arbitration Association ("AAA") by three arbitrators from the AAA Large, Complex Case panel of arbitrators. The compensation will be determined for the System held by Cave Creek as of the date on which the arbitration hearing commences and that date will be the date of valuation."

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9. After this Panel was appointed to hear this matter, Cave Creek urged a second dismissal motion before this Panel contesting the Tribunal's arbitral jurisdiction over the claims and asking us to stay the arbitration and determine that the issues before us were not arbitrable. We declined to do so for the reasons set forth in our Exhibit 2 February 21, 2020 *Ruling on Jurisdictional and Dismissal Motions*, which we incorporate by reference into this Decision on the Merits.

10. In September 2020, with the COVID 19 pandemic still raging, Carefree's counsel moved to conduct the arbitration hearing virtually, which motion was briefed by the parties and later granted by this Panel for the reasons set forth in the Exhibit 3 *Ruling on Carefree's Motion to Conduct Virtual Hearing* (released concurrently with this Decision on the Merits following the Zoom arbitration hearings and incorporated herein by this reference). This Panel has noted Cave Creek's standing objection to the arbitration hearing having been conducted via Zoom.

11. The arbitration hearings were conducted via Zoom from Monday – Thursday, October 26 – 29 and the hearing was continued to the following week from Wednesday, November 3 through Friday, November 6, 2020, at which time the live portion of the evidentiary hearing concluded, but the actual arbitration hearing concluded following the parties' service of post-hearing submittals and briefs on November 20, 2020. See Sixth Amended Scheduling & Procedures Order.

II. CLAIMS AND ISSUES PRESENTED FOR DETERMINATION.

1. The claims presented for panel determination involve deciding "Just Compensation" for Carefree's condemnation of the Cave Creek water system serving the CSA, which requires consideration and evaluation of the parties' widely conflicting expert appraisals to determine which one(s) most accurately comport with the IGA and with Arizona condemnation law. This effort involves a determination of (among other things): the assets to be condemned, the interpretation of the IGA and Arizona condemnation law, the value of the property sought to be condemned (and, if the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned), the construction of the improvement in the manner proposed by Carefree, whether or how much the portion not sought to be condemned and each estate or interest therein will be benefited separately, if at all, by construction of the improvement proposed by Carefree [but only up to the amount of severance damages assessed], appropriate valuation methodologies to determine the above (and related factors such as appreciation and depreciation of condemned assets, etc.), plus any disconnection or severance costs, all to reach an eventual "Just Compensation" dollar figure due Cave Creek for Carefree's condemning the CSA;

2. Whether Cave Creek breached the implied covenant of good faith and fair dealing in its performance of the IGA with Cave Creek; and

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3. Whether any party is entitled to recover its attorneys' fees and costs in this proceeding.

III. REASONING OF THE DECISION ON THE MERITS.

The Parties' Contract

1. At least initially, though not exclusively, the parties' IGA contract governs this condemnation. Cave Creek and Carefree executed the IGA in contemplation of this condemnation, agreeing that, if "*such a condemnation case is filed, the Parties intend that the case will proceed under the terms and conditions stated herein.*"

2. The IGA identifies some CSA equipment assets to be condemned, establishes ways to resolve some disputes, fixes a valuation date, and generally determines a valuation base for the condemned property. The IGA does not provide specific details or methods of valuation.

Relevant IGA Provisions

3. The operative portions of the parties' IGA consist of sections of varying complexity, with the relevant ones being 5.1, 5.2, 5.3, 5.4, 5.5, 6.1 and 6.11. We proceed to discuss them here briefly, in order, for an overview of IGA coverage:

a) § 5.1 enumerates components to be condemned as "*pipes, valves, hydrants*" and other equipment of the Cave Creek system lying in the CSA. Attorney Tom Chenal, who helped draft this provision and was described at the hearing as its "lead author," testified that its intent was to subject to condemnation the "physical assets" of the Cave Creek system in the CSA. This enumeration of measurable physical assets suggests that the parties intended condemnation to be limited to taking these physical assets, plus Central Arizona Water (CAP) acre feet being condemned under a formula stated in this section.

b) § 5.2 addresses valuing a "Supplemental System" consisting of Cave Creek assets in the time period from the date of the arbitration hearing to the date of taking possession of the condemned assets.

c) § 5.3 is a longer, more troublesome provision, which reads in relevant part as follows:

The Parties agree that the compensation to which Cave Creek will be entitled in the condemnation action will be based on the total compensation paid by Cave Creek to the Water Company to acquire the Subjects of Condemnation. . . . Except as specifically provided herein, it is the intent of the Parties that the compensation be equivalent to the compensation to which Cave Creek would be entitled for the System and Supplemental System under the Arizona statutes and case law governing municipal acquisition of utility property by eminent domain. The compensation shall include the cost of physically separating the System from the Cave Creek water utility.

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Under the parties' later stipulation in March 2020, appraisers must adjust and/or allocate that total compensation according to principles of Arizona law to value the CSA assets consistent with Arizona law. This emphasized stipulation imposes a repeated mandate to adjust the starting \$19,500,000 (“\$19.5 MM”) figure consistent with Arizona utility condemnation law.

The underlined language, notably “*Except as specifically provided herein,*” requires a valuation with its starting point based on the 2007 compensation Cave Creek paid to Global for its System, which both parties agree to be \$19.5 MM. See *May v. Ellis*, 208 Ariz. 229, 231, ¶¶ 11-12, 92 P.3d 859, 861 (2004) (“except as otherwise provided” directs which law controls when multiple provisions conflict).

The parties stipulated that “*the appraisers...will be instructed to utilize the total compensation for the entire Cave Creek Water Company from the 2007 transaction as the starting point for valuing the assets in the Carefree Service Area.*” Given the § 5.3 language above, the parties and their experts are bound by the IGA requirement that \$19.5 million is the necessary starting point for valuing the CSA, including all asset components. This starting figure must then be “allocated and/or adjusted” to be consistent with Arizona condemnation law.

d) §§ 5.2 and 5.5 address possible post-condemnation disputes over Supplemental System compensation for additions to the CSA after completion of the evidentiary hearing. See Section V(3).

e) § 6.1 contains a broad indemnity provision not directly relevant to determination of compensation items. This section may be relevant to a subsequent discussion regarding fees and costs and, if so, will be further discussed in that context.

f) § 6.11 repeats the mandate in § 5.3, perhaps for emphasis, that this IGA “*shall be governed by the law of the State of Arizona.*”

Arizona Principles of Contract Interpretation

4. In Arizona contracts such as the IGA are construed “to give effect to the parties’ intent, applying the plain contractual language when it is unambiguous.” *Standard Constr. Co. Inc. v. State*, 2020 Ariz. App. LEXIS 733 (App. 2020). Contract language is interpreted in the context of the entire contract. When possible, contracts are read to “give effect to all terms of the contract to avoid any term being rendered superfluous.” *Terrell v. Torres*, 248 Ariz. 47, 50, ¶ 14, 456 P.3d 13, 16 (2020).

5. Ambiguities in contract language permit the use of parole evidence from outside sources, such as from drafters and contemporaneous documents, to resolve ambiguities in contract language.

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What is Being Condemned

6. Broadly described, Cave Creek's entire water system presently includes three asset categories: 1) Cave Creek's "Transmission Assets" consisting primarily of an approximately twelve mile long water transmission line and pump stations that move raw water uphill from the Central Arizona Project ("CAP") canal to Cave Creek's water treatment plant ("WTP"); 2) Cave Creek's "Treatment Assets" consisting primarily of this WTP; and 3) Cave Creek's present "Distribution Assets" consisting of its pipes, tanks and pumps that distribute treated water from the WTP to customers in both towns, including to the CSA.

7. Carefree is condemning a subset portion of Cave Creek's present "Distribution Assets" located within or exclusively serving the CSA, including distribution lines in the CSA presently owned by Cave Creek and pump stations in Cave Creek that exclusively serve the CSA, but otherwise not Cave Creek's Transmission Assets, WTP or other distribution assets within Cave Creek. These latter assets remain the property of Cave Creek within its town limits. Cave Creek Mayor Bunch admitted on cross examination that Cave Creek's WTP and transmission lines will remain unchanged within Cave Creek after condemnation. Cave Creek expert Mr. Zanni also admitted on cross examination that the physical assets to be condemned are Cave Creek's "distribution assets" lying in the CSA. Mr. Neiss also said that Carefree will not take Cave Creek's WTP or the 12 mile CAP water line but will take only the distribution assets within the CSA.

8. Pursuant to IGA § 5.1, the parties agree that the assets being acquired include the Cave Creek water infrastructure within the CSA, described just above, plus four easements and a single parcel of fee land, plus the rights to 377.83 acre feet of CAP raw Water Rights defined in IGA § 5.1, and the right and obligation to serve customers in the CSA. The distribution infrastructure currently serves approximately 544 metered connections to residents and businesses in the CSA.

9. Carefree also claims that this acquisition includes the physical assets and any undeveloped fee real properties and dedicated water main easements associated with Ocotillo Ridge Booster Pump Station ("BPS") #1, Ocotillo Ridge BPS #2, Hawksnest BPS #2, Sentinel Rock BPS, which are distribution assets within the boundaries of Cave Creek that exclusively service three Carefree homes and other vacant lots (the "Cave Creek Assets"), which Cave Creek disputes can be condemned in this arbitration proceeding.

10. The conclusion from this analysis is that compensation is not due Cave Creek for its WTP or treatment lines because they remain within Cave Creek unaffected by the taking. Cave Creek's compensation derives exclusively for and from taking its distribution lines lying in the CSA, the Cave Creek Assets, plus the real properties described above.

Two Legal Compensation Categories

11. The Arizona Constitution provides that private property cannot be taken or damaged for public use unless just compensation is paid to the owner. ARIZ. CONST. ART. 2, SEC. 17. "Just compensation" contemplates two broad elements of damage: (1) the value of the property actually

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taken by condemnation and (2) the lessening in value of the property remaining, as affected by severing it from the property actually taken, and by the manner in which the proposed improvement may be constructed.” *Suffield v. State ex rel. Morrison*, 92 Ariz. 152, 375 P.2d 263, 266 (1962).

Valuation Steps

12. Among competing valuation methods, Arizona law expresses support for a generic market value. “Value” in Arizona includes market value: what a willing buyer would pay and what a willing seller would accept. *Tucson v. El Rio Water Co.*, 101 Ariz. 49, 51, 415 P.2d 872, 874 (1966). Arizona courts might have expounded on this definition to define market value in terms of more specific appraisal methods but, to date, have not done so.

13. The Arizona legislature has indicated that assessing market value compensation entails three steps:

- (i) The value of the property sought to be condemned;
- (ii) If the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned, and the construction of the improvement in the manner proposed by the plaintiff; and
- (iii) How much the portion not sought to be condemned and each estate or interest therein will be benefited separately, if at all, by construction of the improvement proposed by plaintiff [but only up to the amount of severance damages assessed] . . . A.R.S. § 12-1122(A)(1)-(3).

State ex rel. Ordway v. Buchanan, 154 Ariz. at 162. 741 P2d 292 (1987), adding that a “major concern” is to ensure that condemnees “not be awarded double compensation for losses that have already been included in the land taken.”

Neighbor Condemnation

14. “In Arizona there is no constitutional prohibition against the taking of private property for public use except that just compensation be made.” *Mesa v. S.R.P.*, 92 Ariz. 91, 104, 373 P.2d 722 (1962) (internal citations omitted). This principle extends to publicly-owned property, including property appropriated to a public use. A.R.S. § 12-1114(2)(3); A.R.S. § 12-1112(3); *Mesa v. SRP, supra*, (municipal corporation may condemn property of another municipal corporation).

15. Carefree accordingly has the right to condemn property outside its corporate limits for utility purposes. A.R.S. § 9-511(C); *Citizens Utils. Water Co. v. Superior Court*, 108 Ariz. 296, 297, 497 P2d 55 (1972) (“A.R.S. § 9-511 grants cities the power to exercise the right of eminent domain *within or without the city*”).

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Utility Condemnation

16. These general compensation tenets described above match utility condemnation procedures described in Article 2, chapter 8 of Title 12 at A.R.S. 12-1122(A)(1)-(3). A.R.S. 9-515(C) provides: "The fair value of the public utility shall be the equivalent of the compensation to be paid for the taking of private property for public use as provided by article 2, chapter 8 of title 12."

17. The value of a condemned public utility equals the value of the real estate, the plant, the equipment, and its going concern. *City of Phoenix v. Consol. Water Co.*, 101 Ariz. 43, 45, 415 P.2d 866, 868 (1966). An amount for "going concern" is built into the fair market value. *City of Tucson v. El Rio Water Co.*, 101 Ariz. 49, 51, 415 P.2d 872, 874 (1966).

18. "Just compensation" in Arizona thus includes two basic legal elements: Compensation for the part taken (including incorporating "going concern" value) and damages for diminution in market value suffered by the remainder by its severance from the part taken. The goal is that "The value of the land remaining plus damages should equal the value of the land in the before situation. The landowner is entitled to be made whole but is not entitled to make a profit from the taking . . ." *Tucson Title Ins. Co. v. State ex rel. Herman*, 15 Ariz. App.452, 5, 489 P.2d 299, 302 (1971).

The Condemnee Bears the Burden of Proof

19. In a condemnation case the party seeking compensation -- the condemnee -- bears the burden of proof on valuation. *Town of Williams v. Perrin*, 70 Ariz. 157, 159, 217 P2d 918 (1950); *State ex rel. Ordway v. Buchanan*, 154 Ariz. 159, 164, 741 P2d 292 (1987). Thus, Cave Creek must prove its entitlement to compensation in each instance by a preponderance of evidence. *State ex rel. Herman v. Mestas*, 12 Ariz. App. 289, 294 , 469 P2d 855 (1970).

Analysis of Compensable Elements

20. Before fixing monetary values, this Panel must determine which asset categories are compensable and which are not. The ensuing discussions proceed to make those compensability determinations in light of expert analyses plus Arizona law.

Starting with the \$19.5MM as the Basis

21. The IGA clearly requires the \$19.5 MM figure to be the basic starting point for any monetary analysis. Cave Creek expert Mr. Zanni expressed his view that as long as the \$19.5 MM figure gets consideration somewhere in his appraisals, it is "based on" or "starts with" it. At his deposition pp. 90-91, Mr. Zanni admits that his four appraisal results would be about the same whether or not he included the \$19.5 MM figure, by which this Panel concludes that the \$19.5 MM was irrelevant to his valuations. He also says at pp. 83 and 89 that the \$19.5 MM figure "informs" his analysis and that amount equals "cash flow." For his part Mr. Walker also admitted in his deposition and on cross examination that the \$19.5 MM figure played no part in his valuation.

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22. These Cave Creek expert valuations avoid the foundational language of the IGA and eventually artificially inflate Cave Creek's compensation. The IGA and Stipulation do not say that the \$19.5 MM should merely be given some weight or factored somewhere into the valuation; instead, the IGA makes this figure the functional starting point for all valuation factors and for ensuing adjustments, which Cave Creek's expert valuations failed to do. The Panel's conclusion from this analysis is that these Cave Creek experts' starting point does not match the IGA's required starting point.

Mr. Zanni, Mr. Grunden and the *Rickles* case

23. A different issue arises regarding Mr. Zanni's per-customer approach. At his deposition p. 60 and on direct examination, he admitted basing his compensation figures on the total number of customers lost to Cave Creek, which is 544 of 2840 current customers, and then dividing the \$19.5 MM by the number of customers. He testified that this averaged per-customer value of \$8,078 is the "basis for [his] method of appraisal." Cave Creek's opening brief re-states this per-customer value with approval. Mr. Grunden also admits to using a similar "average cost per customer" analysis, taking the \$19.5 MM as "only a reference point."

24. However, *City of Tucson v. Rickles*, 109 Ariz. 82, 505 P2d 253 (1973) holds that such a per-customer [or per space] average is improper both "as a matter of law" and also because this per-capita division necessarily includes in the per-person average some assets not being taken (such as Cave Creek's non-condemned WTP and water transmission equipment). Mr. Giardina, however, does not use this per-customer ratio but instead adopts an ERU residential unit excluding non-condemned assets in the part taken.

25. *Rickles* impairs the Zanni and Grunden per-customer or per-space ratio, holding it improper as a matter of law. *Rickles* requires distinguishing between the part taken and the part not taken, which is what Carefree's experts correctly did by excluding the value of transmission and treatment assets not being taken, and then assigning a proportionate share of distribution assets to the CSA based on the share of water distributed (ERUs) or number of CSA customers relative to the remaining system.

26. By multiplying the value of all assets in the Cave Creek system by the ratio of CSA customer-connections to total connections, Mr. Zanni and Mr. Grunden did what *Rickles* prohibits: they included in the per-capita figure a share of Cave Creek service assets not being taken among the assets taken.

27. The Panel's conclusion from this analysis is that the otherwise differing Zanni-Grunden per-customer approaches violate Arizona law in *Rickles* because of including non-condemned assets with those being condemned.

Disconnection costs

28. The parties agree that disconnection is more than merely capping a pipe or adding a new valve. Disconnection involves reconfiguring wells, pipelines, pumps, meters, and other

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facilities in the CSA on the date of the condemnation filing. The parties agree these physical assets will be significantly altered.

29. The towns disagree as to who does and pays for the disconnect/reconnect. Mr. Walker, Mr. Adam and other Cave Creek witnesses estimated several million dollars for the disconnect costs, under the assumption that Cave Creek will do the disconnect or that Carefree will somehow do and fund the disconnect on Cave Creek property outside the CSA. Mr. Walker's deposition at pp. 54 and 58 indicates his belief that disconnection refers to "lost income stream." Carefree's witnesses insist that Carefree will do the disconnect/reconnect in the CSA. The "lead author" of the IGA, Mr. Chenal testified that, based on the IGA, he expected the disconnect to be done by Carefree, not by Cave Creek.

30. Under Arizona law, the choice of condemnation and how to do it resides in the condemner "in the manner proposed by Plaintiff," A.R.S. Sec. 12-1122(A)(2), where "plaintiff" is the condemner. This statute holds that the manner of doing the disconnect is to be decided by the condemner Carefree, not by the condemnee.

31. Cave Creek's latest contract argument, in part, is that the IGA explicitly requires that Cave Creek receive compensation for disconnection costs in any circumstance, independently from Arizona law. Its closing argument asserts that the IGA makes disconnection costs agreed-to damages for Cave Creek even if Carefree does the disconnect. Admittedly, the IGA does not specify who performs and who pays the disconnection cost. However, IGA § 5.3 does say that "the compensation shall include the cost of physically separating the System from the Cave Creek water utility."

32. Cave Creek reads this sentence to mean that, regardless of who does the disconnect or where it occurs, Cave Creek gets paid for it. It reads this sentence isolated from the repeated IGA requirement to adjust/allocate compensation consistent with Arizona law. These parties did not elsewhere separately contract for Carefree to pay for disconnection, such as by a separate contract addressing disconnection, so the IGA plus Arizona law comprise the sole insights into the disconnect responsibility. Cave Creek argues that the IGA language quoted just above abrogates Arizona law regarding disconnection, meaning that consistency with Arizona law becomes secondary, at best, to the disconnect mandate quoted above.

33. No such abrogation language exists in the IGA, express or implied, specifying who pays for disconnection if Carefree does the disconnect. If Carefree is doing the disconnect and Cave Creek is not, then it seems gratuitous, even absurd, to compensate the latter for work it is not doing. This disconnect language must be read in the context of consistency with Arizona law, a mandate repeated in IGA § 6.11 requiring the entire IGA to be "governed by" Arizona law. To ignore these repeated mandates frustrates separating the systems and the guidance of Arizona law required by the IGA. What's more, the implied covenant of good faith and fair dealing urges that Cave Creek must mitigate any 'damages' for disconnection it claims under the contract, as occurred in *Catalina Foothills Unified School Dist. No. 16 v. La Paloma...*, 238 Ariz. 510, 363 P.3d 127 (2015) (school district's conveyance of easement over condemned street back to

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homeowner's association effectively "cured" any other severance damages because the easement ensured homeowner's association and other property owners continued use of the road).

34. The IGA sentence in § 5.3 regarding disconnection must also be read to allow Cave Creek to seek reimbursement for incidental costs in the separation, but not to give Cave Creek control over how and when separation occurs, or to force Carefree to pay costs Cave Creek chooses to incur for the disconnect. This IGA sentence cannot mean that each town is responsible for disconnecting only its own "side," which would lead to coordination difficulties and possible distrust, which is already heightened among these parties.

35. Ultimately, under Arizona law, it is the condemnor, not the condemnee, who chooses details of the condemnation work. A.R.S. § 12-1122(A)(2) provides that, in a partial taking, damages shall be assessed by reason of "the construction of the improvement in the manner proposed by the [condemnor]."

36. The Panel's conclusion from this analysis is that Carefree will do the disconnect at its expense and by its own chosen methods and the proper compensation to Cave Creek for disconnect costs is zero.

Increases in water capacity

37. Should Cave Creek be compensated for its lost water capacity, or lost water customers, or perhaps for eventual increases in its water value? Cave Creek's Mr. Adam and Mr. Walker posit a figure of nearly \$2.9 MM for this category.

38. A.R.S. Sec. 9-518(F)-(J) does afford the condemnee value changes within a limited window of time: "additions, betterments, improvements and extensions...between the date of commencement of the trial and the date of taking possession should be included in compensation." Mr. Chenal said that the parties agreed that water would go up in value, so he thought it could be compensable in the future.

39. However, Carefree is taking Cave Creek's physical assets such as pipes, hydrants, and valves; it is not condemning Cave Creek water apart from the CAP allotment described in IGA § 5.1, for which no profit may be exacted as a matter of law. The water for Carefree's 544 newly-serviced customers will come not from Cave Creek but from Carefree's own supply (or from its suppliers, such as Scottsdale). Cave Creek's water, apart from the CAP, is not being taken or diminished. Cave Creek Mayor Bunch testified that for several years Cave Creek has been buying Phoenix water and intends to continue to do so to "reduce its own water production" by buying more water from Phoenix in the future.

40. As to the excess capacity issue, this part of the argument presumably means that Cave Creek, for a time, may have more of its water accumulating in its tanks because of no longer servicing these 544 former customers. Any increase in Cave Creek's water quantity is a choice made by Cave Creek, not caused by Carefree. Cave Creek's decision to buy Phoenix water predates condemnation and, according to its mayor, will continue for reasons unrelated to

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condemnation. Now and in the future Cave Creek obviously can adjust how much water it buys from Phoenix.

41. Carefree is not responsible for Cave Creek's future water volume. If, apart from the CAP, Carefree is taking no water from Cave Creek after condemnation, no reason exists to compensate Cave Creek for water it has not lost. As to the build-up of excess water capacity in its tanks, Cave Creek can choose to simply buy less water from Phoenix.

42. Furthermore, and more decisive for this Panel, on the legal merits of this argument, *Suffield v. State of Arizona ex rel. Robert Morrison*, 92 Ariz. 152, 375 P2d 263 (1962) holds that, in a condemnation case, the "value of water diverted in and of itself is not the measure of compensation."

Cave Creek's CAP Water Rights

43. Apart from this water capacity issue, the parties agreed in IGA § 5.1 that Cave Creek deserves compensation for several acre feet of CAP water being taken by Carefree for its new CSA customers. A total of 377.83 acre feet is the amount of CAP water resulting from application of IGA § 5.1.

44. Neither CAP Water Rights nor the water taken can be sold to third party water providers. The Central Arizona Water Conservancy District that oversees transfers of CAP water prohibits profit by an entity transferring CAP Water Rights: "Any transfer of a CAP M&I subcontract allocation must be accomplished with no profit to the relinquishing entity."

45. Cave Creek has not provided specifics regarding the amount paid for the CAP Water Rights as part of the Global acquisition. Its records for that acquisition include two line items without detail about assets included in these values: (1) \$18.25MM for depreciable assets and (2) \$1.25MM for non-depreciable assets such as water.

46. Because the CAP Water Rights are not a fixed asset with a defined useful life, this Water Rights' purchase price is part of the \$1.25 MM non-depreciable asset amount, along with easements and land. The question becomes what value to assign to this CAP water.

47. Cave Creek paid no more than \$1.25 MM for 2,606 acre feet of CAP Water Rights in 2007. Given these water rights plus the CSA easements and land in the Cave Creek system, Cave Creek must have paid Global something less than \$1.25 MM for the CAP Water Rights. Using \$1.25 MM as the maximum paid for CAP Water Rights, Cave Creek necessarily paid less than \$480 per acre foot ($\$1,250,000$ divided by 2,606 acre feet = \$480 per acre foot) per the terms of the IGA.

48. If Cave Creek is obligated to transfer 377.83 acre feet of CAP Water Rights to Carefree, as everyone agrees, and Cave Creek paid less than \$181,000 ($\480×377.83) for rights to this water, the resulting amount is an eventual compensatory credit to Cave Creek.

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Loss of Income and Customers?

49. What about Cave Creek's loss of 544 water customers, perhaps causing Cave Creek an annual deficit of some \$900,000 for loss of income and/or excess water capacity? Mr. Zanni in his deposition at p. 57 urged a figure of \$8.3 MM for Cave Creek's loss of this customer income. Cave Creek witness Mr. Walker said that Cave Creek should be compensated several million dollars for losing the income stream of these 544 customers, which he equates to a "disconnect" cost. See Ex. D 10 and his deposition pp. 54 and 58.

50. Arizona law, however, is to the contrary for several different reasons. First, this income loss is built into the basic condemnation value in the term "going concern," i.e., the basic value of the condemned CSA reflects this change in customer base. *Catalina Foothills Unified School District v. La Paloma Property Owners Assn.*, 23 Ariz. 510, 363 P3d 127 (2015). Further, Cave Creek will recoup these lost customers in the near future, likely within six years, because of its own population growth.

51. In any event, and more decisively, loss of customers and loss of that income stream are not compensable items under *City of Phoenix v. Leroy's Liquors*, 177 Ariz. 375, 868 P2d 958 (1993), expressly holding that the condemnee's loss of customers, loss of profits and/or income stream are not compensable. This Panel's conclusion matches this holding.

Severance

52. Severance refers to a diminished value of the part remaining after condemnation of the contiguous part. Severance costs are not compensable unless they reduce the value of the isolated parcel. The loss must affect what a buyer would pay and what a seller would accept; the abstract value of the lost parcel itself is irrelevant. *Suffield, supra*, 92 Ariz. at 156, 375 P2d 263 (1962).

53. To claim severance damages, the condemnee bears the burden of showing value of the severed parcel before and after condemnation. No such Cave Creek evidence exists in this record. Mr. Adam's deposition at pp. 23 and 25 equates "stranded" with both "stranded treatment capacity" and also with "severance." He did no severance analysis. On cross examination Mr. Zanni admits he did not calculate severance damages but used that term in passing, adding that he equates it to "excess water treatment." Zanni Deposition p. 30. He also said he didn't know how to describe or define severance damages. Zanni Deposition p. 33. He also admits in his deposition at p. 68 to not doing any severance analysis or "cost to cure" analysis, but then admits at his deposition at p. 67 that he adopted another appraiser's figure of \$7,792,000 for severance damages.

54. Mr. Giardina is the only Carefree expert who did this before-after analysis, finding no difference in before-after value. Given this testimony and the absence of any dollar evidence of before and after value, this Panel concludes that Cave Creek should not receive any severance damages.

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“Stranded” Debt, Finances and Time Value of Money

55. Mr. Zanni figures a capital rate of 4.2% for the remaining Cave Creek debt financing, asserting a total compensatory charge of \$2.9 MM for this item. Mr. Walker also asserts that Cave Creek should be compensated \$1.2 MM for its WTP debt service. Walker Deposition pp. 48-49.

56. Other Cave Creek experts find approximately \$1.7 million in business losses representing the present value of the net operating income from the CSA that Cave Creek will no longer receive because Carefree is buying those assets, exchanging the assets for cash. Mr. Walker also claims that \$1.2 MM of the prior Cave Creek debt incurred to purchase the WTP and improvements to the WTP, which Cave Creek will continue to own, are now “stranded” due to freeing additional excess treatment capacity in the WTP.

57. There are several different reasons why these arguments don't work. Mr. Chenal on cross examination testified that the IGA contemplated condemnation of *present-tense physical assets as of the date of the condemnation*, without recovery for future financial obligations, results, or executory contracts. Mr. Kreuzweisner, a Cave Creek water executive, admitted on cross examination that the IGA contemplated present, not future financial obligations. Further, the Cave Creek debt will not be stranded because it can be retired or restructured at Cave Creek's option. A.R.S. 9-515 requires the condemnee to mitigate its damages. Further, the assets purchased with the debt stay with Cave Creek, meaning they are not lost. If Cave Creek had paid cash, it would not be entitled to recover the cash spent on the assets it is keeping in the absence of severance damages.

58. In a word, any “stranded debt” results from Cave Creek's pre-condemnation choice of financing options and obligations, including the obligation to comply with the Global purchase and with the IGA. The CSA condemnation is not the proximate cause of Cave Creek incurring either its prior or its future debt obligations. Under A.R.S. 9-515 and 12-1122 the condemnee has a duty to mitigate its losses, including future financial losses, a choice within the present and future control of Cave Creek.

59. Furthermore, and apart from the foregoing reasons, Arizona condemnation law does not allow future financial obligations to be compensable. Business losses, bonds, debt, and excess treatment capacity are not compensable under *Arizona Water Co v. City of Yuma*, 7 Ariz. App 53, 436 P2d 147 (1968) (loss of income to water company during reinvestment period and retirement of bonds comprise “remote and speculative damages”), adding that “[The condemnor] is under no duty to assume [the condemnee's] contract obligations. . . . It is bound to pay only the just value of the utility. The fact that [the condemnee] has entered into a contract whereby it will cost it something to deliver the utility to [the condemnor] cannot affect the reasonable value of the utility.” *Id.* at 58, 436 P.2d at 152 (quoting *Oshkosh Waterworks Co. v. R.R. Comm'n of Wisconsin*, 161 Wis. 122, 152 N.W. 859, 864 (1915)).

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60. Regarding Cave Creek monetary demands for the “time value of money,” at least three answers appear. In the first place, customers in the CSA have already paid and continue to pay established and sometimes increasing charges for their water. CSA customers have been paying the same water rates as Cave Creek customers, including occasional rate increases. These water rates reflect the “time value of money.” Secondly, any adjustment for the time value of money is defeated because CSA physical assets have depreciated rather than increased in value. Finally, the following quotation from the Yuma case, immediately above, seems, by analogy, to reject compensating for the time value of money:

As a general rule, remote and speculative damages are disregarded in condemnation cases, 1 Orgel, 'Valuation Under Eminent Domain', 2nd Ed., s 64, P. 293. Loss of income during the reinvestment period is a good example of remote and speculative damages. It would be a matter of conjecture to attempt to determine the loss of income during the reinvestment period. It is possible that The Company might never find an investment from which it could secure a rate of return similar to that made on the property condemned. Conversely, due to changes in economic conditions, it might be able to make an investment with a rate of return somewhat higher than it is presently receiving. Such damages would not be measurable with any degree of certainty and they should be rejected as too speculative

Id. HN 9.

61. The Panel’s conclusion regarding these varied Cave Creek financial obligations and monetary expectations is consistent with the prior paragraph: they are not compensable under Arizona law.

Depreciation of Cave Creek assets

62. Cave Creek asserts no depreciation is allowable because the IGA doesn’t mention it. However, appreciation/depreciation is implied in the reference to Arizona condemnation law, which recognizes both as legitimate monetary factors.

63. Depreciation represents loss in value caused by physical deterioration, functional obsolescence, economic obsolescence, and/or regulatory environment. Whereas land and easements represent an appreciation credit to Cave Creek, depreciation of its equipment reflects a subtraction of value. While there is a facile argument that appreciation and depreciation are offsetting, such an approach is too simple because the numbers differ, and appreciation relates to real property while depreciation relates to physical equipment. Cave Creek deserves some value for appreciation of its real property since 2007, as discussed in a following section.

64. As to depreciation of Cave Creek equipment, the evidence showed many photos of old, rusty, and poorly maintained pipes, hydrants, and pumps. Mr. Kreuzweisner gave rebuttal testimony that Cave Creek recently fixed some of these deficiencies. In response to a question, he said he had no percent estimate for the extent of these corrections.

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65. Cave Creek bears the burden of proving entitlement to compensation and damages, if any, including extent of remediation. This burden includes proving that activities such as painting, cleaning, and raking, possibly begun after filing this condemnation, measurably impact the market value of its CSA assets. No such value evidence was presented.

66. This Panel cannot infer, without evidence, that these cosmetic improvements mean that the CSA assets have thereby become partly less depreciated or not at all. Instead, the evidence is that the CSA depreciating assets are thirteen years older today than they were when Cave Creek bought them in 2007, with thirteen more years of accumulated wear, as depicted in the several photographs in evidence.

67. Mr. Zanni's direct examination indicates some support for a depreciation figure ("*You also factor in depreciation*"). So does his Replacement Cost New Less Depreciation ("RCNLD") method. So does Mr. Giardina's analysis. Later, Mr. Zanni treated depreciating assets as if the passage of time made them more valuable rather than devalued due to wear. A 28-year-old pump, however, is not worth more today than it was thirteen years ago.

68. At his deposition at pp. 77-79, Mr. Zanni admitted that depreciation of Cave Creek assets had occurred but, two pages later, admits that, by the date of his deposition, he had done no depreciation analysis. At the hearing, however, he estimated the amount of Cave Creek's depreciation at 2% for the thirteen years since 2007, to reach a total depreciation of 26%. However, this methodology inflates Cave Creek assets but ignores the decrease in value resulting from loss of the entire useful equipment life. Mr. Zanni would have Carefree pay for assets as if they were new rather than having a reduced useful life due to age and lack of maintenance, as reflected in the photographs mentioned above.

69. Cave Creek water records as of June 30, 2019 show an accumulated depreciation of \$4,562,500 and an annual depreciation expense of \$365,000 after acquiring the Global System in 2007. These values indicate 12.5 years of depreciation associated with the \$18.25 MM portion of the Global acquisition from 2007 to June 30, 2019.

70. This depreciation booked by Cave Creek, however, fails to account for accumulated depreciation preceding the 2007 acquisition, and therefore is understated. Depreciation since 2007 is booked on a 50-year schedule starting in 2007, rather than a 50-year schedule starting when the assets went into service in 1992.

71. For his cost approach analysis Mr. Giardina uses the Cave Creek-provided asset records to estimate annual depreciation starting from 1992 to reach a depreciation value consistent with Cave Creek accounting records and its planned capital expenditures. He recommends that depreciation reflect a 50-year useful life from the 1992 acquisition. Use of a 50-year depreciable life expectancy from 2007 includes both compensable distribution and non-compensable treatment assets in service before the 2007 acquisition. These assets were not new in 2007 when Cave Creek acquired them. Given that these assets were placed into service 15 years before 2007,

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a 50- year useful life beginning in 2007 means that these Cave Creek facilities would have a total useful life of 65 years.

72. To determine net book value as of May 1, 2020 Mr. Giardini made two adjustments to the accumulated depreciation reported by Cave Creek as of June 30, 2019. The first included an additional \$304,167 for ten months of depreciation expense from July 1, 2019 through May 1, 2020, resulting in an accumulated depreciation of \$4,866,667. The second adjustment reflects accumulated depreciation from when the assets were placed into service in 1992 rather than from the date of the 2007 acquisition.

73. The adjustment to reflect a 35-year remaining useful life increases the accumulated depreciation by \$2,085,715. When combined with the first adjustment of \$304,167, this figure results in an increase of \$2,389,881 for the accumulated depreciation amount as of May 1, 2020, an increase from the \$4,562,500 June 30, 2019 amount (before any adjustments) to the \$6,952,381 May 1, 2020 value.

74. The Panel concludes that this last figure is the correct total depreciation figure applied to condemned Cave Creek assets. In this Panel's view, the 2007 accumulated depreciation of the Cave Creek water system must be adjusted to reflect a 35-year remaining life, not 50 years. Given lack of a figure for remediation, coupled with the fact that Cave Creek bears this burden of proof, this Panel concludes that depreciation like that recommended by Mr. Giardina is in order, even if his figure predates Cave Creek's unquantified remediation efforts.

Appreciation of Cave Creek Assets

75. As mentioned in the prior section, under § 5.1 of the IGA, easements and land were included in the \$19.5 MM Global acquisition price in 2007. The \$1.25 MM represents the non-depreciable assets in the Global acquisition such as easements and land in the Cave Creek-only service area. Landpro Valuation appraised the four easements and one land parcel as follows:

- (i) An existing 0.0821-acre easement within a 5.2699-acre parcel of residential land, located at the northwest corner of Hawksnest Road and Mule Deer Point in Carefree, Arizona, and identified as Maricopa County APN 216-30 008: Valuation: \$6,621.
- (ii) An existing 1,782 square foot (0.0409-acre parcel) booster pump station site, owned by Carefree or Cave Creek, within the Ocotillo Ridge Estates subdivision in Carefree, Arizona, and identified as Maricopa County Assessor's Parcel Number 216-22-027: Valuation: \$2,217.
- (iii) An existing 0.0930-acre easement within a 1.5977-acre residential property, identified as Lot 37 within the Carefree Sentinel Rock Estates subdivision in Carefree, Arizona, and identified as Maricopa County Assessor's Parcel Number 211-28-061: Valuation: \$7,597.

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- (iv) An existing 0.1768-acre easement within a 5.7210-acre residential property, identified as Lot 1 within the Ocotillo Ridge Estates subdivision in Carefree, Arizona, and identified as Maricopa County Assessor's Parcel Number 216-22-002: Valuation: \$3,832.
- (v) An existing 0.0671-acre easement within a 4.1843 acre parcel of commercial land, located along the east side of Cave Creek Road and north of Carefree Highway in Carefree, Arizona, and identified as Maricopa County APN 211-47-206: Valuation: \$21,915.

76. The total valuation of the five above easements and land parcels as estimated by Landpro is \$42,182. This figure represents, in effect, a credit to Cave Creek for appreciation of CSA land and easements.

Ocotillo II (OR II)

77. Cave Creek claims almost \$4 million of its asserted disconnection work is to run a new water line to serve three existing and up to nine future customers within its town limits cut off by Carefree's acquisition of the CSA. The neighborhood "C" A-10 disconnect solution as proposed by Gannet Fleming and adopted by Mr. Zanni amounts to a cost of over \$1.3 MM per existing customer or \$333,000 for each future customer. Mr. Adam recommends Cave Creek serve these three customers at a cost of \$4 MM. Cave Creek suggests it is within its rights to provide water service to these residents, at this high cost, even without a cooperative agreement with Carefree.

78. Carefree has authority to condemn these areas. Property appropriated to a public use may be condemned under A.R.S. § 12-1114(3). Even if OR II is not considered a public use, Carefree has statutory authority to condemn it. Normally, this taking is done on a showing that the proposed use is a "more necessary" public use under A.R.S. § 12-1112 (3). IGA § 5.7 endorses the same "more necessary" concept. Here the difference is between Carefree's service to OR II versus Cave Creek's expensive waste of that same property after project completion. Connecting to Carefree's water service is "more necessary" than Cave Creek's non-use - and cheaper as well.

79. As noted in the Raftelis Report and discussed in detail in the CVL Rebuttal Report, if Carefree connects to these customers, Cave Creek will bear no disconnect costs. Carefree will be responsible for all connect and disconnect costs in this area regardless of what those might be.

80. Carefree has the right to condemn OR II under its general condemnation authority under IGA § 5.7 and A.R.S. § 12 - 1112. The area was condemned in the underlying court complaint as part of the CSA's distribution assets. Complaint in Condemnation, CV 2019-052592, Paragraph 8, Exhibit 5, Parcel No. 8, describing the Ocotillo Ridge II pump station.

81. This Panel concludes that the Ocotillo – A10 customers should have service by Carefree as part of this condemnation, without Cave Creek compensation for that service.

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Breach of Contract and the Implied Covenant of Good Faith and Fair Dealing

82. In Arizona, a party to a contract has a duty to act fairly and in good faith. This duty is implied by law and need not be in writing. This duty requires that neither party do anything that prevents the other party from receiving the benefits of their agreement. See, e.g., Revised Arizona Jury Instruction CONTRACT 16 regarding “Good Faith and Fair Dealing” and its supporting citations.

83. We find that Cave Creek breached both the IGA and its implied covenant of good faith and fair dealing concerning it. Particularly disturbing to the Panel were Cave Creek’s opinion poll, press release, and a video released by Cave Creek related to Carefree’s condemnation³. For example, the video is text set to music and provides:

The Town of Carefree has sued Cave Creek to take over water service for just a few hundred people. This action will be very costly for both towns resulting in no improvements, same water, same service, higher costs, compensation for Cave Creek, unnecessary legal fees, [and] re-engineering new facilities. Who will cover the massive expense? All Carefree residents? Only affected customers? Cave Creek must act in the best interest of its resident and customers. We oppose the condemnation.

84. When Cave Creek states “*We oppose the condemnation,*” it admits to undermining the condemnation it agreed to under the IGA. Cave Creek argues that because the video’s statements are “factual,” nothing untoward must be inferred from them. This is disingenuous – a party’s statement that is tantamount to *we oppose performing our contract with the claimant admits* to motives, intentions and desires contrary to the very duty that requires “neither party do anything that prevents the other party from receiving the benefits of their [IGA].”

85. When Cave Creek needed Carefree’s aid to condemn the CCWC from Global in 2005, it implored Carefree to act in a friendly, neighborly fashion to assist it, but when Carefree needed Cave Creek’s reciprocity in kind, Cave Creek responded with an opinion poll, press release, and video whose obvious purposes were to politically undermine Carefree’s exercise of its bargained for legal rights in the IGA. It also weighs in our decision to allow Carefree to perform the disconnection work at its own expense. Frankly, given Cave Creek’s obvious, admitted motives, intentions, and desires to prevent Carefree from receiving its benefits under the IGA, the Panel does not believe that Cave Creek can be trusted to perform any disconnection work on its

³ During closing arguments, Carefree agreed to strike ¶ 7 of its *Amended Demand for Arbitration* of January 3, 2020, and replace it with allegations that Cave Creek breached the covenant of good faith and fair dealing and acted in bad faith in relation to: (1) Cave Creek’s alleged actions in 2017-2018 related to a prospective development at the Northeast corner of Carefree Highway; (2) Cave Creek’s opinion poll and press release; and (3) a video released by Cave Creek related to the condemnation. Carefree did not meet its burden with respect to (1) Cave Creek’s alleged actions in 2017-2018 related to a prospective development at the Northeast corner of Carefree Highway, but it did with respect to items (2) and (3).

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own on a “go forward” basis consistent with its duties of good faith and fair dealing to Carefree under the IGA.

86. No discrete evidence of damages related to Cave Creek’s specific acts of its Breach of Contract and Breach of the Implied Covenant of Good Faith and Fair Dealing (its opinion poll, press release, and a video) was presented. However, the acts complained of, particularly the video, do breach the covenant of good faith and fair dealing by resisting performance of the IGA despite the parties’ prior approval of this condemnation in their IGA. Still, a trier of fact may award nominal damages for such breaches, and we decide to award collective damages of \$1,000.00 for the same. See, e.g., *Edwards v. Anaconda Co.*, 115 Ariz. 313, 317, 565 P.2d 190, 194 (Ct. App. 1977) (where damages for breach of contract are indefinite and cannot be estimated accurately, award of nominal damages is correct measure of damages).

87. Further, though no particular damages have been proven, the finding of Breach of the Implied Covenant of Good Faith and Fair Dealing may entitle Carefree to an award of attorneys’ fees, costs and expenses incurred in responding to these anti-contract persuasion efforts. *Desert Mountain Properties Ltd. P’ship v. Liberty Mut. Fire Ins. Co.*, 225 Ariz. 194, 209, ¶ 61 (App. 2010).

Summary of Value Conclusions and “Just Compensation” Amount

88. We find by a preponderance of the evidence that the Giardina/Raftelis conclusions of value are most consistent with the parties’ intentions in the IGA and are based upon the original \$19.5 MM Cave Creek purchase price of the CCWC, which the IGA requires as the fulcrum for any determination of value under the IGA, and we adopt them as our own:

Line No.	Asset Description	Original Cost	Less Accumulated Depreciation	Net Book Value
1	2007 Global Acquisition – All Assets	\$19,500,000	(\$6,952,381)	\$12,547,619
2	Less: 2007 Global Acquisition – CAP Water, Easements/Land	(1,250,000)	(0)	(1,250,000)
3	2007 Global Acquisition w/o CAP Water, Easements/Land	\$18,250,000	(\$6,952,381)	\$11,297,619
4	Distribution %	44.75%	44.75%	44.75%
5	2007 Global Acquisition – Distribution	\$8,166,875	(\$3,111,191)	\$5,055,684
6	Carefree ERU %	22.70%	22.70%	22.70%
7	Carefree 2007 Distribution Allocation	\$1,853,881	(\$706,240)	\$1,147,641
8	Global Acquisition – Carefree-Only Assets	151,475	(57,705)	93,770
9	Subtotal – Carefree Allocation of Global Acquisition	\$2,005,356	(\$763,945)	\$1,241,411
10	Cave Creek Post-2007 – Investments	\$12,460,762	(\$3,286,285)	\$9,174,477
11	Distribution %	0.00%	0.00%	0.00%
12	Cave Creek Post-2007 – Investments	\$0	(\$0)	\$0
13	Carefree ERU %	22.70%	22.70%	22.70%
14	Subtotal – Carefree Allocation of Post-2007 Investments	\$0	(\$0)	\$0
15	SUBTOTAL CAREFREE PORTION (line 9 + line 14)	\$2,005,356	(\$763,945)	\$1,241,411
16	Value of Carefree CAP Water Rights			181,000
17	Value of Carefree Easements and Land			42,182
18	TOTAL CAREFREE / CSA PORTION (sum lines 15, 16, and 17)			\$1,464,593

**Table 1
from Raftelis
Appraisal
Report,
page 15**

May 15, 2020

Effective Date of
Appraisal:
May 1, 2020

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Attorneys' Fees and Costs

89. We turn now to the issue of attorney's fees and costs. The IGA does not have an attorneys' fees clause, *per se*, in it, but § 6.1 includes an "indemnity" clause. However, the IGA includes an arbitration clause that incorporates by reference the Commercial Arbitration Rules (the "Rules") of the American Arbitration Association (the "AAA"), Rule R-1 of which provides, in relevant part:

R-1. Agreement of Parties*

(a) The parties shall be deemed to have made these rules a part of their arbitration agreement whenever they have provided for arbitration by the American Arbitration Association (hereinafter AAA) under its Commercial Arbitration Rules or for arbitration by the AAA of a domestic commercial dispute without specifying particular rules. These rules and any amendment of them shall apply in the form in effect at the time the administrative requirements are met for a Demand for Arbitration or Submission Agreement received by the AAA. Any disputes regarding which AAA rules shall apply shall be decided by the AAA. The parties, by written agreement, may vary the procedures set forth in these rules. After appointment of the arbitrator, such modifications may be made only with the consent of the arbitrator.

(Underlined emphasis added.)

Further, AAA rule R-47 provides:

R-47. Scope of Award

...

(d) The award of the arbitrator(s) may include:

i. interest at such rate and from such date as the arbitrator(s) may deem appropriate; and

ii. an award of attorneys' fees if all parties have requested such an award or it is authorized by law or their arbitration agreement.

(Underlined emphasis added.)

90. At the initial telephonic hearing in this matter held on Thursday, December 12, 2019 at 1:00 p.m., "[t]he following matters were discussed, and by Agreement of the parties through their counsel and Order of the Arbitrators the following is now in effect:..." and the Panel issued a December 13, 2019 initial Scheduling and Procedures Order that stated, in relevant part:

"22. Special Procedures for the Determination of the "Prevailing Party" and related Attorneys' Fees. [NOTE: all parties have requested an award of attorneys' fees in this proceeding.] ..."

ARBITRATORS' DECISION ON THE MERITS

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91. In addition, Arizona law allows for the recovery of attorneys' fees as follows:

A.R.S. § 12-341.01. Recovery of attorney fees

A. In any contested action arising out of a contract, express or implied, the court may award the successful party reasonable attorney fees. If a written settlement offer is rejected and the judgment finally obtained is equal to or more favorable to the offeror than an offer made in writing to settle any contested action arising out of a contract, the offeror is deemed to be the successful party from the date of the offer and the court may award the successful party reasonable attorney fees. This section shall not be construed as altering, prohibiting or restricting present or future contracts or statutes that may provide for attorney fees.

B. The award of reasonable attorney fees pursuant to this section should be made to mitigate the burden of the expense of litigation to establish a just claim or a just defense. It need not equal or relate to the attorney fees actually paid or contracted, but the award may not exceed the amount paid or agreed to be paid.

C. The court and not a jury shall award reasonable attorney fees under this section.

[Underlined emphasis added.]

See, generally, the Arizona Supreme Court's decision in American Power Products Inc. v. CSK Auto, Inc., No. CV-16-0133-PR (3/23/2017).

92. Also, the Arizona Revised Uniform Arbitration Act provides:

A.R.S. § 12-3021. Remedies; fees and expenses of arbitration proceeding

...

B. An arbitrator may award reasonable attorney fees and other reasonable expenses of arbitration only if that award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

C. As to all remedies other than those authorized by subsections A and B of this section, an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under section 12-3022 or for vacating an award under section 12-3023.

D. An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.

93. The parties' current disputes arise out of contract, so attorneys' fees to the "prevailing party" are recoverable under the contract terms and statutory provisions set forth above.

ARBITRATORS' DECISION ON THE MERITS

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94. Additionally, IGA § 6.1 shows the parties' agreement to a very broad indemnity clause:

6.1 Indemnity. Cave Creek agrees to indemnify and hold Carefree harmless from and against any and all loss, damage, or other injury of any sort whatsoever, suffered as a direct result of Carefree entering into or implementing this IGA; in the event that Carefree is subjected to any third party litigation as a direct result of Carefree entering into or implementing this IGA, Cave Creek agrees, at its own expense, to provide a defense to Carefree in such litigation.

95. The starting point for interpreting the scope of an indemnity obligation lies with its language. See *Grosvenor Holdings, L.C. v. Figueroa*, 222 Ariz. 588, 593, (Ct.App.2009) (“Because the indemnity obligation is contractual in nature, we begin our analysis with the language of the agreement.”); *MT Builders, L.L.C. v. Fisher Roofing, Inc.*, 219 Ariz. 297, 302 (App. 2008) (“When, as here, there is an express indemnity agreement between parties, the extent of the duty to indemnify must be determined from that agreement.”); *Evans Withycombe, Inc. v. W. Innovations, Inc.*, 215 Ariz. 237, 242, (Ct. App. 2006) (“The extent of a contractual duty to indemnify ‘must be determined from the contract.’”);

96. When the terms of an indemnity provision are “clear and ambiguous” they must be given effect as written. *Flood Control Dist. of Maricopa County v. Paloma Inv. Ltd. P'ship*, 230 Ariz. 29, 38 (Ct. App. 2012) (“we decline to judicially engraft the indemnity agreement with restrictions not found in its language.”). See also, *Goodman v. Newzona Inv. Co.*, 101 Ariz. 470, 472, 421 P.2d 318, 320 (1966) (“The court must give effect to the contract as it is written, and the clear and unambiguous terms of a contract are conclusive.”). Contracts are to be construed to give words their ordinary, common sense meaning. *A Tumbling-T Ranches v. Flood Control Dist. of Maricopa County*, 220 Ariz. 202, 209 (App. 2008).

97. IGA § 6.1 broadly provides that Carefree is entitled to indemnity for “any and all loss, damage, or other injury of any sort whatsoever.” This section defines the “trigger” as when Carefree incurs those losses, damages, and injuries of any sort as a result of implementing the IGA agreement, and here the implementation of the IGA required filing the Superior Court Lawsuit and these ancillary legal proceedings. Hence, we conclude that the indemnity provisions of IGA § 6.1 also apply to this action.

IV. DECISION ON THE MERITS.

1. Upon confirmation of the partial, final award⁴ to be rendered hereafter, Carefree is entitled to judgment condemning the Property described in its January 29, 2019 Complaint in Condemnation (the “Complaint”) in Maricopa County Superior Court case number CV2019-052592 (the “Lawsuit”), including:

⁴ See Point V(3), below.

ARBITRATORS' DECISION ON THE MERITS

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A. All assets described in Paragraph 6 of the Complaint, incorporating Paragraph 5.1 of the Intergovernmental Agreement (the "IGA") designated Exhibit D1 in the Arbitration proceedings, as follows:

"5.1 Carefree Service Area System. The Carefree Service Area System ("System") will consist of 1) the wells, pipelines, pumps, meters and other facilities located in the Carefree Service Area and used to provide water service to the Carefree Service Area on the date of the filing of the condemnation complaint and 2) the portion of the Cave Creek CAP subcontract water used to serve the Carefree Service Area ("System CAP"). The quantity of the System CAP water shall be the product of the following Formula in which the following symbols have the following meanings:

"CD" = the total water demand, in acre feet, of the retail customers of Cave Creek water utility located in the Carefree Service Area during the calendar year immediately preceding the year in which the condemnation complaint is filed;

"CC" = the total number of retail water customers of the Cave Creek water utility located in the Carefree Service Area on December 31 of the calendar year immediately preceding the year in which the condemnation complaint is filed;

"CU" = Carefree Service Area annual water use per customer

The Formula:

$$CD \pm CC = CU$$

The System CAP will be the product of multiplying the CU by the total number of subdivided lots in the Carefree Service Area on the date of commencement of the arbitration hearing."

The total water allocation pursuant to the agreement is 377.83 acre feet per year to be transferred for Cave Creek Water Company to the Town of Carefree, Arizona, Utilities Community Facilities District; and

B. All other property condemned in the Complaint in Condemnation, including the real property and improvements thereon described and depicted in Exhibits 5, 6, 7, 8, 9 and 10 of the Complaint, attached and incorporated by reference collectively as Exhibit "A," and

C. The Cave Creek Assets.

2. The assets and other property and property rights condemned as described in Paragraph 1, subparts A and B and C, above, are referred to as the "Property."

3. Upon confirmation of the partial, final award to be rendered hereafter, Cave Creek shall have judgment for **\$1,464,593.00 (One Million, Four Hundred and Sixty-Four Thousand,**

ARBITRATORS' DECISION ON THE MERITS

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Five Hundred and Ninety Three Dollars) as total just compensation for the Property (the “Just Compensation”).

4. Cave Creek is not entitled to further compensation:

(b) by reason of its remaining property's severance from the Property being taken; or

(c) by reason of the construction of the project in the manner proposed by Carefree.

5. Upon confirmation of the partial, final award to be rendered hereafter, and upon payment in full of the amount determined as Just Compensation, Carefree shall be entitled to a Final Order of Condemnation vesting Carefree with title to all Property condemned, free and clear of all claims, liens and encumbrances, and Cave Creek shall have no further right, title, estate, claim, lien, or interest in the Property.

6. Upon confirmation of the partial, final award to be rendered hereafter, Carefree, at its sole cost and expense, on its own schedule, and in a reasonable time, place and manner consistent with its overall project (as determined in its sole discretion), shall have the sole right to separate the condemned Property from the remaining Cave Creek System and shall design, execute, and pay for all disconnection and reconnection necessary to accomplish the separation and/or reintegration of the Cave Creek and Carefree Systems (the “Project”) and shall generally follow the Cave Creek permitting approval process for similar projects; provided, however, that if Cave Creek's permitting approval process requires any different or additional design, then any additional costs or expenses occasioned thereby will be borne and paid for by Cave Creek at its sole cost and expense and Cave Creek shall not be entitled to any further compensation (1) by reason of the taking of the Property or its severance from Cave Creek's remaining system, or (2) by reason of the construction of the Project in the manner proposed by Carefree.

7. Upon confirmation of the partial, final award to be rendered hereafter, Carefree shall generally follow a reintegration procedure consistent with Cave Creek's established permitting process but is not required to do so.

8. Upon confirmation of the partial, final award to be rendered hereafter, Cave Creek retains the right under other provisions of law to separately claim damages, if appropriate, for Carefree's faulty or negligent design or construction of the Project.

9. Cave Creek breached the IGA and also its implied covenant of good faith and fair dealing concerning the IGA, and Carefree is entitled to nominal, collective damages in the amount of **\$1,000.00** for the same.

10. The partial, final award to be rendered hereafter in this matter shall abide the parties' submissions for a prevailing party determination and accompanying application for attorneys' fees and costs thereon, which any party claiming to be a “prevailing party” shall submit by Friday, December 11, 2020, together with any supporting declarations and evidence. See Section V, below.

ARBITRATORS' DECISION ON THE MERITS

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11. This decision fully decides all existing claims and counterclaims (if any) submitted to this Panel. All claims and counterclaims (if any) not expressly granted herein are hereby denied unless reserved to the parties herein.

V. REMAINING PROCEDURAL MATTERS AND ENTRY OF AWARD ON CLAIMS AND ISSUES PRESENTED FOR DETERMINATION.

1. Attorneys' Fees & Costs Determination. Any party that believes that it is the "prevailing party" under Arizona law shall submit any supporting evidence that it wishes to submit regarding its *Application for Attorneys' Fees and Costs* to the AAA and the Arbitrators by **5:00 p.m. PST on Friday, December 11, 2020** and the opposing side shall have until **5:00 p.m. PST on Friday, December 18, 2020** to file any Response and Opposition to the same, at which time the hearing will be closed. No reply shall be filed unless requested by the Arbitrators. Thereafter, the Arbitrators will timely render our final award.

2. Nature of this Decision on the Merits. This Decision on the Merits is a ruling and not an interim or final award, and the Arbitrators neither expect nor intend that their duties in this proceeding are *functus officio*. We expressly reserve jurisdiction to render a final award, including an award or attorneys' fees, arbitrator compensation and AAA arbitration costs as permitted or allowed by the applicable AAA Rules and/or the parties' agreement to arbitrate hereafter in a final award.

3. Our Forthcoming Partial Final Award:

The Panel notes the following provisions of the IGA:

5.2 Supplemental System. The Supplemental System will consist of the additions, betterments, improvements and extensions to the System between the date of commencement of the arbitration hearing and the date on which the condemnor takes possession of the System. The Supplemental System will include Supplement System CAP which will be the product of multiplying the CU by the number of new subdivision lots created in the Carefree Service Area between the date of commencement of the arbitration hearing and the date on which the condemnor takes possession.

5.5 Supplemental Compensation. Within thirty days after the compensation award, Cave Creek shall provide to the condemnor the verified report described in A.R.S. §9-518.E. In the event that the parties cannot agree upon the probable value of the Supplemental System for purposes of the bond or letter of credit, the probable value shall be determined by the arbitrators. If, within thirty days after the condemnor has taken possession, the parties have not agreed upon the compensation to be paid for the Supplemental System, the amount of such compensation shall be determined by the arbitrators. When the compensation for the Supplemental System has been determined, the condemnor shall pay to Cave Creek, within ninety days after the date of such determination, the amount of the compensation plus interest from the date of possession

ARBITRATORS' DECISION ON THE MERITS

Town of Carefree adv. Town of Cave Creek

AAA Case No. 01-19-0001-7178

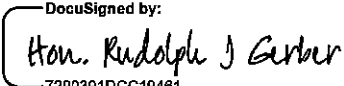
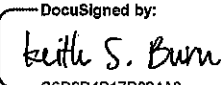

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until paid and the bond or letter of credit shall be returned to the condemnor. If the compensation and interest are not paid within ninety days, Cave Creek may draw on the letter of credit or call on the bond to satisfy the indebtedness. In the event that the letter of credit or bond is not sufficient, Cave Creek may, upon application to the Court, have a money judgment against the condemnor in the amount of the deficiency and Cave Creek will be entitled to the costs and attorneys fees incurred in obtaining and collecting on the judgment.

Because of the existence of these Sections in the IGA, the Panel's forthcoming award will be a partial final award concerning only the *Claims and Issues Presented for Determination* (as defined in Section II of this Decision on the Merits) and we will reserve jurisdiction over any later claims arising under the above IGA Sections.

Messrs. Gerber and Burn authorize their signatures hereon via *DocuSign* in accordance with A.R.S. §12-3029 of Arizona's Revised Uniform Arbitration Act (regarding *Relationship to Electronic Signatures in Global and National Commerce Act*).

IT IS SO DECIDED.

Dated: <u>December 4, 2020</u>	<p>DocuSigned by:  <small>7290391DCC19481</small> By: _____ Hon. Rudolph J. Gerber (Ret.), Arbitrator</p>
Dated: <u>December 4, 2020</u>	<p>DocuSigned by:  <small>C6D8D4B17B024A3...</small> By: _____ Keith S. Burn, Arbitrator</p>
Dated: <u>December 4, 2020</u>	<p> By: _____ Mark E. Lassiter, Arbitrator*</p>

(* Denotes Panel Chair)

ARBITRATORS' DECISION ON THE MERITS*Town of Carefree adv. Town of Cave Creek*

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Copies of this Order served by
E-mail on Friday, December 04, 2020 on:

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* - Legal Assistants

EXHIBIT 1

Complaint in Condemnation

ARBITRATORS' DECISION ON THE MERITS

Town of Carefree adv. Town of Cave Creek

AAA Case No. 01-19-0001-7178

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JAN 29 2019

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ATTORNEYS FOR PLAINTIFF



CLERK OF THE SUPERIOR COURT
DEPUTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

TOWN OF CAREFREE, ARIZONA
UTILITIES COMMUNITY FACILITIES
DISTRICT, a municipal corporation and
political subdivision of the State of
Arizona, a municipal district,

Plaintiff,

v.

TOWN OF CAVE CREEK, a municipal
corporation of the State of Arizona; and
UNKNOWN OWNERS AND
CLAIMANTS,

Defendants.

Case No. CV2019-052592

COMPLAINT IN CONDEMNATION

Plaintiff Town of Carefree, Arizona Utilities Community Facilities District, a municipal corporation and political subdivision of the State of Arizona, a municipal district ("UCFD"), by and through its attorneys Sherman & Howard L.L.C. and Maguire, Pearce & Storey, PLLC, for its complaint in condemnation alleges as follows:

1. Plaintiff UCFD is a special purpose district for purposes of Article IX, Section 19, Constitution of Arizona, a tax levying public improvement district for the purposes of Article XIII, Section 7, Constitution of Arizona, and a municipal corporation, for all purposes of Title 35, Chapter 3, Article 3, 3.1, 3.2, 4 and 5, Arizona

1 Revised Statutes, as amended, and is vested by law and contract with the authority to
2 condemn the assets of a water utility company.

3 2. Defendant Town of Cave Creek is a municipal corporation of the State of
4 Arizona ("Cave Creek").

5 3. The subjects of condemnation, the Carefree Service Area and Carefree
6 Service Area System, as more particularly described herein, are located entirely within
7 the County of Maricopa, State of Arizona.

8 4. This condemnation action is brought in part pursuant to the following
9 rights and authorizations contained in that certain Intergovernmental Agreement
10 ("IGA") by and between Cave Creek and the Town of Carefree ("Carefree"), dated
11 August 2, 2005, and approved by Cave Creek Resolution R2005-24 and Carefree
12 Resolution 2005-23, copies of which are attached hereto as **Exhibits 1 and 2**, and
13 Resolution No. 2019-02, passed and adopted by the Board of Directors of the UCFD on
14 January 15, 2019, a copy of which is attached hereto as **Exhibit 3**. It is also brought in
15 part pursuant to the authority set forth in Arizona Revised Statutes, Title Nine, Chapter
16 5, Article 2.

17 5. As set forth in the IGA, a portion of Cave Creek's water service area
18 currently lies within Carefree and is referred to therein as the "Carefree Service Area,"
19 which specifically includes all real property in Carefree currently being served water by
20 Cave Creek and/or all real property in Carefree which Cave Creek has the obligation or
21 right to serve water, which is more particularly shown and described on **Exhibit 4**
22 attached hereto.

23 6. The IGA specifically permits the UCFD to acquire the Carefree Service
24 Area and the Carefree Service Area System as defined in detail in Paragraph 5.1 of the
25 IGA, entitled "Carefree Service Area System":

26 "5.1 Carefree Service Area System. The Carefree Service Area System
27 ("System") will consist of 1) the wells, pipelines, pumps, meters and other
28 facilities located in the Carefree Service Area and used to provide water
service to the Carefree Service Area on the date of the filing of the

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condemnation complaint and 2) the portion of the Cave Creek CAP subcontract water used to serve the Carefree Service Area ("System CAP"). The quantity of the System CAP water shall be the product of the following Formula in which the following symbols have the following meanings:

"CD" = the total water demand, in acre feet, of the retail customers of Cave Creek water utility located in the Carefree Service Area during the calendar year immediately preceding the year in which the condemnation complaint is filed;

"CC" = the total number of retail water customers of the Cave Creek water utility located in the Carefree Service Area on December 31 of the calendar year immediately preceding the year in which the condemnation complaint is filed;

"CU" = Carefree Service Area annual water use per customer

The Formula:

$$CD \div CC = CU$$

The System CAP will be the product of multiplying the CU by the total number of subdivided lots in the Carefree Service Area on the date of commencement of the arbitration hearing.

7. Upon information and belief, all of the real property, including, but not limited to, all easements and appurtenances thereto, documented or undocumented, all personal property and other assets, if any, within the Carefree Service Area and the Carefree Service Area System used or useful in providing water services to Carefree residents are owned by Defendant Cave Creek, and are included in this Condemnation Action and are specifically included in the "subjects of condemnation".

8. The real properties owned by Cave Creek located within the Carefree Service Area and the Carefree Service Area System that are included as subjects of condemnation in this action are described in Exhibits 5, 6, 7, 8, 9, and 10.

9. The use to which the subjects of condemnation as described in the IGA as the Carefree Service Area and the Carefree Service Area System are to be applied by the Plaintiff is a use authorized by law and is a public use.

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10. This acquisition by UCFD of the Carefree Service Area and the Carefree Service Area System will carry out the intent of the parties as expressed in the IGA permitting and authorizing the condemnation by UCFD of the Carefree Service Area and Carefree Service Area System.

11. In addition to Defendant Cave Creek, there may be parties who have some interest in the subject of condemnation, the Carefree Service Area and the Carefree Service Area System, whose names are unknown to Plaintiff, and remain parties to this action as unknown parties or claimants and/or may be joined later.

WHEREFORE, the Plaintiff Town of Carefree, Arizona Utilities Community Facilities District, prays for judgment against Defendant Town of Cave Creek as follows:

A. That all of the right, title and interest in and to the property and rights of Defendant Cave Creek including but not limited to, all easements and appurtenances thereto, documented or undocumented, as described herein as the subjects of condemnation, the Carefree Service Area and the Carefree Service Area System, be condemned for public use by the UCFD as set forth in the IGA between Cave Creek and Carefree;

B. That title to said property and rights as specifically described in the Carefree Service Area and the Carefree Service Area System be vested in the Plaintiff UCFD;

C. For determination of the value of the subjects of condemnation – the Carefree Service Area and the Carefree Service Area System as determined in accordance with the terms and conditions of the IGA;

D. That just compensation be paid by UCFD for condemnation of said property and rights of Defendant Cave Creek – the Carefree Service Area and the Carefree Service Area System, to be assessed and ascertained in accordance with the terms and conditions of the IGA;

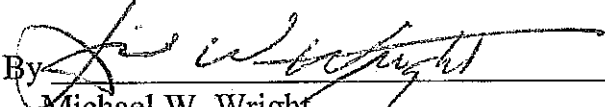
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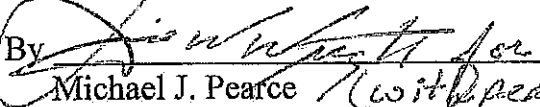
E. For a Final Order of Condemnation vesting all right, title and interest in and to the Carefree Service Area and the Carefree Service Area System in the UCFD upon payment by UCFD of all sums of money determined to be just compensation for the taking of all right, title and interest of the Carefree Service Area and the Carefree Service Area System in the manner as provided in the IGA;

F. For forever barring and estopping Defendant Cave Creek from claiming any right, title or interest in and to the subjects of condemnation – the Carefree Service Area and the Carefree Service Area System, condemned by this action superior to that of Plaintiff UCFD; and

G. For such other and further relief as this Court deems just and proper under the circumstances.

RESPECTFULLY SUBMITTED January 29, 2019.

SHERMAN & HOWARD L.L.C.
By 
Michael W. Wright
7033 East Greenway Parkway, Suite 250
Scottsdale, AZ 85254
Attorneys for Plaintiff

MAGUIRE, PEARCE & STOREY, PLLC
By 
Michael J. Pearce (with permission)
2999 North 44th Street, Suite 650
Phoenix, AZ 85018
Attorneys for Plaintiff

VERIFICATION

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

LESTER PETERSON, declares under penalty of perjury:

1. I am the Chairman of the Board of the Carefree, Arizona, Utilities Community Facilities District, and the Mayor of the Town of Carefree.

2. I have read the Complaint in Condemnation to which this Verification is attached and know the contents thereof. The facts stated in the Complaint for Condemnation are true and correct to the best of my knowledge, information, and belief, except as to those matters alleged upon information and belief and, as to those matters, I believe them to be true.

Dated this 27th day of January, 2019.

TOWN OF CAREFREE, ARIZONA
UTILITIES COMMUNITY FACILITIES
DISTRICT AND TOWN OF CAREFREE

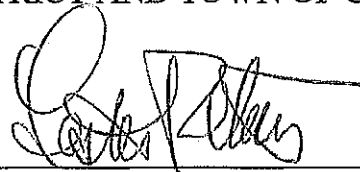
By: 
Lester Peterson, Chairman of the Board of
Town of Carefree, Arizona Utilities
Community Facilities District, and Mayor
of the Town of Carefree

EXHIBIT 1

RESOLUTION NO. R2005-24

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CAVE CREEK, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE TOWN THAT CERTAIN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF CAVE CREEK AND TOWN OF CAREFREE RELATING TO WATER UTILITY SERVICE; AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE CAREFREE WATER COMPANY REGARDING WATER UTILITY SERVICE AND DECLARING AN EMERGENCY

WHEREAS, the Municipality of Cave Creek is desirous of contracting with the Town of Carefree relating to water utility service for the Town's residents; and

WHEREAS, both of the parties hereto have the authority and the ability to enter into Intergovernmental Agreements pursuant to the provisions of A.R.S. 11-951 et seq; and

WHEREAS, the Town is desirous of contracting with the Carefree Water Company relating to water utility service

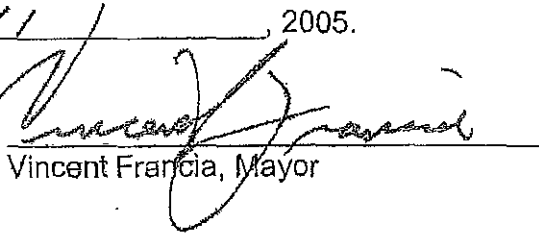
NOW, THEREFORE, IT IS RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF CAVE CREEK, ARIZONA AS FOLLOWS:

Section 1 - Authorization. The Mayor is authorized to execute on behalf of the Town of Cave Creek that certain Intergovernmental Agreement with the Town of Carefree, Arizona, a copy of which is attached to this Resolution as Exhibit "A"..

Section 2 - Authorization. The Mayor is authorized to execute on behalf of the Town of Cave Creek that certain agreement with the Carefree Water Company, a copy of which is attached to the Resolution as Exhibit "B".

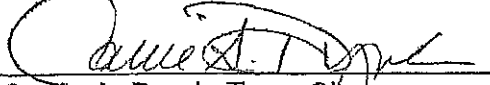
Section 3 - Emergency Clause.. That due to the timelines of the current litigation between the Town and the Cave Creek Water Company an emergency is hereby declared to exist and this Resolution upon proper adoption shall become operative immediately and the Council finds that such action is in the best interests of the health, safety and welfare of the citizens of the Town.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL AND THE TOWN OF CAVE CREEK, ARIZONA, on August 1, 2005.



Vincent Francia, Mayor

ATTEST:


Carrie A. Dyrek, Town Clerk

APPROVED AS TO FORM:

Mariscal, Weeks, McIntyre & Friedlander, P.A.

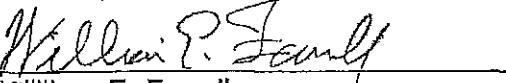

William E. Farrell
For the Firm

EXHIBIT A

TOWN OF CAVE CREEK – TOWN OF CAREFREE INTERGOVERNMENTAL AGREEMENT RELATING TO WATER UTILITY SERVICE

This is an Intergovernmental Agreement (“IGA”) dated this 2 day of August, 2005, by and between the Town of Cave Creek, a municipal corporation of the State of Arizona, hereinafter referred to as “Cave Creek” and the Town of Carefree, a municipal corporation of the State of Arizona, hereinafter referred to as “Carefree.”

SECTION I. RECITALS.

The following recitals represent the general principles to which the Parties have agreed. These principles are therefore incorporated in the specific covenants that follow.

- 1.1 Cave Creek and Carefree are empowered by A.R.S. Title 11, Chapter 7, Article 3 to enter into this IGA.
- 1.2 Cave Creek has been authorized by its voters to acquire and operate the water utility of Cave Creek Water Company (“Water Company”) and Pacer Equities Co. (“Pacer”) and has initiated a condemnation action to acquire the utility properties of these companies within the area of the Water Company’s Certificate of Convenience and Necessity (“Service Area”). These properties are described in the condemnation complaint and will be referred to herein as the “Subjects of Condemnation”.
- 1.3 A portion of the Water Company’s Service Area lies within Carefree, and additional Service Area within Carefree may be certificated to the Water Company before Cave Creek acquires the Subjects of Condemnation; the portion of the Water Company’s Service Area which now or in the future may lie within Carefree is referred to herein as the “Carefree Service Area”.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties covenant and agree as follows:

SECTION II. STATEMENT OF PURPOSE.

The purpose of this IGA is to create, set forth and define the intended relationships between Cave Creek and Carefree regarding the acquisition by Cave Creek of the Subjects of Condemnation within the Carefree Service Area and the future operation of Cave Creek’s water utility within the Carefree Service Area after the Subjects of Condemnation have been acquired.

SECTION III. PROVISIONS RELATING TO CAVE CREEK ACQUISITION OF WATER UTILITY PROPERTIES IN CAREFREE

In consideration of the agreements of Cave Creek contained in this IGA, Carefree hereby consents to the acquisition by Cave Creek, through condemnation or otherwise, and utility operation of the Subjects of Condemnation in the Carefree Service Area.

SECTION IV. PROVISIONS RELATING TO CAVE CREEK OPERATION OF WATER UTILITY IN THE CAREFREE SERVICE AREA

In consideration of the agreements of Carefree contained in this IGA, Cave Creek hereby agrees that for as long as it or its assignees or successors provide water service in the Carefree Service Area:

- 4.1 The water rates, rate components, service charges, and fees for water service by Cave Creek in the Carefree Service Area shall be the same as the water rates, rate components, service charges, and fees for water service in Cave Creek.
- 4.2 The quality of water service and conditions for water service by Cave Creek in the Carefree Service Area shall be the same as the quality of water service and conditions for water service by Cave Creek in Cave Creek.
- 4.3 Cave Creek will assume the rights and obligations of the Water Company under the Agreement for Treatment and Transportation of Central Arizona Project Water dated May 1, 2002, between the Water Company and the Carefree Water Company, as the same may be supplemented pursuant to the terms of the form of the agreement between Cave Creek and Carefree Water Company attached hereto as Exhibit A.

SECTION V. CONDEMNATION OF THE CAREFREE SERVICE AREA SYSTEM

Cave Creek and Carefree agree that, after the Acquisition Date, Carefree shall, upon written request and reasonable notice, have full access to the books and records of the Cave Creek water utility and, for inspection purposes, to the physical facilities of the Cave Creek water utility located in the Carefree Service Area. The Parties agree that the Carefree Water Company, the Carefree UCFD or Carefree may file a condemnation action to acquire the Carefree Service Area System from Cave Creek. In that event, the action shall be conducted in accordance with the following terms and conditions:

5.1. Carefree Service Area System. The Carefree Service Area System ("System") will consist of 1) the wells, pipelines, pumps, meters and other facilities located in the Carefree Service Area and used to provide water service to the Carefree Service Area on the date of the filing of the condemnation complaint and 2) the portion of the Cave Creek CAP subcontract water used to serve the Carefree Service Area ("System CAP"). The quantity of the System CAP water shall be the product of the following Formula in which the following symbols have the following meanings:

"CD" = the total water demand, in acre feet, of the retail customers of Cave Creek water utility located in the Carefree Service Area during the calendar year immediately preceding the year in which the condemnation complaint is filed;

"CC" = the total number of retail water customers of the Cave Creek water utility located in the Carefree Service Area on December 31 of the calendar year immediately preceding the year in which the condemnation complaint is filed;

"CU" = Carefree Service Area annual water use per customer

The Formula:

$$CD \div CC = CU$$

The System CAP will be the product of multiplying the CU by the total number of subdivided lots in the Carefree Service Area on the date of commencement of the arbitration hearing.

5.2 Supplemental System. The Supplemental System will consist of the additions, betterments, improvements and extensions to the System between the date of commencement of the arbitration hearing and the date on which the condemnor takes possession of the System. The Supplemental System will include Supplement System CAP which will be the product of multiplying the CU by the number of new subdivision lots created in the Carefree Service Area between the date of commencement of the arbitration hearing and the date on which the condemnor takes possession.

5.3 Compensation. The Parties agree that the compensation to which Cave Creek will be entitled in the condemnation action will be based on the total compensation paid by Cave Creek to the Water Company to acquire the Subjects of Condemnation. After the condemnation case is filed, Cave Creek and the condemnor will in good faith seek to agree upon the compensation Cave Creek will receive from the condemnor for the System. Except as specifically provided herein, it is the intent of the Parties that the compensation be equivalent to the compensation to which Cave Creek would be entitled for the System and Supplemental System under the Arizona statutes and case law governing municipal acquisition of utility property by eminent domain. The compensation shall include the cost of physically separating the System from the Cave Creek water utility. In the event that the Parties are unable to agree upon the compensation within 120 days after the date of the filing of the condemnation complaint, the compensation for the System shall be determined by arbitration under the Procedures for Large, Complex Commercial Disputes and the Commercial Arbitration Rules of the American Arbitration Association ("AAA") by three arbitrators from the AAA Large, Complex Case panel of arbitrators. The compensation will be determined for the System held by Cave Creek as of the date on which the arbitration hearing commences and that date will be the date of valuation.

5.4 Possession. In the event that compensation is determined by arbitration, the condemnor shall be entitled to possession of the System upon payment of the compensation in full to Cave Creek within six months after the date of the arbitration award and the deposit with Cave Creek of a bond or letter of credit in the amount of the

probable value of the Supplemental System. In the event that the approvals of the Central Arizona Water Conservation District and the Bureau of Reclamation for transfer of the Option CAP have not been obtained by the date of possession, the portion of the compensation attributable to the System CAP shall be withheld by the condemnor and paid to Cave Creek when the approvals have been obtained.

5.5 Supplemental Compensation. Within thirty days after the compensation award, Cave Creek shall provide to the condemnor the verified report described in A.R.S. §9-518.E. In the event that the parties cannot agree upon the probable value of the Supplemental System for purposes of the bond or letter of credit, the probable value shall be determined by the arbitrators. If, within thirty days after the condemnor has taken possession, the parties have not agreed upon the compensation to be paid for the Supplemental System, the amount of such compensation shall be determined by the arbitrators. When the compensation for the Supplemental System has been determined, the condemnor shall pay to Cave Creek, within ninety days after the date of such determination, the amount of the compensation plus interest from the date of possession until paid and the bond or letter of credit shall be returned to the condemnor. If the compensation and interest are not paid within ninety days, Cave Creek may draw on the letter of credit or call on the bond to satisfy the indebtedness. In the event that the letter of credit or bond is not sufficient, Cave Creek may, upon application to the Court, have a money judgment against the condemnor in the amount of the deficiency and Cave Creek will be entitled to the costs and attorneys fees incurred in obtaining and collecting on the judgment.

5.6 Abandonment. In the event that the condemnor fails to pay the compensation award for the System within six months after the award is made, the provisions of A.R.S. §§9-518.D. and 9-518.K. shall apply.

5.7 Public Use. The parties agree that, although the System will be appropriated to a public use after it is acquired by Cave Creek, the public use to which it would be applied by the Carefree Water Company, the Carefree UFCD or Carefree would be a more necessary public use under A.R.S. §12-1112.

SECTION VI. MISCELLANEOUS PROVISIONS.

6.1 Indemnity. Cave Creek agrees to indemnify and hold Carefree harmless from and against any and all loss, damage, or other injury of any sort whatsoever, suffered as a direct result of Carefree entering into or implementing this IGA; in the event that Carefree is subjected to any third party litigation as a direct result of Carefree entering into or implementing this IGA, Cave Creek agrees, at its own expense, to provide a defense to Carefree in such litigation.

6.2 Agreement with Carefree Water Company. Cave Creek agrees to enter into the agreement with the Carefree Water Company, no later than 30 days after the Effective Date of this IGA, in the form attached hereto as Exhibit A.

6.3 Assignment of IGA. No Party shall have the right to assign this IGA nor any interest herein except to its successors. This IGA shall be binding on the successors of the Parties hereto.

6.4 Notices. All notices shall be in writing and together with other mailings pertaining to this IGA shall be made to:

FOR CAREFREE:

Town Administrator
Town of Carefree
P. O. Box 740
100 Easy Street
Carefree, AZ 85377

FOR CAVE CREEK

Town Manager
Town of Cave Creek
37622 N. Cave Creek Road
Cave Creek, AZ 85331

or as otherwise specified from time to time by each party

6.5 Waiver. Waiver by either Party of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

6.6 Amendment. This IGA shall not be amended except by written instrument mutually agreed upon and executed by the Parties.

6.7 Entire IGA. This IGA and its recitals constitute the entire agreement between the Parties regarding the subject matter of this IGA, and supercedes all prior oral and written agreements of the Parties regarding such subject matter. All warranties and guarantees and representations shall survive during the life of this IGA.

6.8 Construction and Interpretation. All provisions of this IGA shall be construed to be consistent with the intention of the Parties expressed in the recitals hereof.

6.9 Term. The term of this IGA shall be for fifty (50) years from the Effective Date, subject to renewal for another fifty (50) years upon the written agreement of both Parties. This IGA may be terminated at any time upon the written agreement of both parties. This IGA does not call for joint ownership of property by the Parties, therefore upon termination there will be no joint property to be disposed of.

6.10 Effective Date. This IGA shall be effective upon filing of the original executed IGA with the office of the Maricopa County Recorder.

6.11 Arizona Law. This IGA will be governed by the laws of the State of Arizona. Either Party may, within three years after the execution of this Agreement, cancel the IGA without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the IGA on behalf of a Party is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of the other Party in any capacity or a consultant to other Party with respect to the subject matter of the IGA. The provisions of A.R.S. §38-511 apply to this Agreement.


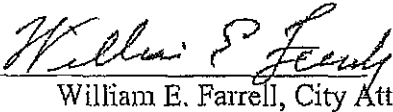
IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands the day and year first above written.

TOWN OF CAVE CREEK

By: 
VINCENT FRANCIA, MAYOR

ATTEST:

APPROVED AS TO FORM:

By:  Carrie A. Dyrek, Town Clerk
By:  William E. Farrell, City Attorney

TOWN OF CAREFREE

By: 
EDWARD C. MORGAN, MAYOR

ATTEST:

APPROVED AS TO FORM:

By: 
Town Clerk
By: 
Town Attorney

ATTORNEY CERTIFICATION

TOWN OF CAVE CREEK

The foregoing Intergovernmental Agreement, being an agreement between the Town of Cave Creek and the Town of Carefree, has been reviewed this 11th day of August, 2005, pursuant to A. R. S. §11-952 by the undersigned counsel for Cave Creek, who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those Parties to the agreement represented by the Town of Cave Creek.

By: *William E. Lusk*
Cave Creek Town Attorney

ATTORNEY CERTIFICATION

TOWN OF CAREFREE

The foregoing Intergovernmental Agreement, being an agreement between the Town of Cave Creek and the Town of Carefree, has been reviewed this 2 day of August, 2005, pursuant to A. R. S. §11-952 by the undersigned Attorney for the Town of Carefree, who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those Parties to the agreement represented by the Town of Carefree.

By: *[Signature]*
Carefree Town Attorney

Approved by the Town Council
at their meeting held on:
August 1, 2005
Quita Hammarston
FOR Cave Creek Town Clerk

EXHIBIT B

TOWN OF CAVE CREEK – CAREFREE WATER COMPANY AGREEMENT

This is an Agreement (“Agreement”) dated this 2 day of August, 2005, by and between the Town of Cave Creek, a municipal corporation of the State of Arizona, hereinafter referred to as “Cave Creek” and the Carefree Water Company, hereinafter referred to as “Company.”

SECTION I. RECITALS.

The following recitals represent the general principles to which the Parties have agreed. These principles are therefore incorporated in the specific covenants that follow.

- 1.1 Cave Creek has been authorized by its voters to acquire and operate the water utility of Cave Creek Water Company (“Water Company”) and Pacer Equities Co. (“Pacer”) and has initiated a condemnation action (“Action”) to acquire the utility properties of these companies within the area of the Water Company’s Certificate of Convenience and Necessity (“Service Area”). These properties are described in the condemnation complaint and will be referred to herein as the “Subjects of Condemnation”.
- 1.2 A portion of the Water Company’s Service Area lies within the Town of Carefree, and additional Service Area within Carefree may be certificated to the Water Company before Cave Creek acquires the Subjects of Condemnation; the portion of the Water Company’s Service Area which now or in the future may lie within Carefree is referred to herein as the “Carefree Service Area”.
- 1.3 The Carefree Arizona Utilities Community Facilities District (“Carefree UCFD”), a community facilities district formed and existent pursuant to Arizona Revised Statutes section 48-701 et seq., is the sole stockholder in the Carefree Water Company. The Board of Directors of the Carefree Water Company is composed of the Board of the Carefree UCFD. The Board of the Carefree UCFD is the Mayor and Council of the Town of Carefree (“Carefree”). On May 1, 2002, the Carefree Water Company and the Cave Creek Water Company entered into the Agreement for Treatment and Transportation of Central Arizona Project Water (“Wheeling Agreement”).
- 1.4 Cave Creek and the Town of Carefree are entering into an Intergovernmental Agreement Relating to Water Utility Service (“IGA”).
- 1.5 The Company, the Carefree UCFD or Carefree may decide, after Cave Creek has acquired the Subjects of Condemnation, to acquire by condemnation the Subjects of Condemnation located in the Carefree Service Area and the related portion of Cave Creek’s CAP allocation. In the event that such a condemnation case is filed, the Parties intend that the case will proceed under the terms and conditions stated herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties covenant and agree as follows:

SECTION II. STATEMENT OF PURPOSE.

The purpose of this Agreement is to create, set forth and define the intended relationships between Cave Creek and the Company after the date on which Cave Creek has acquired the Subjects of Condemnation, has commenced water utility service in the Carefree Service Area, and has assumed the rights and obligations of the Water Company under the Wheeling Agreement ("Acquisition Date"). Another purpose of this Agreement is to establish the terms and conditions under which the Company, the Carefree UCFD or Carefree may, after the Acquisition Date, acquire by condemnation the Subjects of Condemnation lying within the Carefree Service Area and the related portion of the Cave Creek CAP allocation.

SECTION III. PROVISIONS RELATING TO COOPERATION BETWEEN CAVE CREEK AND THE COMPANY

Cave Creek and the Company agree that after the Acquisition Date, the parties will cooperate in developing and updating the master water service plan of each party.

SECTION IV. PROVISIONS RELATING TO THE WHEELING AGREEMENT

4.1 Cave Creek agrees to assume and will assume the Wheeling Agreement including any amendments thereto, as of the Acquisition Date. In the event that any amendments to the Wheeling Agreement after the execution of this Agreement and prior to the Acquisition Date are in conflict with any of the amendments stated in Section 4.2, the amendments prior to the Acquisition Date shall govern.

4.2 Cave Creek and Company agree that after the Acquisition Date, if not otherwise amended as set forth in Section 4.1, the following provisions will be added to or amended in the Wheeling Agreement as follows:

A. "1.4. "Company's CAP Allocation" shall include the 1,300 acre feet of CAP water which Company is entitled to receive from the Central Arizona Water Conservation District ("CAWCD"); water which Company is entitled to receive from the United States; water from other sources which Company has a right to or interest in, which will be transported by the CAP Canal for the benefit of Company; or any combination of the above. The total of both the present and future Company CAP Allocation, which may be subject to this Agreement, shall not exceed 2,000 acre feet."

B. "1.14 "Emergency" shall mean any malfunction, destruction, temporary inability to perform under the Agreement, or dangerous condition of either party's water treatment, delivery or receiving infrastructure directly resulting from uncontrollable forces."

C. "1.15. "Uncontrollable Forces" shall mean a cause reasonably beyond the ability of a party to control that renders such party unable to perform its obligations under the Agreement, including but not limited to: terrorism; sabotage; war; riot; civil disturbance or disobedience; natural disasters or catastrophes; labor disputes; and restraint by lawful court order or authorized directive of either the State of Arizona, the United States, or any department or division thereof."

D. "1.16. "Acquisition Date" shall mean the date on which Cave Creek commences water utility services in the Carefree Service Area after Cave Creek has acquired the Subjects of Condemnation. "

E. "4.4. Company shall be responsible for all costs associated with upgrading and enlarging the Turn-Out, if necessary, including, without limitation, any additional metering and telemetering facilities necessary to implement this Agreement.

4.4.1. To the extent improvements to Cave Creek's water delivery and treatment system, other than replacement and repair for normal wear and tear and other than metering and Turn-Out improvements, are necessary or desirable in order to deliver Treated or Untreated Water to Company, such improvements and the terms and conditions under which such improvements are made, shall be as mutually agreed to by the Parties.

4.4.2 At least two additional points of delivery connections over the number existing as of June 15, 2005 will be established for the purpose of increasing the amount of water to be delivered to Company under the Agreement, but without any requirement to resize pipes. Cave Creek and Company will each pay one-half of the cost of the meters and vaults in connection with increasing the points of delivery connections. Company and Carefree will each be responsible for the cost of pipes and other costs and expenses necessary for it to access each additional point of delivery connection."

F. "4.10.1. Company shall have the right to suspend the acceptance of both Treated and Untreated Water on a temporary basis, without notice, due to water quality problems at the point of delivery which exceed the NTU Standard of 0.5 for clarity or which fail to meet applicable mandatory federal, state and local laws, regulations and standards. The temporary suspension will end when the applicable mandatory federal, state and local laws, regulations and standards and the NTU Standard of 0.5 are met.

G. "4.12. Amount of Water Deliveries. Company acknowledges Cave Creek does not currently have capacity to deliver or treat Company's entire CAP Allocation. Subject to the primary duty of Cave Creek to serve water to retail customers within its service area and to contract customers whose contracts

predate May 1, 2002, Cave Creek shall transport on a monthly basis to the Point(s) of Delivery only the amount of CAP water requested by Company, minus Transmission and Treatment Losses for the month (Monthly Allocation"). Unless otherwise agreed to by the Authorized Representative(s), no Monthly Allocation shall exceed ten percent (10%) of the total annual amount of Company's CAP Allocation ordered pursuant to Section 3.0.

H "13.9. If Cave Creek or Company shall default in the timely performance of its obligations under this Agreement, the Party not in default shall provide notice to the defaulting Party of the default and the actions necessary to cure the default. Unless the default is malicious or creates an emergency, making this process impracticable, the Parties shall meet in good faith to resolve the default. If the Parties are unable to resolve the default sixty (60) days after first meeting thereon, the Party not in default shall, to the extent permitted by applicable law, be entitled to all damages incurred arising from the default, including reasonable attorneys' fees and costs of suit. Any claim or controversy arising out of or related to the Agreement, including claims for damages arising out of default, and claims for the enforcement of the provisions of the Agreement shall be resolved by arbitration administered by the American Arbitration Association under its Complex Commercial Arbitration Rules."

4.3. Cave Creek agrees to provide service to additional areas within the limits of the Town of Carefree in sections 4 and 5, T5N R4E, and sections 26 and 34, T6N R4E, G&SRB&M.

SECTION V. CONDEMNATION OF THE CAREFREE SERVICE AREA SYSTEM

Cave Creek and the Company agree that, after the Acquisition Date the Company shall, upon written request and reasonable notice, have full access to the books and records of the Cave Creek water utility and, for inspection purposes, to the physical facilities of the Cave Creek water utility located in the Carefree Service Area. The Parties agree that the Company, the Carefree UCFD or Carefree may file a condemnation action to acquire the Carefree Service Area System from Cave Creek. In that event, the action shall be conducted in accordance with the following terms and conditions:

5.1. Carefree Service Area System. The Carefree Service Area System ("System") will consist of 1) the wells, pipelines, pumps, meters and other facilities located in the Carefree Service Area and used to provide water service to the Carefree Service Area on the date of the filing of the condemnation complaint and 2) the portion of the Cave Creek CAP subcontract water used to serve the Carefree Service Area ("System CAP"). The quantity of the System CAP water shall be the product of the following Formula in which the following symbols have the following meanings:

"CD" = the total water demand, in acre feet, of the retail customers of Cave Creek water utility located in the Carefree Service Area during the calendar year immediately preceding the year in which the condemnation complaint is filed;

"CC" = the total number of retail water customers of the Cave Creek water utility located in the Carefree Service Area on December 31 of the calendar year immediately preceding the year in which the condemnation complaint is filed;

"CU" = Carefree Service Area annual water use per customer

The Formula:

$$CD \div CC = CU$$

The System CAP will be the product of multiplying the CU by the total number of subdivided lots in the Carefree Service Area on the date of commencement of the arbitration hearing.

5.2 Supplemental System. The Supplemental System will consist of the additions, betterments, improvements and extensions to the System between the date of commencement of the arbitration hearing and the date on which the condemnor takes possession of the System. The Supplemental System will include Supplement System CAP which will be the product of multiplying the CU by the number of new subdivision lots created in the Carefree Service Area between the date of commencement of the arbitration hearing and the date on which the condemnor takes possession.

5.3 Compensation. The Parties agree that the compensation to which Cave Creek will be entitled in the condemnation action will be based on the total compensation paid by Cave Creek to the Water Company to acquire the Subjects of Condemnation. After the condemnation case is filed, Cave Creek and the Company will in good faith seek to agree upon the compensation Cave Creek will receive from the Company for the System. Except as specifically provided herein, it is the intent of the Parties that the compensation be equivalent to the compensation to which Cave Creek would be entitled for the System and Supplemental System under the Arizona statutes and case law governing municipal acquisition of utility property by eminent domain. The compensation shall include the cost of physically separating the System from the Cave Creek water utility. In the event that the Parties are unable to agree upon the compensation within 120 days after the date of the filing of the condemnation complaint, the compensation for the System shall be determined by arbitration under the Procedures for Large, Complex Commercial Disputes and the Commercial Arbitration Rules of the American Arbitration Association ("AAA") by three arbitrators from the AAA Large, Complex Case panel of arbitrators. The compensation will be determined for the System held by Cave Creek as of the date on which the arbitration hearing commences and that date will be the date of valuation.

5.4 Possession. In the event that compensation is determined by arbitration, the condemnor shall be entitled to possession of the System upon payment of the compensation in full to Cave Creek within six months after the date of the arbitration award and the deposit with Cave Creek of a bond or letter of credit in the amount of the

probable value of the Supplemental System. In the event that the approvals of the Central Arizona Water Conservation District and the Bureau of Reclamation for transfer of the Option CAP have not been obtained by the date of possession, the portion of the compensation attributable to the System CAP shall be withheld by the condemnor and paid to Cave Creek when the approvals have been obtained.

5.5 Supplemental Compensation. Within thirty days after the compensation award, Cave Creek shall provide to the condemnor the verified report described in A.R.S. §9-518.E. In the event that the parties cannot agree upon the probable value of the Supplemental System for purposes of the bond or letter of credit, the probable value shall be determined by the arbitrators. If, within thirty days after the condemnor has taken possession, the parties have not agreed upon the compensation to be paid for the Supplemental System, the amount of such compensation shall be determined by the arbitrators. When the compensation for the Supplemental System has been determined, the condemnor shall pay to Cave Creek, within ninety days after the date of such determination, the amount of the compensation plus interest from the date of possession until paid and the bond or letter of credit shall be returned to the condemnor. If the compensation and interest are not paid within ninety days, Cave Creek may draw on the letter of credit or call on the bond to satisfy the indebtedness. In the event that the letter of credit or bond is not sufficient, Cave Creek may, upon application to the Court, have a money judgment against the condemnor in the amount of the deficiency and Cave Creek will be entitled to the costs and attorneys fees incurred in obtaining and collecting on the judgment.

5.6 Abandonment. In the event that the condemnor fails to pay the compensation award for the System within six months after the award is made, the provisions of A.R.S. §§9-518.D. and 9-518.K. shall apply.

5.7 Public Use. The parties agree that, although the System will be appropriated to a public use after it is acquired by Cave Creek, the public use to which it would be applied by the Company, the Carefree UFCD or Carefree would be a more necessary public use under A.R.S. §12-1112.

SECTION VI. MISCELLANEOUS PROVISIONS.

6.1 Assignment of Agreement. No Party shall have the right to assign this Agreement nor any interest herein except to its successors. This Agreement shall be binding on the successors of the Parties hereto.

6.2 Notices. All notices shall be in writing and together with other mailings pertaining to this Agreement shall be made by personal delivery or by registered, express or certified mail, return receipt requested, and shall be deemed effective when delivered, to:

FOR CAREFREE WATER COMPANY:
President

Carefree Water Company
Town of Carefree
P. O. Box 740
100 Easy Street
Carefree, AZ 85377

FOR CAVE CREEK

Town Manager
Town of Cave Creek
37622 N. Cave Creek Road
Cave Creek, AZ 85331

or as otherwise specified from time to time by each party.

6.3 Waiver. Waiver by either Party of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

6.4 Further Assurances. The Parties agree to execute promptly such other documents and perform such other acts as may be reasonably necessary to carry out the purpose and intent of this Agreement.

6.5 Amendment. This Agreement shall not be amended except by written instrument mutually agreed upon and executed by the Parties.

6.6 Entire Agreement. This Agreement and its recitals constitute the entire agreement between the Parties regarding the subject matter of this Agreement, and supersedes all prior oral and written agreements of the Parties regarding such subject matter. All warranties and guarantees and representations shall survive during the life of this Agreement.

6.7 Construction and Interpretation. All provisions of this Agreement shall be construed to be consistent with the intention of the Parties expressed in the recitals hereof.

6.8 Term. The term of this Agreement shall be for fifty (50) years from the Effective Date, subject to renewal for another fifty (50) years upon the written agreement of the parties.

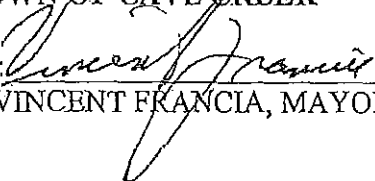
6.9 Effective Date. This Agreement shall be effective upon filing of the original executed IGA with the office of the Maricopa County Recorder.

6.10 Arizona Law. This Agreement will be governed by the laws of the State of Arizona. Cave Creek may, within three years after the execution of this Agreement,

cancel the Agreement without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of Cave Creek is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of Carefree Water Company in any capacity or a consultant to Carefree Water Company with respect to the subject matter of the Agreement. The provisions of A.R.S. §38-511 apply to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands the day and year first above written.

TOWN OF CAVE CREEK

By: 
VINCENT FRANCIA, MAYOR

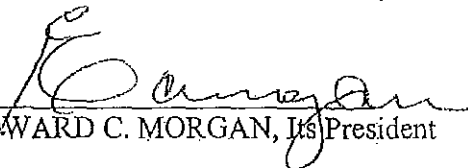
ATTEST:

APPROVED AS TO FORM:

By: 
Carrie A. Dyrek, Town Clerk

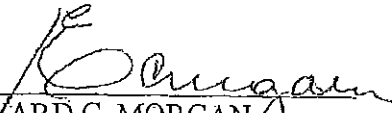
By: 
William E. Farrell, City Attorney

CAREFREE WATER COMPANY, INC., an Arizona corporation

By: 
EDWARD C. MORGAN, Its President

The execution of this Agreement by Carefree Water Company, Inc. was duly authorized by the Board of Directors of the Carefree Arizona Utilities Community Facilities District, a community facilities district formed and existent pursuant to Arizona Revised Statutes section 48-701 et seq and the Carefree UCFD agrees to be bound the terms of this Agreement if, under Article V, it should be the condemnor.

CAREFREE ARIZONA UTILITIES COMMUNITY FACILITIES DISTRICT

By: 
EDWARD C. MORGAN
Its Chairman of the Board of Directors

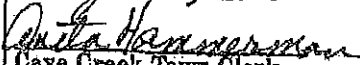
Approved by the Town Council
at their meeting held on
August 1, 2005

for Anita Hammerman
Cave Creek Town Clerk

EXHIBIT 2

PERMANENT RECORD

TOWN OF CAREFREE, ARIZONA
RESOLUTION 2005- 23

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CAREFREE, MARICOPA COUNTY, ARIZONA APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE TOWN OF CAREFREE THAT CERTAIN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF CAREFREE AND THE TOWN OF CAVE CREEK RELATING TO WATER UTILITY SERVICE; APPROVING THAT CERTAIN AGREEMENT BETWEEN THE TOWN OF CAVE CREEK AND THE CAREFREE WATER COMPANY RELATING TO WATER UTILITY SERVICE WHICH IS ATTACHED TO THE INTERGOVERNMENTAL AGREEMENT; AND DECLARING AN EMERGENCY.

WHEREAS, the Town of Carefree is desirous of contracting with the Town of Cave Creek to provide water utility service to the citizens in certain areas of the Town of Carefree; and

WHEREAS, pursuant to A.R.S. § 11-951, *et seq.*, the Town of Carefree and the Town of Cave Creek have the authority and ability to enter into the Intergovernmental Agreement regarding water utility service, a copy of which is attached hereto as Exhibit "A;" and

WHEREAS, there is pending litigation between the Town of Cave Creek and the Cave Creek Water Company concerning the condemnation of the Cave Creek Water Company such that an emergency exists.

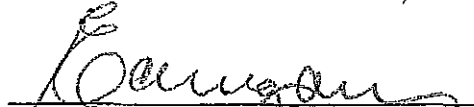
NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CAREFREE, ARIZONA, AS FOLLOWS:

Section 1 - Authorization. That certain Intergovernmental Agreement with the Town of Cave Creek regarding the operation of Cave Creek Water Company within the Town of Carefree service area, a copy of which Agreement is attached to this Resolution as Exhibit "A," including the Agreement between the Town of Cave Creek and the Carefree Water Company attached hereto, are hereby approved and the Mayor is authorized to execute the Intergovernmental Agreement on behalf of the Town of Carefree.

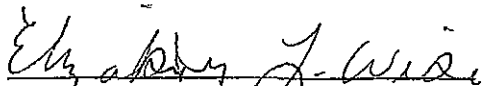
Section 2 - Emergency Clause. Due to the pending litigation between the Town of Cave Creek and the Cave Creek Water Company concerning the condemnation of the Cave Creek Water Company, an emergency is hereby declared to exist and this Resolution shall become operative immediately and the Carefree Common Council finds that such action is in the best interests of the health, safety and welfare of the citizens of the Town of Carefree.

PASSED AND ADOPTED by the Mayor and the Common Council of the Town of Carefree this 2 day of August, 2005.

Ayes 7 Nays 0 Abstentions 0 Absent 0


Edward C. Morgan, Mayor

Attest:


Elizabeth L. Wise, Town Clerk

Approved as to Form:

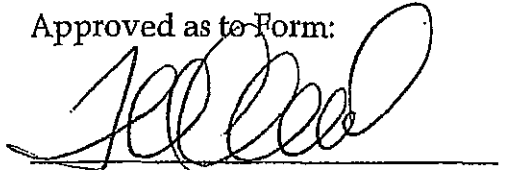

Thomas K. Chenal, Town Attorney

EXHIBIT 'A'

TOWN OF CAVE CREEK - TOWN OF CAREFREE INTERGOVERNMENTAL AGREEMENT RELATING TO WATER UTILITY SERVICE

This is an Intergovernmental Agreement ("IGA") dated this 2 day of August, 2005, by and between the Town of Cave Creek, a municipal corporation of the State of Arizona, hereinafter referred to as "Cave Creek" and the Town of Carefree, a municipal corporation of the State of Arizona, hereinafter referred to as "Carefree."

SECTION I. RECITALS.

The following recitals represent the general principles to which the Parties have agreed. These principles are therefore incorporated in the specific covenants that follow.

- 1.1 Cave Creek and Carefree are empowered by A.R.S. Title 11, Chapter 7, Article 3 to enter into this IGA.
- 1.2 Cave Creek has been authorized by its voters to acquire and operate the water utility of Cave Creek Water Company ("Water Company") and Pacer Equities Co. ("Pacer") and has initiated a condemnation action to acquire the utility properties of these companies within the area of the Water Company's Certificate of Convenience and Necessity ("Service Area"). These properties are described in the condemnation complaint and will be referred to herein as the "Subjects of Condemnation".
- 1.3 A portion of the Water Company's Service Area lies within Carefree, and additional Service Area within Carefree may be certificated to the Water Company before Cave Creek acquires the Subjects of Condemnation; the portion of the Water Company's Service Area which now or in the future may lie within Carefree is referred to herein as the "Carefree Service Area".

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties covenant and agree as follows:

SECTION II. STATEMENT OF PURPOSE.

The purpose of this IGA is to create, set forth and define the intended relationships between Cave Creek and Carefree regarding the acquisition by Cave Creek of the Subjects of Condemnation within the Carefree Service Area and the future operation of Cave Creek's water utility within the Carefree Service Area after the Subjects of Condemnation have been acquired.

SECTION III. PROVISIONS RELATING TO CAVE CREEK ACQUISITION OF WATER UTILITY PROPERTIES IN CAREFREE

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TOWN OF CAREFREE

In consideration of the agreements of Cave Creek contained in this IGA, Carefree hereby consents to the acquisition by Cave Creek, through condemnation or otherwise, and utility operation of the Subjects of Condemnation in the Carefree Service Area.

SECTION IV. PROVISIONS RELATING TO CAVE CREEK OPERATION OF WATER UTILITY IN THE CAREFREE SERVICE AREA

In consideration of the agreements of Carefree contained in this IGA, Cave Creek hereby agrees that for as long as it or its assignees or successors provide water service in the Carefree Service Area:

- 4.1 The water rates, rate components, service charges, and fees for water service by Cave Creek in the Carefree Service Area shall be the same as the water rates, rate components, service charges, and fees for water service in Cave Creek.
- 4.2 The quality of water service and conditions for water service by Cave Creek in the Carefree Service Area shall be the same as the quality of water service and conditions for water service by Cave Creek in Cave Creek.
- 4.3 Cave Creek will assume the rights and obligations of the Water Company under the Agreement for Treatment and Transportation of Central Arizona Project Water dated May 1, 2002, between the Water Company and the Carefree Water Company, as the same may be supplemented pursuant to the terms of the form of the agreement between Cave Creek and Carefree Water Company attached hereto as Exhibit A.

SECTION V. CONDEMNATION OF THE CAREFREE SERVICE AREA SYSTEM

Cave Creek and Carefree agree that, after the Acquisition Date, Carefree shall, upon written request and reasonable notice, have full access to the books and records of the Cave Creek water utility and, for inspection purposes, to the physical facilities of the Cave Creek water utility located in the Carefree Service Area. The Parties agree that the Carefree Water Company, the Carefree UCFD or Carefree may file a condemnation action to acquire the Carefree Service Area System from Cave Creek. In that event, the action shall be conducted in accordance with the following terms and conditions:

- 5.1. Carefree Service Area System. The Carefree Service Area System ("System") will consist of 1) the wells, pipelines, pumps, meters and other facilities located in the Carefree Service Area and used to provide water service to the Carefree Service Area on the date of the filing of the condemnation complaint and 2) the portion of the Cave Creek CAP subcontract water used to serve the Carefree Service Area ("System CAP"). The quantity of the System CAP water shall be the product of the following Formula in which the following symbols have the following meanings:

"CD" = the total water demand, in acre feet, of the retail customers of Cave Creek water utility located in the Carefree Service Area during the calendar year immediately preceding the year in which the condemnation complaint is filed;

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TOWN OF CAREFREE

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"CC" = the total number of retail water customers of the Cave Creek water utility located in the Carefree Service Area on December 31 of the calendar year immediately preceding the year in which the condemnation complaint is filed;

"CU" = Carefree Service Area annual water use per customer

The Formula:

$$CD \div CC = CU$$

The System CAP will be the product of multiplying the CU by the total number of subdivided lots in the Carefree Service Area on the date of commencement of the arbitration hearing.

5.2 Supplemental System. The Supplemental System will consist of the additions, betterments, improvements and extensions to the System between the date of commencement of the arbitration hearing and the date on which the condemnor takes possession of the System. The Supplemental System will include Supplement System CAP which will be the product of multiplying the CU by the number of new subdivision lots created in the Carefree Service Area between the date of commencement of the arbitration hearing and the date on which the condemnor takes possession.

5.3 Compensation. The Parties agree that the compensation to which Cave Creek will be entitled in the condemnation action will be based on the total compensation paid by Cave Creek to the Water Company to acquire the Subjects of Condemnation. After the condemnation case is filed, Cave Creek and the condemnor will in good faith seek to agree upon the compensation Cave Creek will receive from the condemnor for the System. Except as specifically provided herein, it is the intent of the Parties that the compensation be equivalent to the compensation to which Cave Creek would be entitled for the System and Supplemental System under the Arizona statutes and case law governing municipal acquisition of utility property by eminent domain. The compensation shall include the cost of physically separating the System from the Cave Creek water utility. In the event that the Parties are unable to agree upon the compensation within 120 days after the date of the filing of the condemnation complaint, the compensation for the System shall be determined by arbitration under the Procedures for Large, Complex Commercial Disputes and the Commercial Arbitration Rules of the American Arbitration Association ("AAA") by three arbitrators from the AAA Large, Complex Case panel of arbitrators. The compensation will be determined for the System held by Cave Creek as of the date on which the arbitration hearing commences and that date will be the date of valuation.

5.4 Possession. In the event that compensation is determined by arbitration, the condemnor shall be entitled to possession of the System upon payment of the compensation in full to Cave Creek within six months after the date of the arbitration award and the deposit with Cave Creek of a bond or letter of credit in the amount of the

probable value of the Supplemental System. In the event that the approvals of the Central Arizona Water Conservation District and the Bureau of Reclamation for transfer of the Option CAP have not been obtained by the date of possession, the portion of the compensation attributable to the System CAP shall be withheld by the condemnor and paid to Cave Creek when the approvals have been obtained.

5.5 Supplemental Compensation. Within thirty days after the compensation award, Cave Creek shall provide to the condemnor the verified report described in A.R.S. §9-518.E. In the event that the parties cannot agree upon the probable value of the Supplemental System for purposes of the bond or letter of credit, the probable value shall be determined by the arbitrators. If, within thirty days after the condemnor has taken possession, the parties have not agreed upon the compensation to be paid for the Supplemental System, the amount of such compensation shall be determined by the arbitrators. When the compensation for the Supplemental System has been determined, the condemnor shall pay to Cave Creek, within ninety days after the date of such determination, the amount of the compensation plus interest from the date of possession until paid and the bond or letter of credit shall be returned to the condemnor. If the compensation and interest are not paid within ninety days, Cave Creek may draw on the letter of credit or call on the bond to satisfy the indebtedness. In the event that the letter of credit or bond is not sufficient, Cave Creek may, upon application to the Court, have a money judgment against the condemnor in the amount of the deficiency and Cave Creek will be entitled to the costs and attorneys fees incurred in obtaining and collecting on the judgment.

5.6 Abandonment. In the event that the condemnor fails to pay the compensation award for the System within six months after the award is made, the provisions of A.R.S. §§9-518.D. and 9-518.K. shall apply.

5.7 Public Use. The parties agree that, although the System will be appropriated to a public use after it is acquired by Cave Creek, the public use to which it would be applied by the Carefree Water Company, the Carefree UFCD or Carefree would be a more necessary public use under A.R.S. §12-1112.

SECTION VI. MISCELLANEOUS PROVISIONS.

- 6.1 Indemnity. Cave Creek agrees to indemnify and hold Carefree harmless from and against any and all loss, damage, or other injury of any sort whatsoever, suffered as a direct result of Carefree entering into or implementing this IGA; in the event that Carefree is subjected to any third party litigation as a direct result of Carefree entering into or implementing this IGA, Cave Creek agrees, at its own expense, to provide a defense to Carefree in such litigation.
- 6.2 Agreement with Carefree Water Company. Cave Creek agrees to enter into the agreement with the Carefree Water Company, no later than 30 days after the Effective Date of this IGA, in the form attached hereto as Exhibit A.

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6.3 Assignment of IGA. No Party shall have the right to assign this IGA nor any interest herein except to its successors. This IGA shall be binding on the successors of the Parties hereto.

6.4 Notices. All notices shall be in writing and together with other mailings pertaining to this IGA shall be made to:

FOR CAREFREE:

Town Administrator
Town of Carefree
P. O. Box 740
100 Easy Street
Carefree, AZ 85377

FOR CAVE CREEK

Town Manager
Town of Cave Creek
37622 N. Cave Creek Road
Cave Creek, AZ 85331

or as otherwise specified from time to time by each party

6.5 Waiver. Waiver by either Party of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

6.6 Amendment. This IGA shall not be amended except by written instrument mutually agreed upon and executed by the Parties.

6.7 Entire IGA. This IGA and its recitals constitute the entire agreement between the Parties regarding the subject matter of this IGA, and supercedes all prior oral and written agreements of the Parties regarding such subject matter. All warranties and guarantees and representations shall survive during the life of this IGA.

6.8 Construction and Interpretation. All provisions of this IGA shall be construed to be consistent with the intention of the Parties expressed in the recitals hereof.

6.9 Term. The term of this IGA shall be for fifty (50) years from the Effective Date, subject to renewal for another fifty (50) years upon the written agreement of both Parties. This IGA may be terminated at any time upon the written agreement of both parties. This IGA does not call for joint ownership of property by the Parties, therefore upon termination there will be no joint property to be disposed of.

6.10 Effective Date. This IGA shall be effective upon filing of the original executed IGA with the office of the Maricopa County Recorder.

6.11 Arizona Law. This IGA will be governed by the laws of the State of Arizona. Either Party may, within three years after the execution of this Agreement, cancel the IGA without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the IGA on behalf of a Party is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of the other Party in any capacity or a consultant to other Party with respect to the subject matter of the IGA. The provisions of A.R.S. §38-511 apply to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands the day and year first above written.

TOWN OF CAVE CREEK

By: *Vincent Francia*
VINCENT FRANCIA, MAYOR

ATTEST:

APPROVED AS TO FORM:

By: *Carla A. Dyrek*
Carla A. Dyrek, Town Clerk

By: *William E. Farrell*
William E. Farrell, City Attorney

TOWN OF CAREFREE

By: *Edward C. Morgan*
EDWARD C. MORGAN, MAYOR

ATTEST:

APPROVED AS TO FORM:

By: *Christina F. Wise*
Town Clerk

By: *[Signature]*
Town Attorney

11/14/2005 15:12 4804887845

TOWN OF CAREFREE

ATTORNEY CERTIFICATION

TOWN OF CAVE CREEK

The foregoing Intergovernmental Agreement, being an agreement between the Town of Cave Creek and the Town of Carefree, has been reviewed this 11th day of August, 2005, pursuant to A. R. S. §11-952 by the undersigned counsel for Cave Creek, who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those Parties to the agreement represented by the Town of Cave Creek.

By: William P. Paul
Cave Creek Town Attorney

ATTORNEY CERTIFICATION

TOWN OF CAREFREE

The foregoing Intergovernmental Agreement, being an agreement between the Town of Cave Creek and the Town of Carefree, has been reviewed this 2nd day of August, 2005, pursuant to A. R. S. §11-952 by the undersigned Attorney for the Town of Carefree, who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those Parties to the agreement represented by the Town of Carefree.

By: [Signature]
Carefree Town Attorney

Approved by the Town Council
at their meeting held on
8/1/05
[Signature]
Cave Creek Town Clerk

EXHIBIT A TO THE INTERGOVERNMENTAL AGREEMENT RELATING
TO WATER UTILITY SERVICE BETWEEN THE TOWN OF CAVE CREEK
AND THE TOWN OF CAREFREE

TOWN OF CAVE CREEK - CAREFREE WATER COMPANY AGREEMENT

This is an Agreement ("Agreement") dated this 2 day of August, 2005, by and between the Town of Cave Creek, a municipal corporation of the State of Arizona, hereinafter referred to as "Cave Creek" and the Carefree Water Company, hereinafter referred to as "Company."

SECTION I. RECITALS.

The following recitals represent the general principles to which the Parties have agreed. These principles are therefore incorporated in the specific covenants that follow.

- 1.1 Cave Creek has been authorized by its voters to acquire and operate the water utility of Cave Creek Water Company ("Water Company") and Pacer Equities Co. ("Pacer") and has initiated a condemnation action ("Action") to acquire the utility properties of these companies within the area of the Water Company's Certificate of Convenience and Necessity ("Service Area"). These properties are described in the condemnation complaint and will be referred to herein as the "Subjects of Condemnation".
- 1.2 A portion of the Water Company's Service Area lies within the Town of Carefree, and additional Service Area within Carefree may be certificated to the Water Company before Cave Creek acquires the Subjects of Condemnation; the portion of the Water Company's Service Area which now or in the future may lie within Carefree is referred to herein as the "Carefree Service Area".
- 1.3 The Carefree Arizona Utilities Community Facilities District ("Carefree UCFD"), a community facilities district formed and existent pursuant to Arizona Revised Statutes section 48-701 et seq., is the sole stockholder in the Carefree Water Company. The Board of Directors of the Carefree Water Company is composed of the Board of the Carefree UCFD. The Board of the Carefree UCFD is the Mayor and Council of the Town of Carefree ("Carefree"). On May 1, 2002, the Carefree Water Company and the Cave Creek Water Company entered into the Agreement for Treatment and Transportation of Central Arizona Project Water ("Wheeling Agreement").
- 1.4 Cave Creek and the Town of Carefree are entering into an Intergovernmental Agreement Relating to Water Utility Service ("IGA").
- 1.5 The Company, the Carefree UCFD or Carefree may decide, after Cave Creek has acquired the Subjects of Condemnation, to acquire by condemnation the Subjects of Condemnation located in the Carefree Service Area and the related portion of Cave Creek's CAP allocation. In the event that such a condemnation case is filed, the Parties intend that the case will proceed under the terms and conditions stated herein.

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TOWN OF CAREFREE

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties covenant and agree as follows:

SECTION II. STATEMENT OF PURPOSE.

The purpose of this Agreement is to create, set forth and define the intended relationships between Cave Creek and the Company after the date on which Cave Creek has acquired the Subjects of Condemnation, has commenced water utility service in the Carefree Service Area, and has assumed the rights and obligations of the Water Company under the Wheeling Agreement ("Acquisition Date"). Another purpose of this Agreement is to establish the terms and conditions under which the Company, the Carefree UCPD or Carefree may, after the Acquisition Date, acquire by condemnation the Subjects of Condemnation lying within the Carefree Service Area and the related portion of the Cave Creek CAP allocation.

SECTION III. PROVISIONS RELATING TO COOPERATION BETWEEN CAVE CREEK AND THE COMPANY

Cave Creek and the Company agree that after the Acquisition Date, the parties will cooperate in developing and updating the master water service plan of each party.

SECTION IV. PROVISIONS RELATING TO THE WHEELING AGREEMENT

4.1 Cave Creek agrees to assume and will assume the Wheeling Agreement including any amendments thereto, as of the Acquisition Date. In the event that any amendments to the Wheeling Agreement after the execution of this Agreement and prior to the Acquisition Date are in conflict with any of the amendments stated in Section 4.2, the amendments prior to the Acquisition Date shall govern.

4.2 Cave Creek and Company agree that after the Acquisition Date, if not otherwise amended as set forth in Section 4.1, the following provisions will be added to or amended in the Wheeling Agreement as follows:

A. "1.4. "Company's CAP Allocation" shall include the 1,300 acre feet of CAP water which Company is entitled to receive from the Central Arizona Water Conservation District ("CAWCD"); water which Company is entitled to receive from the United States; water from other sources which Company has a right to or interest in, which will be transported by the CAP Canal for the benefit of Company; or any combination of the above. The total of both the present and future Company CAP Allocation, which may be subject to this Agreement, shall not exceed 2,000 acre feet."

B. "1.14 "Emergency" shall mean any malfunction, destruction, temporary inability to perform under the Agreement, or dangerous condition of either party's water treatment, delivery or receiving infrastructure directly resulting from uncontrollable forces."

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TOWN OF CAREFREE

C. "1.15. "Uncontrollable Forces" shall mean a cause reasonably beyond the ability of a party to control that renders such party unable to perform its obligations under the Agreement, including but not limited to: terrorism; sabotage; war; riot; civil disturbance or disobedience; natural disasters or catastrophes; labor disputes; and restraint by lawful court order or authorized directive of either the State of Arizona, the United States, or any department or division thereof."

D. "1.16. "Acquisition Date" shall mean the date on which Cave Creek commences water utility services in the Carefree Service Area after Cave Creek has acquired the Subjects of Condemnation. "

E. "4.4. Company shall be responsible for all costs associated with upgrading and enlarging the Turn-Out, if necessary, including, without limitation, any additional metering and telemetering facilities necessary to implement this Agreement.

4.4.1. To the extent improvements to Cave Creek's water delivery and treatment system, other than replacement and repair for normal wear and tear and other than metering and Turn-Out improvements, are necessary or desirable in order to deliver Treated or Untreated Water to Company, such improvements and the terms and conditions under which such improvements are made, shall be as mutually agreed to by the Parties.

4.4.2 At least two additional points of delivery connections over the number existing as of June 15, 2005 will be established for the purpose of increasing the amount of water to be delivered to Company under the Agreement, but without any requirement to resize pipes. Cave Creek and Company will each pay one-half of the cost of the meters and vaults in connection with increasing the points of delivery connections. Company and Carefree will each be responsible for the cost of pipes and other costs and expenses necessary for it to access each additional point of delivery connection."

F. "4.10.1. Company shall have the right to suspend the acceptance of both Treated and Untreated Water on a temporary basis, without notice, due to water quality problems at the point of delivery which exceed the NTU Standard of 0.5 for clarity or which fail to meet applicable mandatory federal, state and local laws, regulations and standards. The temporary suspension will end when the applicable mandatory federal, state and local laws, regulations and standards and the NTU Standard of 0.5 are met.

G. "4.12. Amount of Water Deliveries. Company acknowledges Cave Creek does not currently have capacity to deliver or treat Company's entire CAP Allocation. Subject to the primary duty of Cave Creek to serve water to retail customers within its service area and to contract customers whose contracts

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TOWN OF CAREFREE

predate May 1, 2002, Cave Creek shall transport on a monthly basis to the Point(s) of Delivery only the amount of CAP water requested by Company, minus Transmission and Treatment Losses for the month (Monthly Allocation"). Unless otherwise agreed to by the Authorized Representative(s), no Monthly Allocation shall exceed ten percent (10%) of the total annual amount of Company's CAP Allocation ordered pursuant to Section 3.0.

H "13.9. If Cave Creek or Company shall default in the timely performance of its obligations under this Agreement, the Party not in default shall provide notice to the defaulting Party of the default and the actions necessary to cure the default. Unless the default is malicious or creates an emergency, making this process impracticable, the Parties shall meet in good faith to resolve the default. If the Parties are unable to resolve the default sixty (60) days after first meeting thereon, the Party not in default shall, to the extent permitted by applicable law, be entitled to all damages incurred arising from the default, including reasonable attorneys' fees and costs of suit. Any claim or controversy arising out of or related to the Agreement, including claims for damages arising out of default, and claims for the enforcement of the provisions of the Agreement shall be resolved by arbitration administered by the American Arbitration Association under its Complex Commercial Arbitration Rules."

4.3. Cave Creek agrees to provide service to additional areas within the limits of the Town of Carefree in sections 4 and 5, T5N R4E, and sections 26 and 34, T6N R4E, G&SRB&M.

SECTION V. CONDEMNATION OF THE CAREFREE SERVICE AREA SYSTEM

Cave Creek and the Company agree that, after the Acquisition Date the Company shall, upon written request and reasonable notice, have full access to the books and records of the Cave Creek water utility and, for inspection purposes, to the physical facilities of the Cave Creek water utility located in the Carefree Service Area. The Parties agree that the Company, the Carefree UCFD or Carefree may file a condemnation action to acquire the Carefree Service Area System from Cave Creek. In that event, the action shall be conducted in accordance with the following terms and conditions:

5.1. Carefree Service Area System. The Carefree Service Area System ("System") will consist of 1) the wells, pipelines, pumps, meters and other facilities located in the Carefree Service Area and used to provide water service to the Carefree Service Area on the date of the filing of the condemnation complaint and 2) the portion of the Cave Creek CAP subcontract water used to serve the Carefree Service Area ("System CAP"). The quantity of the System CAP water shall be the product of the following Formula in which the following symbols have the following meanings:

"CD" = the total water demand, in acre feet, of the retail customers of Cave Creek water utility located in the Carefree Service Area during the calendar year immediately preceding the year in which the condemnation complaint is filed;

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TOWN OF CAREFREE

"CC" = the total number of retail water customers of the Cave Creek water utility located in the Carefree Service Area on December 31 of the calendar year immediately preceding the year in which the condemnation complaint is filed;

"CU" = Carefree Service Area annual water use per customer

The Formula:

$$CD + CC = CU$$

The System CAP will be the product of multiplying the CU by the total number of subdivided lots in the Carefree Service Area on the date of commencement of the arbitration hearing.

5.2 Supplemental System. The Supplemental System will consist of the additions, betterments, improvements and extensions to the System between the date of commencement of the arbitration hearing and the date on which the condemnor takes possession of the System. The Supplemental System will include Supplement System CAP which will be the product of multiplying the CU by the number of new subdivision lots created in the Carefree Service Area between the date of commencement of the arbitration hearing and the date on which the condemnor takes possession.

5.3 Compensation. The Parties agree that the compensation to which Cave Creek will be entitled in the condemnation action will be based on the total compensation paid by Cave Creek to the Water Company to acquire the Subjects of Condemnation. After the condemnation case is filed, Cave Creek and the Company will in good faith seek to agree upon the compensation Cave Creek will receive from the Company for the System. Except as specifically provided herein, it is the intent of the Parties that the compensation be equivalent to the compensation to which Cave Creek would be entitled for the System and Supplemental System under the Arizona statutes and case law governing municipal acquisition of utility property by eminent domain. The compensation shall include the cost of physically separating the System from the Cave Creek water utility. In the event that the Parties are unable to agree upon the compensation within 120 days after the date of the filing of the condemnation complaint, the compensation for the System shall be determined by arbitration under the Procedures for Large, Complex Commercial Disputes and the Commercial Arbitration Rules of the American Arbitration Association ("AAA") by three arbitrators from the AAA Large, Complex Case panel of arbitrators. The compensation will be determined for the System held by Cave Creek as of the date on which the arbitration hearing commences and that date will be the date of valuation.

5.4 Possession. In the event that compensation is determined by arbitration, the condemnor shall be entitled to possession of the System upon payment of the compensation in full to Cave Creek within six months after the date of the arbitration award and the deposit with Cave Creek of a bond or letter of credit in the amount of the

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TOWN OF CAREFREE

probable value of the Supplemental System. In the event that the approvals of the Central Arizona Water Conservation District and the Bureau of Reclamation for transfer of the Option CAP have not been obtained by the date of possession, the portion of the compensation attributable to the System CAP shall be withheld by the condemnor and paid to Cave Creek when the approvals have been obtained.

5.5 Supplemental Compensation. Within thirty days after the compensation award, Cave Creek shall provide to the condemnor the verified report described in A.R.S. §9-518.E. In the event that the parties cannot agree upon the probable value of the Supplemental System for purposes of the bond or letter of credit, the probable value shall be determined by the arbitrators. If, within thirty days after the condemnor has taken possession, the parties have not agreed upon the compensation to be paid for the Supplemental System, the amount of such compensation shall be determined by the arbitrators. When the compensation for the Supplemental System has been determined, the condemnor shall pay to Cave Creek, within ninety days after the date of such determination, the amount of the compensation plus interest from the date of possession until paid and the bond or letter of credit shall be returned to the condemnor. If the compensation and interest are not paid within ninety days, Cave Creek may draw on the letter of credit or call on the bond to satisfy the indebtedness. In the event that the letter of credit or bond is not sufficient, Cave Creek may, upon application to the Court, have a money judgment against the condemnor in the amount of the deficiency and Cave Creek will be entitled to the costs and attorneys fees incurred in obtaining and collecting on the judgment.

5.6 Abandonment. In the event that the condemnor fails to pay the compensation award for the System within six months after the award is made, the provisions of A.R.S. §§9-518.D. and 9-518.K. shall apply.

5.7 Public Use. The parties agree that, although the System will be appropriated to a public use after it is acquired by Cave Creek, the public use to which it would be applied by the Company, the Carefree UFCD or Carefree would be a more necessary public use under A.R.S. §12-1112.

SECTION VI. MISCELLANEOUS PROVISIONS.

6.1 Assignment of Agreement. No Party shall have the right to assign this Agreement nor any interest herein except to its successors. This Agreement shall be binding on the successors of the Parties hereto.

6.2 Notices. All notices shall be in writing and together with other mailings pertaining to this Agreement shall be made by personal delivery or by registered, express or certified mail, return receipt requested, and shall be deemed effective when delivered, to:

FOR CAREFREE WATER COMPANY:
President

11/14/2005 15:12 4804883845

TOWN OF CAREFREE

Carefree Water Company
Town of Carefree
P. O. Box 740
100 Easy Street
Carefree, AZ 85377

FOR CAVE CREEK

Town Manager
Town of Cave Creek
37622 N. Cave Creek Road
Cave Creek, AZ 85331

or as otherwise specified from time to time by each party.

6.3 Waiver. Waiver by either Party of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

6.4 Further Assurances. The Parties agree to execute promptly such other documents and perform such other acts as may be reasonably necessary to carry out the purpose and intent of this Agreement.

6.5 Amendment. This Agreement shall not be amended except by written instrument mutually agreed upon and executed by the Parties.

6.6 Entire Agreement. This Agreement and its recitals constitute the entire agreement between the Parties regarding the subject matter of this Agreement, and supersedes all prior oral and written agreements of the Parties regarding such subject matter. All warranties and guarantees and representations shall survive during the life of this Agreement.

6.7 Construction and Interpretation. All provisions of this Agreement shall be construed to be consistent with the intention of the Parties expressed in the recitals hereof.

6.8 Term. The term of this Agreement shall be for fifty (50) years from the Effective Date, subject to renewal for another fifty (50) years upon the written agreement of the parties.

6.9 Effective Date. This Agreement shall be effective upon filing of the original executed IGA with the office of the Maricopa County Recorder.

6.10 Arizona Law. This Agreement will be governed by the laws of the State of Arizona. Cave Creek may, within three years after the execution of this Agreement,

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cancel the Agreement without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of Cave Creek is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of Carefree Water Company in any capacity or a consultant to Carefree Water Company with respect to the subject matter of the Agreement. The provisions of A.R.S. §38-511 apply to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands the day and year first above written.

TOWN OF CAVE CREEK

By: *Vincent Francia*
VINCENT FRANZIA, MAYOR

ATTEST:

APPROVED AS TO FORM:

By: *Carla A. Dyrek*
Carla A. Dyrek, Town Clerk

By: *William E. Farrell*
William E. Farrell, City Attorney

CAREFREE WATER COMPANY, INC., an Arizona corporation

By: *Edward C. Morgan*
EDWARD C. MORGAN, Its President

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TOWN OF CAREFREE

PAGE 16/18

The execution of this Agreement by Carefree Water Company, Inc. was duly authorized by the Board of Directors of the Carefree Arizona Utilities Community Facilities District, a community facilities district formed and existent pursuant to Arizona Revised Statutes section 48-701 et seq and the Carefree UCFD agrees to be bound the terms of this Agreement if, under Article V, it should be the condemnor.

CAREFREE ARIZONA UTILITIES COMMUNITY FACILITIES DISTRICT

By: *Edward C. Morgan*
EDWARD C. MORGAN
Its Chairman of the Board of Directors

Approved by the Town Council
at their meeting held on
8/1/05
Conita Hammerman
FOR Cave Creek Town Clerk

EXHIBIT 3

RESOLUTION 2019-02

A JOINT RESOLUTION OF THE BOARD OF DIRECTORS OF THE TOWN OF CAREFREE, ARIZONA UTILITIES COMMUNITY FACILITIES DISTRICT (UCFD), AND THE TOWN COUNCIL OF THE TOWN OF CAREFREE, ARIZONA, AUTHORIZING THE CHAIRMAN OF THE BOARD OF DIRECTORS AND THE MAYOR OF THE TOWN OF CAREFREE TO INSTRUCT THE ATTORNEY FOR THE UCFD AND/OR THE ATTORNEY FOR THE TOWN OF CAREFREE TO PREPARE AND FILE A CONDEMNATION ACTION AGAINST THE TOWN OF CAVE CREEK TO ACQUIRE ALL OF THE COMPONENTS OF THE CAREFREE WATER SERVICE AREA SYSTEM LOCATED WITHIN THE TOWN OF CAVE CREEK WATER UTILITY SERVICE AREA.

WHEREAS, originally, a private water company known as the Cave Creek Water Company operated and managed a water service area located within portions of the Towns of Cave Creek and Carefree; and

WHEREAS, prior to the Town of Cave Creek's purchase of this private utility, the Town of Cave Creek and the Town of Carefree entered into an Intergovernmental Agreement ("IGA") approved by Cave Creek Resolution #2005-24 and Carefree Resolution #2005-23; and

WHEREAS, this IGA specifically permits the UCFD to acquire the Carefree Service Area System which consists of the wells, pumps, meters, and other facilities located in the Carefree Service Area and the portion of the Cave Creek Central Arizona Project subcontracted water used to serve the Carefree Service Area; and

WHEREAS, as contemplated in the IGA, the UCFD wishes to acquire the delineated Carefree Service Area System.

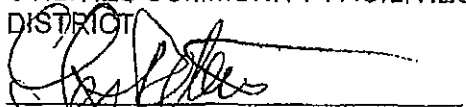
NOW, THEREFORE, IT IS RESOLVED by the Board of Directors of the UCFD and the Town Council of the Town of Carefree, Arizona that the Chairman of the Board is hereby authorized to instruct the attorney for the UCFD and/or the attorney for the Town of Carefree to prepare and file a condemnation action against the Town of Cave Creek to acquire the Carefree Water Service Area system located in the Town of Cave Creek Water Utility Service Area and execute professional services contracts in order to facilitate the acquisition of this Carefree Service Area, disconnection of the Carefree Service Area from the Cave Creek Water System, and re-connection of the Carefree Service Area to the Carefree Water Company.

PASSED AND ADOPTED BY the Board of Directors of the Town of Carefree, Arizona Utilities Community Facilities District and the Town Council of the Town of Carefree, Arizona, this 15th day of January, 2019.

Carefree Town Council:

AYES 6 NOES 0 ABSTENTIONS 0 ABSENT 1

TOWN OF CAREFREE ARIZONA and
UTILITIES COMMUNITY FACILITIES
DISTRICT


Les Peterson, Mayor and Chairman
of the Board Directors

ATTESTED TO:


Kandace French Contreras, Town Clerk of
and Board Secretary/Treasurer

APPROVED AS TO FORM:

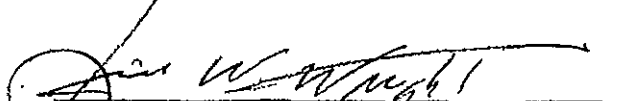

Michael W. Wright, Town and UCFD Attorney

EXHIBIT 4

CAREFREE SERVICE AREA

Those portions of the Town of Cave Creek water service area consisting of the following:

All parcels of land within Sections 4 and 5, Township 5 North, Range 4 East, Gila and Salt River Base and Meridian, Maricopa County, Arizona, and all parcels of land within Sections 24, 26, 34, and 35, Township 6 North, Range 4 East, Gila and Salt River Base and Meridian, Maricopa County, Arizona, that are located within the Town of Carefree and that meet one or more of the following criteria:

- 1) Were within a Cave Creek Water Company Arizona Corporation Commission Certified Area that was subsequently acquired by the Town of Cave Creek under the Final Order of Condemnation granted to the Town of Cave Creek on April 24, 2007 (No. CV2005-005882); or
- 2) Are currently, or have previously been, provided water and/or have been billed for water service by the Town of Cave Creek or the Cave Creek Water Company; or
- 3) Are adjacent to any pipeline owned or operated by the Town of Cave Creek or the Cave Creek Water Company.

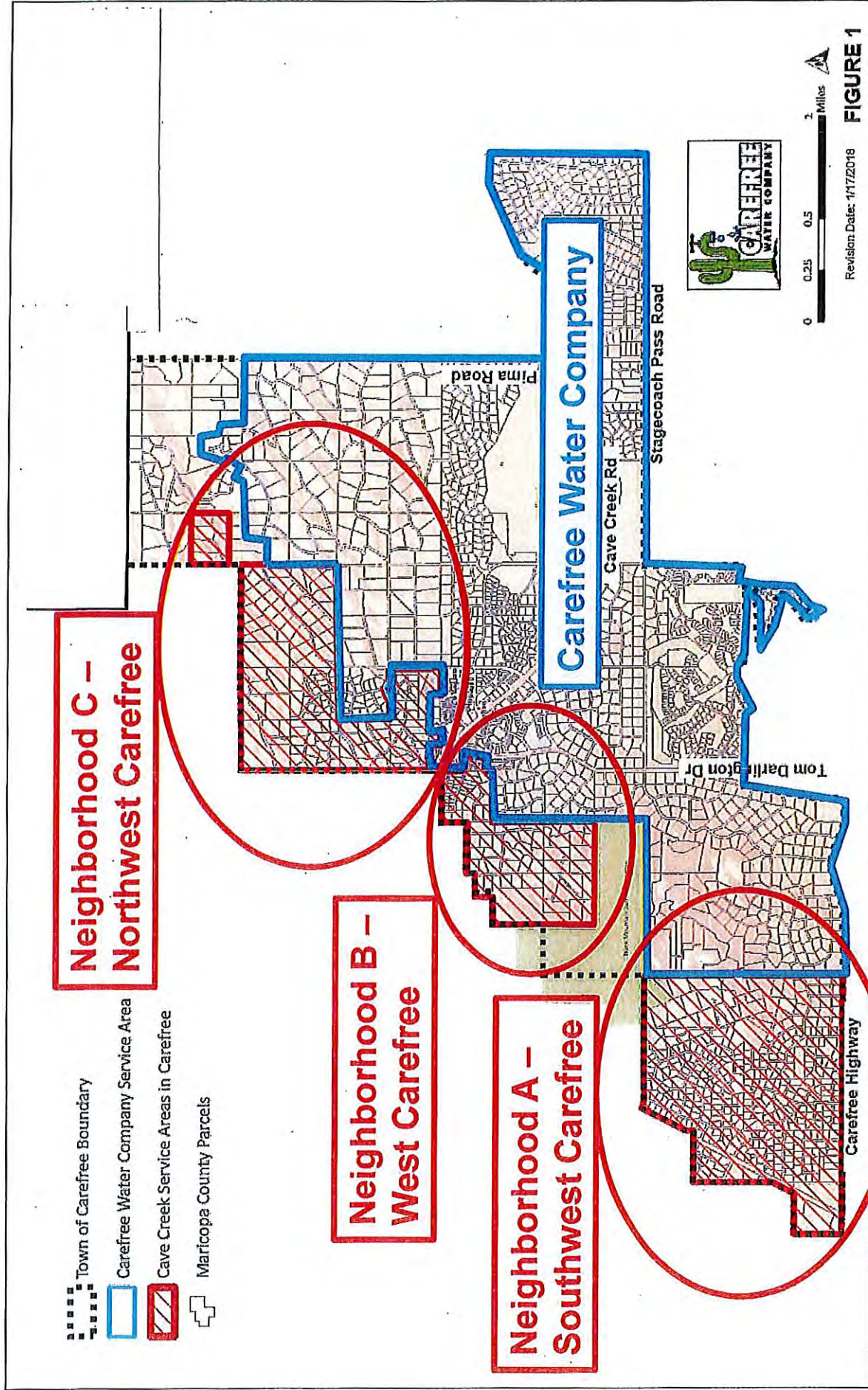


FIGURE 1

Revision: Date: 1/17/2018

EXHIBIT 5

Exhibit A

PARCEL NO. 4:

TRACTS D AND E, OF OCOTILLO RIDGE ESTATES, LOTS 1-22 AND TRACTS A-E, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 475 OF MAPS, PAGE 46.

EXCEPTING THEREFROM ALL COAL, OIL, GAS AND OTHER MINERALS DEPOSITS AS RESERVED IN THE PATENT TO THE LAND.

PARCEL NO. 8:

THAT PORTION OF UNIT 3A, OF OCOTILLO RIDGE ESTATES, A SUBDIVISION PLAT, RECORDED AS BOOK 581 OF MAPS, PAGE 39, MARICOPA COUNTY RECORDERS OFFICE, ALSO BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID UNIT 3A, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF SAID SECTION 23, MONUMENTED BY A STONE; FROM WHICH THE EAST QUARTER CORNER OF SAID SECTION 23, MONUMENTED BY A 3/4" PIPE, BEARS AS A BASIS OF BEARING NORTH 00 DEGREES 02 MINUTES 28 SECONDS EAST, A DISTANCE OF 2624.49 FEET;

THENCE NORTH 00 DEGREES 02 MINUTES 38 SECONDS EAST, ALONG THE EASTERLY LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 23, A DISTANCE OF 400.60 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF OCOTILLO RIDGE DRIVE AS SHOWN ON SAID PLAT, SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE SOUTHEASTERLY, WHOSE RADIUS POINT BEARS SOUTH 33 DEGREES 39 MINUTES 42 SECONDS EAST, A DISTANCE OF 670.00 FEET;

THENCE SOUTHWESTERLY ALONG SAID CURVE AND SAID SOUTHERLY RIGHT-OF-WAY LINE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 05 DEGREES 19 MINUTES 25 SECONDS, AN ARC DISTANCE OF 62.25 FEET TO A POINT OF NON-TANGENCY, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING;

THENCE SOUTH 40 DEGREES 25 MINUTES 08 SECONDS EAST, A DISTANCE OF 31.57 FEET;

THENCE SOUTH 49 DEGREES 34 MINUTES 52 SECONDS WEST, A DISTANCE OF 25.00 FEET;

THENCE NORTH 40 DEGREES 25 MINUTES 08 SECONDS WEST, A DISTANCE OF 31.72 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF OCOTILLO RIDGE DRIVE AS SHOWN ON SAID PLAT, SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE SOUTHEASTERLY, WHOSE RADIUS POINT BEARS SOUTH 41 DEGREES 07 MINUTES 25 SECONDS EAST, A DISTANCE OF 670.00 FEET;

THENCE NORTHEASTERLY ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 02 DEGREES 08 MINUTES 17 SECONDS, AN ARC DISTANCE OF 25.00 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 40:

ENTRY WALL, LANDSCAPE, BOOSTER STATION, PUBLIC UTILITY AND ACCESS EASEMENT AS CREATED IN 99-0510290 OF OFFICIAL RECORDS OVER THE FOLLOWING DESCRIBED PROPERTY:

COMMENCING AT THE MOST SOUTHERLY CORNER OF LOT 1, OCOTILLO RIDGE ESTATES, LOTS 1 - 22 AND TRACTS A - E, AS RECORDED IN BOOK 475 OF MAPS, PAGE 46, OFFICE OF THE MARICOPA COUNTY RECORDER, SAID CORNER BEING THE BEGINNING OF A CURVE, CONCAVE NORTHWESTERLY AND FOR WHICH THE RADIAL CENTER BEARS NORTH 01 DEGREES 55 MINUTES 57 SECONDS WEST A RADIUS OF 87.00 FEET;

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE TO THE LEFT AND THE SOUTHERLY BOUNDARY OF SAID LOT 1, THROUGH A CENTRAL ANGLE OF 38 DEGREES 45 MINUTES 46 SECONDS, A DISTANCE OF 58.86 FEET TO THE BEGINNING OF THE HEREIN DESCRIBED EASEMENT;

THENCE NORTH 04 DEGREES 36 MINUTES 55 SECONDS WEST, A DISTANCE OF 105.76 FEET;

THENCE NORTH 09 SECONDS 28 MINUTES 01 SECONDS EAST, A DISTANCE OF 10.17 FEET;

THENCE NORTH 36 DEGREES 24 MINUTES 07 SECONDS EAST, A DISTANCE OF 26.75 FEET;

THENCE NORTH 36 DEGREES 42 MINUTES 03 SECONDS EAST, A DISTANCE OF 27.97 FEET;

THENCE NORTH 57 DEGREES 32 MINUTES 19 SECONDS EAST, A DISTANCE OF 27.58 FEET;

THENCE NORTH 53 DEGREES 24 MINUTES 17 SECONDS EAST, A DISTANCE OF 42.87 FEET TO A POINT ON THE SOUTHEASTERLY BOUNDARY OF SAID LOT 1,

THENCE SOUTH 06 DEGREES 06 MINUTES 42 SECONDS WEST ALONG SAID SOUTHEASTERLY BOUNDARY OF LOT 1, A DISTANCE OF 37.27 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 69.00 FEET;

THENCE SOUTHWESTERLY ALONG SAID SOUTHEASTERLY BOUNDARY OF LOT 1 AND THE ARC OF SAID

CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 40 DEGREES 35 MINUTES 30 SECONDS, A DISTANCE OF 48.88 FEET TO A POINT ON A TANGENT, REVERSE CURVE, CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 56.00 FEET;

THENCE SOUTHWESTERLY ALONG SAID SOUTHEASTERLY BOUNDARY OF LOT 1 AND THE ARC OF SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 29 DEGREES 55 MINUTES 08 SECONDS A DISTANCE OF 29.24 FEET;

THENCE SOUTH 16 DEGREES 47 MINUTES 04 SECONDS WEST ALONG SAID SOUTHEASTERLY BOUNDARY OF LOT 1, A DISTANCE OF 56.84 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 87.00 FEET;

THENCE SOUTHWESTERLY ALONG SAID SOUTHEASTERLY BOUNDARY OF LOT 1 AND THE ARC OF SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 32 DEGREES 31 MINUTES 13 SECONDS, A DISTANCE OF 49.38 FEET TO THE POINT OF BEGINNING;

EXCEPT ANY PORTION LYING WITHIN TRACT "D" OF SAID OCOTILLO RIDGE ESTATES, LOTS 1 - 22 AND TRACTS A - E, AS RECORDED IN BOOK 475 OF MAPS, PAGE 46, OFFICE OF THE MARICOPA COUNTY RECORDER.

PARCEL NO. 43:

EASEMENT AGREEMENT AS CREATED IN 2002-0235563 OF OFFICIAL RECORDS OVER THE FOLLOWING DESCRIBED PROPERTY:

A PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 5 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5;

THENCE SOUTH 89 DEGREES 59 MINUTES 35 SECONDS WEST ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5, A DISTANCE OF 140.90 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF CAVE CREEK ROAD;

THENCE SOUTH 27 DEGREES 27 MINUTES 57 SECONDS WEST ALONG SAID EASTERLY RIGHT OF WAY LINE OF CAVE CREEK ROAD, A DISTANCE OF 22.54 FEET;

THENCE NORTH 89 DEGREES 59 MINUTES 35 SECONDS EAST A DISTANCE OF 151.27 FEET TO A POINT ON THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5;

THENCE NORTH 0 DEGREES 03 MINUTES 37 SECONDS EAST ALONG SAID EAST LINE, A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 45:

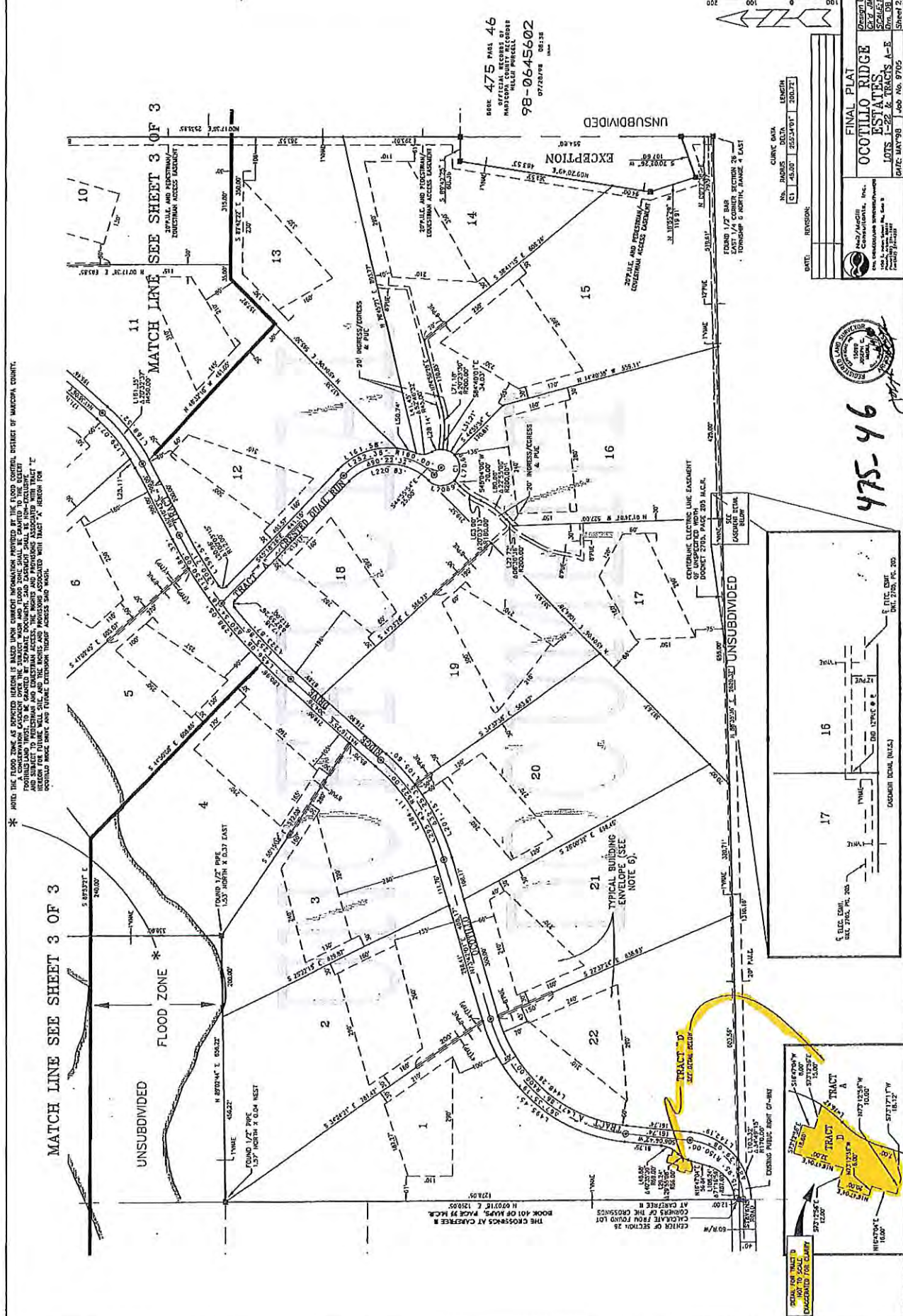
AN EASEMENT FOR WATER MAINS AS CREATED IN DOCKET 11757, PAGE 537, OVER THE FOLLOWING DESCRIBED PROPERTY:

THE EAST 75 FEET OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

EXCEPT ANY PORTION LYING WITHIN THE SOUTH 460 FEET THEREOF.

EXHIBIT 6

EXHIBIT 7



* NOTE THE FLOOD ZONE AS SHOWN ON GENERAL RECORD MAPS AND RECORDS OF THE COUNTY OF MARICOPA, ARIZONA. THE FLOOD ZONE IS SHOWN ON THE RECORD MAPS AND RECORDS OF THE COUNTY OF MARICOPA, ARIZONA. THE FLOOD ZONE IS SHOWN ON THE RECORD MAPS AND RECORDS OF THE COUNTY OF MARICOPA, ARIZONA. THE FLOOD ZONE IS SHOWN ON THE RECORD MAPS AND RECORDS OF THE COUNTY OF MARICOPA, ARIZONA.

MATCH LINE SEE SHEET 3 OF 3

UNSUBDIVIDED

FLOOD ZONE

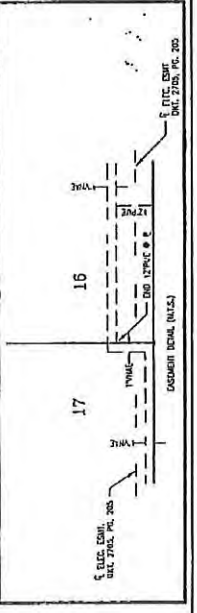
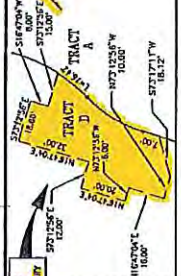
MATCH LINE SEE SHEET 3 OF 3

THE CROSSINGS AT CASPERE II
BOOK 401 OF MAPS, PAGE 21 K.C.R.
H 070318' E 1250.05'

TYPICAL BUILDING
EASEMENT (SEE
NOTE 9)

TRACT "D"
EASEMENT RECORD

SEE PLAN AND
NOT TO SCALE
DIMENSIONS FOR CLARITY



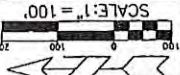
475-46

DATE	REVISION	NO.	REVISION	DATE	LENGTH
		1			

FINAL PLAT
OCOTILLO RIDGE
ESTATES
LOTS 1-22 & TRACTS A-E
DATE: MAY '98 Job No. 8795



SEE SHEET 46
FOR THE RECORD OF
MAPPING INFORMATION
RELATIVE TO THIS
98-0645602
07/28/98

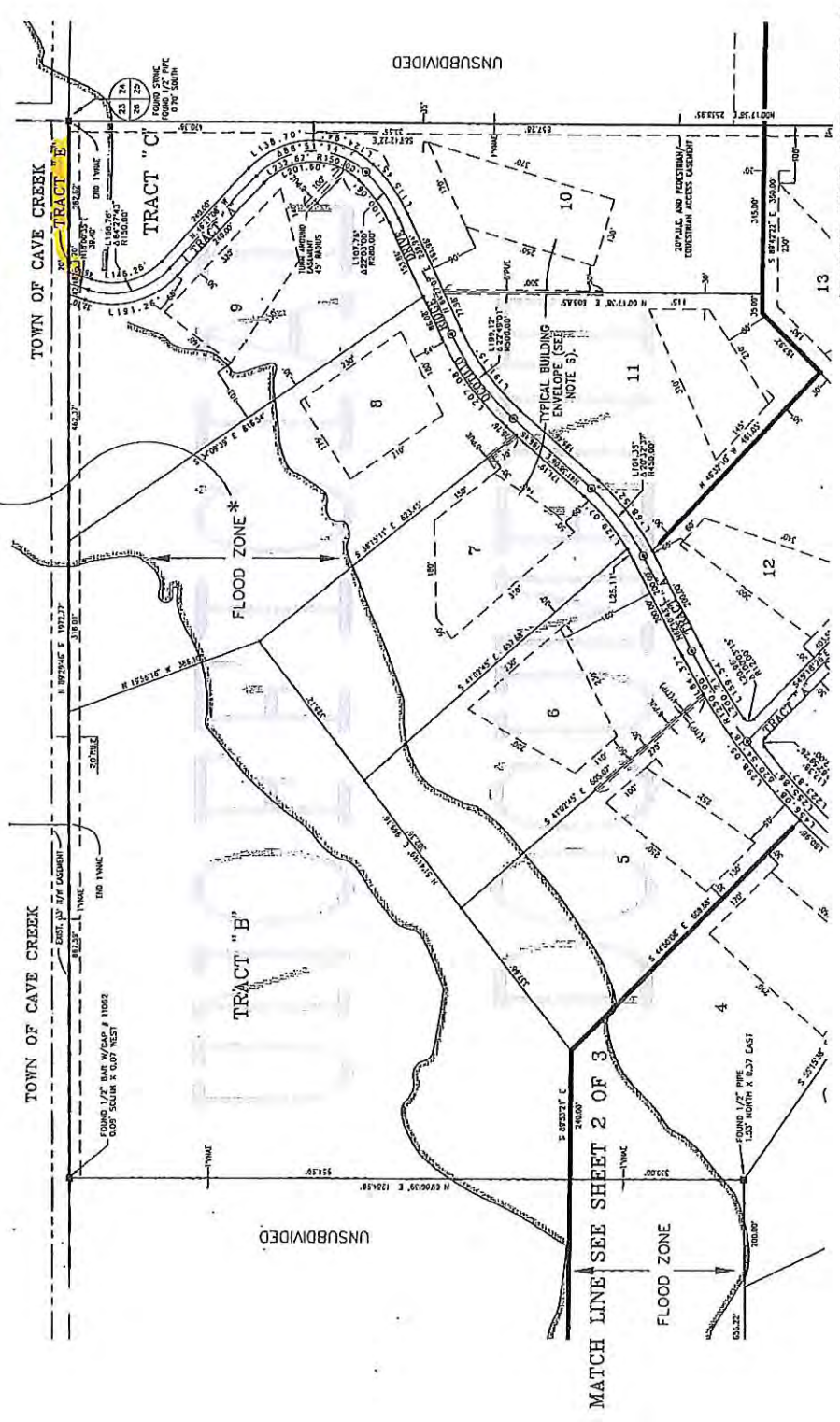


SCALE: 1" = 100'

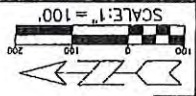
Sheet 2 of 3

EXHIBIT 8

* NOTE THE FLOOD ZONE AS SHOWN HEREIN IS BASED ON THE CURRENT INFORMATION PROVIDED BY FLOOD CONTROL DISTRICT OF MARICOPA COUNTY. A COMPLETION EXAMINER OVER THE SUBJECT WORK AND FLOOD ZONE SHALL BE RESPONSIBLE FOR VERIFYING THE ACCURACY OF THE FLOOD ZONE INFORMATION. THE FLOOD ZONE INFORMATION IS PROVIDED AS A SERVICE TO THE CLIENT AND DOES NOT CONSTITUTE A GUARANTEE OF ANY KIND. THE CLIENT SHALL BE RESPONSIBLE FOR VERIFYING THE ACCURACY OF THE FLOOD ZONE INFORMATION. THE FLOOD ZONE INFORMATION IS PROVIDED AS A SERVICE TO THE CLIENT AND DOES NOT CONSTITUTE A GUARANTEE OF ANY KIND. THE CLIENT SHALL BE RESPONSIBLE FOR VERIFYING THE ACCURACY OF THE FLOOD ZONE INFORMATION.



BOOK 475 PAGE 46
 OFFICIAL RECORD AT
 MARICOPA COUNTY CLERK'S
 OFFICE
 98-0645602
 07/28/16 08:33



MATCH LINE SEE SHEET 2 OF 3

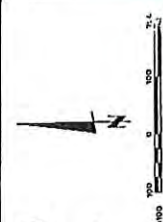
DATE:	REVISION:
FINAL PLAT OCOTILLO RIDGE ESTATES LOTS 1-22 & TRACTS A-E DATE: MAY/28 Job No: 9703 Sheet 3 OF 3	



475-46

EXHIBIT 9

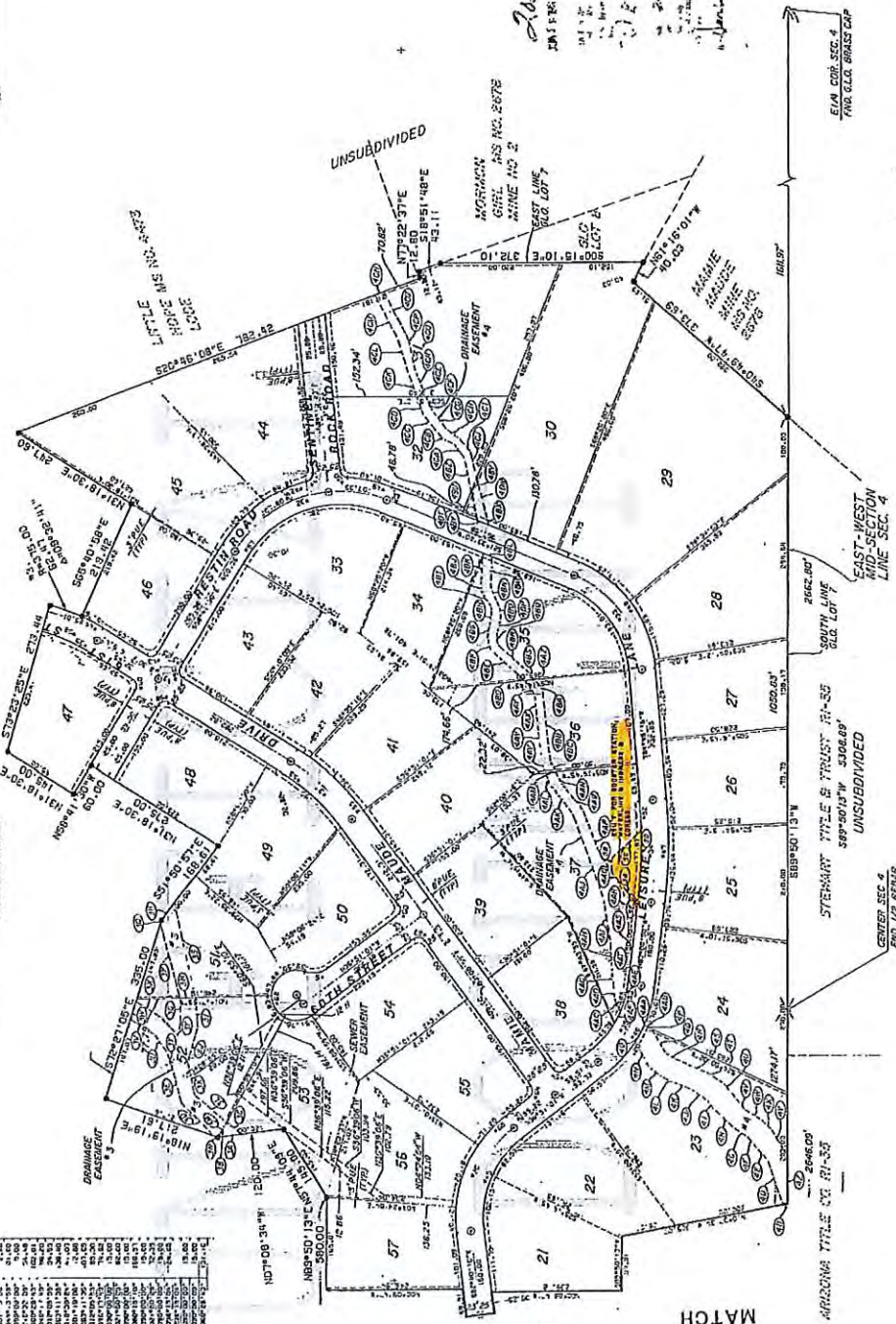
243-12
629-82



CURVE DATA

STATION	PC	PT	PI	TS	STATION	PC	PT	PI	TS
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0+10	0+10	0+10	0+10	0+10	0+10	0+10	0+10	0+10	0+10

LINE	STATION	STATION	CHANGING	CHANGING	CHANGING
1	0+00	0+00	0+00	0+00	0+00
2	0+10	0+10	0+10	0+10	0+10



WBC WBC Consultants, Inc.
 JOB NO. 9-88-024-30, SHEET 3 OF 3

243-12

EXHIBIT 10

**LIST OF UNRECORDED EASEMENTS BELONGING TO CAVE CREEK WATER
COMPANY AND/OR PACER EQUITIES COMPANY**

1. Black Mountain Mobile Home Park ---- 1989, Black Mountain Mobile Home Park Community Ctr., Grantor, water mains easement --- 8-foot easement located in the Southeast Quarter of Section 28, Township 6N, Range 4E.
2. Patterson ---- 1991, Michael and Charlene Patterson, Grantor, water mains easement --- located in a portion of the West Half Northwest Quarter of Section 5, Township 5N, Range 4E.
3. Cafferella ---- 1998, Joseph and Mary Cafferella, Grantor, water mains easement --- located in a portion of Section 35, Township 6N, Range 4E.
4. Cable ---- 2000, Ruth Cable, Grantor, water mains easement --- located in a portion of the Southwest Quarter of Section 35, Township 6N, Range 3E.
5. Collins ---- Floyd Collins, Grantor, water mains easement --- located in a portion of the Northeast Quarter of the Northeast Quarter of Section 28, Township 6N, Range 4E.
6. School House Rd. South Booster Station ---- 1994, Gary and Dawn Ford, Grantor, booster station and water mains easement --- a 15-foot by 15-foot booster site located in the Northeast Quarter of the Northeast Quarter of Section 33, Township 6N, Range 4E.
7. Cable-Woodworth LE ---- 1996, Norman and Linda Rash, Grantor, water mains easement --- located in a portion of the Southwest Quarter of Section 35, Township 6N, Range 3E.
8. Cable-Woodworth LE ---- 1996, Everette and Wilma Jean Baker, Grantor, water mains easement --- located in a portion of the Southwest Quarter of Section 35, Township 6N, Range 3E.
9. Cable-Woodworth LE ---- 1996, James Woodworth and Susan Holden, Grantor, water mains easement --- located in a portion of the Southwest Quarter of Section 35, Township 6N, Range 3E.
10. Cable-Woodworth LE ---- 1996, Ruth Cable, Grantor, water mains easement --- located in a portion of the Southwest Quarter of Section 35, Township 6N, Range 3E.
11. Cable-Woodworth LE ---- 1996, Andy Reichenberger, Grantor, water mains easement --- located in a portion of the Southwest Quarter of Section 35, Township 6N, Range 3E.
12. Gibson ---- 1976, Robert and Shirley Gibson, water mains easement --- located at the West 6 feet of the East Half of the Northwest Quarter of the Northeast Quarter of the Southeast Quarter of Section 5, Township 6N, Range 4E.

EXHIBIT 2

***Ruling on Jurisdictional and
Dismissal Motions***

ARBITRATORS' DECISION ON THE MERITS

Town of Carefree adv. Town of Cave Creek

AAA Case No. 01-19-0001-7178

THE ARBITRATION TRIBUNALS OF THE AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration between:) AAA Case No. 01-19-0001-7178
)
 Town of Carefree, Arizona Utilities) Maricopa County Superior Court Case No.
 Community Facilities District,) CV 2019-052592 [the “Underlying Action”
) - STAYED PENDING ARBITRATION]
 Claimant/Counter-respondent,)
 -and-) **RULING ON JURISDICTIONAL**
) **AND DISMISSAL MOTIONS**
)
 Town of Cave Creek, a municipal corporation) ARBITRATION HEARING DATES:
 of the State of Arizona,) **July 17 – 25, inclusive, 2020, except for**
) **Sunday, July 19, 2020.**
 Respondent/Counterclaimant.)
) Julie E. Collins, Manager of ADR Services
) Direct Dial: (559) 408-5713
) Email: JulieCollins@adr.org
)

Pending before the Tribunal are the parties’ Cross-Jurisdictional Motions¹ and Respondent Town of Cave Creek’s various Dismissal Motions. For the reasons stated below, the Tribunal **DENIES** Respondent Town of Cave Creek’s Motion contesting (and **GRANTS** the Motion of Claimant Town of Carefree, Arizona Utilities Community Facilities District [the “District”] confirming) the Tribunal’s arbitral jurisdiction over the matters raised in the District Claimant’s January 3, 2020 *Amended Demand for Arbitration* (the “Amended Demand”), except as to the new claims raised in ¶8 thereof (which are ordered dismissed), **DISMISSES** proposed Claimant Carefree Water Company as a Claimant, and **DENIES** Respondent Town of Cave Creek’s Various Motions to Dismiss (except as to the new claims raised in ¶8 thereof, which are ordered dismissed).

1. Ruling on Parties’ Cross-Jurisdictional Motions. The Tribunal **DENIES** Respondent Town of Cave Creek’s Motion contesting (and **GRANTS** Claimant District’s Motion confirming) the Tribunal’s arbitral jurisdiction over the matters raised in the District Claimant’s Amended Demand (except as to the new claims raised in ¶8 thereof, which are ordered dismissed in the ruling that follows regarding the Dismissal Motions). There are three primary reasons for this (although others not enumerated here exist):

(a) First, the issue of the arbitrability of the disputes subject to arbitration has already been decided by the Superior Court, which stayed the related action and ordered the parties’ disputes to arbitration.

The Tribunal has reviewed the various motions filed with the court in the underlying action. The issues raised by Respondent Town of Cave Creek in those various motions are near identical (if not identical) to those raised to this Tribunal in the parties’ Jurisdictional Motions, but the court already found Respondent Town of Cave Creek’s arguments in the court action unconvincing and ordered the parties’ disputes (including, but not limited to, those asserted in the Claimant’s Complaint in its court action) to arbitration. The language of the court’s minute entry ruling filed 09/10/2019 8:00 AM (the “Minute Entry”) is both

¹ These Jurisdictional Motions were the subject of oral argument on January 22, 2020.

RULING ON JURISDICTIONAL AND DISMISSAL MOTIONS

Town of Carefree adv. Town of Cave Creek

AAA Case No. 01-19-0001-7178

informative and dispositive of the issue. The court's Minute Entry ruling on the arbitration motions before it in the action was as follows²:

MOTION TO DISMISS

Plaintiff filed a Motion to Dismiss Defendant Counterclaim, alleging that the IGA requires that the issues in the Countercomplaint be arbitrated.

Defendant's Countercomplaint seeks a declaratory judgment to define the scope of the property to be condemned and the appropriate standard of value to apply.

Defendant claims that the subject matter of the Countercomplaint falls outside of the issues agreed to be arbitrated in the IGA.

The parties clearly intended to arbitrate through the American Arbitration Association ("AAA"). (see IGA Paragraph 5.3)

Although Defendant argues that the Court should retain subject matter jurisdiction over the issues in the Countercomplaint, the AAA's Commercial Arbitration Rules provide that:

The Arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim. See AAA, Rule 7.

The Court finds that the arbitration clause of the IGA requires arbitration of the issues raised in the Countercomplaint, subject to the Arbitrator's ruling on any objections to jurisdiction pursuant to AAA Rule 7. The Court will therefore not address the merits of the parties' arguments regarding what property should be included in the condemnation or the compensation formula to be used to value that property.

IT IS ORDERED granting Plaintiff's Motion to Dismiss, filed April 29, 2019 and ordering the parties to pursue arbitration of the claims raised in the Countercomplaint.

IT IS FURTHER ORDERED denying Defendant Cave Creek's Motion to Stay Threatened Arbitration, filed June 18, 2019.

IT IS FURTHER ORDERED granting Plaintiff's Notice of Pending Private Arbitration with American Arbitration Association and Motion to Stay the Court's Proceedings, filed May 30, 2019.

IT IS FURTHER ORDERED that the case is stayed pending the outcome of the parties' arbitration or a determination regarding the arbitrator's jurisdiction over the subject matter at issue in the Complaint in Condemnation.

² Yellow highlighted portion not in original.

RULING ON JURISDICTIONAL AND DISMISSAL MOTIONS

Town of Carefree adv. Town of Cave Creek

AAA Case No. 01-19-0001-7178

Admittedly, there is some confusion in the court's Minute Entry. For example, one is the court grants the Plaintiff Claimant's *Motion to Dismiss* (which a court cannot do under *any* arbitration statute, state or federal, because such arbitration statutes only allow for a "stay" of a court action in which a motion to compel arbitration has been granted), but then the court also "stays" the action in the last paragraph shown above. What is the point of "staying" an action that has already been "dismissed"? However, the Tribunal understands that the court intended to "stay" the action, its reference to a "dismissal" notwithstanding.

The other confusing ruling is that having already decided the disputed arbitrability issues, the court then seems to defer to this Tribunal to entertain them yet again when the court's Minute Entry states "..., *subject to the Arbitrator's ruling on any objections to jurisdiction pursuant to AAA Rule 7.*" (Hence, the current Arbitration Jurisdiction Motions.) But if the court already decided that the disputes are subject to arbitration, what is the point of having this Tribunal revisit the issue? This Tribunal believes that there is no reason for Respondent Town of Cave Creek to get "two bites" of the arbitration jurisdiction apple.

In *Migneault v. United Services Auto. Ass'n*, 21 Ariz.App. 397, 519 P.2d 1162 (Ariz.App. Div. 2, 1974) the court noted "*The sole question presented in this appeal is whether a party's introduction of evidence upon an issue in an arbitration hearing will result in a waiver of the right to later question the arbitrability of that issue in a court of law.*" In deciding the issue affirmatively, the *Migneault* court held that by participating in the arbitration of an insurance coverage issue without objection the motorist waived the right to later question the arbitrability of the insurance coverage issue in a court of law. In so doing, the court offered this compelling rationale.

"Thus, confirmation of an arbitration award is allowed as to a controversy despite the fact that there has been no agreement to arbitrate said controversy if the party opposing confirmation has participated in arbitration of the controversy without objection. In Verdex Steel and Const. Co. v. Board of Supervisors, 19 Ariz.App. 547, 550, 509 P.2d 240, 243 (1973), Division One of this court construed the above-quoted statutory language as follows:

' . . . (O)ne who is not bound by contract to arbitrate and who voluntarily participates in an arbitration proceeding, without making a clear record of nonparticipation in the binding effects of the arbitration, is bound by the award to the same extent and under the same conditions as a party to a written agreement to arbitrate.'

Since it is undisputed that the insured participated in arbitration of the coverage issue without objection (i.e., he introduced evidence bearing upon the issue), the trial court was within its statutory power in confirming the arbitrator's decision as to coverage even though there was no written agreement to arbitrate the coverage issue.

The legislative recognition that a party to arbitration proceedings waives any objection to the arbitrator's jurisdiction over an issue when he participates without objection in the arbitration of that issue is well-reasoned. It would be a tremendous waste of resources for a party to participate in arbitration of a controversy and, after it is resolved against him, to allow him to challenge in a judicial proceeding the arbitrator's power to decide the matter. Fairness demands that parties be bound by the arbitrator's decision on all issues which they willingly and without objection arbitrate although the issues transcend the formal arbitration agreement.

RULING ON JURISDICTIONAL AND DISMISSAL MOTIONS

Town of Carefree adv. Town of Cave Creek

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Although we base our decision upon the provisions of the Uniform Arbitration Act adopted by this jurisdiction, general case law on the subject is also instructive. The annotation at 33 A.L.R.3d 1242 (1970) sets forth most of the cases dealing with waiver of arbitrability. The author summarizes them as follows (33 A.L.R.3d at 1244):

'As a general rule, participation in an arbitration hearing on the merits of a dispute will result in waiver of the right to raise the issue of arbitrability after the arbitrators have made their decision.' (Footnote omitted)

Another succinct statement of the principle is found in the following statement from [citations omitted]:

'Where parties to an arbitration proceeding voluntarily submit and litigate therein on the merits matters not embraced within the expressed description of arbitrable disputes or matters as set forth in the written arbitration agreement, the submission and litigation amount to a waiver of the limitations of the arbitration agreement and give the arbitrator jurisdiction to determine the particular matter; and the parties will be bound by the award of the arbitrator thereon.' (Citations omitted)³

But what of the converse fact pattern presented here? What if, notwithstanding the parties' written agreement that "***The arbitrator shall have the power to determine the existence, scope and validity of the parties' arbitration agreement***" (an "Arbitrator Jurisdiction Rule" – see AAA Rule R-7(a)), the parties deliberately and intentionally chose not to present the arbitrability issue to the arbitrator(s) but instead presented it to the court to decide? We think the *Migneault* rationale likewise applies, but in reverse – namely, (and to paraphrase the *Migneault* court's logic applied to the current Arbitration Jurisdiction Motions):

'Where parties to an arbitration agreement that expressly includes an Arbitrator Jurisdiction Rule nonetheless voluntarily submit and litigate the merits of the arbitrability issues therein to and before the court instead of the arbitrators, then the submission and litigation of such arbitrability issues to the court amounts to a waiver of the Arbitrator Jurisdiction Rule and re-vests the court with jurisdiction to determine the arbitrability matters presented to it; and the parties will be bound by the court's determination thereon.'

To hold otherwise would simply discourage finality in resolving disputed issues and encourage needless repetition and determination of (here, arbitration jurisdiction) issues in two different forums. Or, to again paraphrase the *Migneault* court's logic applied to the current Arbitration Jurisdiction Motions, "*It would be a tremendous waste of resources for a party to participate in arbitration litigation of a controversy regarding the arbitrator's power to decide the matter and, after it is resolved against him, to allow him to challenge in an arbitration judicial proceeding the arbitrator's power to decide the matter."* Here, the parties made a conscious choice to submit the arbitration jurisdiction matters to the court. They need not have done so. Either or both parties could have commenced an arbitration and asked an arbitration tribunal to decide the arbitrability issues, but both parties elected to **waive** this right and opportunity and have a court decide the issue. Having done so, who are we to presume to redecide the issue when the Superior Court already did so **at the parties' request?**

³ 21 Ariz.App. 399-400, 519 P.2d 1164 – 1165.

RULING ON JURISDICTIONAL AND DISMISSAL MOTIONS

Town of Carefree adv. Town of Cave Creek

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(b) Second, the parties' arbitration agreement must be construed to allow the Tribunal to decide elemental matters that are inextricably intertwined with the subject matter of the claims that the court ordered to arbitration, including "discrete sub-issues raised therein."

Second, we think the Superior Court judge rightly decided the arbitral jurisdiction matter on the merits anyway. Respondent Town of Cave Creek asserts that this Tribunal is not empowered to "arbitrate any of the discrete sub-issues" relating to a determination of "Compensation." We disagree. It is undisputed that the issues relating to "Compensation" for the "System" and "Subjects of Condemnation" are to be arbitrated by AAA arbitration under both §§ 5.3 and 5.5 of the Exhibit 1 IGA and the Exhibit 2 Water Agreement. In its Countercomplaint in the Superior Court, the Town of Cave Creek asserted a Countercomplaint against the District arguing that that two issues had to be resolved before proceeding to arbitration: First, what comprises the "Carefree Service System" (including whether it includes any real properties and what assets make up the Carefree Service Area System); and, Second, how the system assets should be valued under the terms of the IGA. Granted, there is no mention of "real property" in these arbitration provisions. So what? The Respondent's invitation to construe the arbitration clauses in a manner that severs from them "discrete sub-issues" not expressly enumerated in them is functionally unworkable. It invites a "piecemeal" determination of a multitude of related, intertwined issues (or "discrete sub-issues"), with some issues to be determined by this Tribunal and others by the court. But this disjointed, "piecemeal" approach is a recipe for disaster. It invites disparate rulings in both the court and arbitration proceedings and surely would increase legal fees in both fora from the inevitable resulting confusion. Doubtless, this was a reason why the court ordered the parties' claims to arbitration and itself declined this "piecemeal" approach.

If a hypothetical arbitration tribunal is clearly and expressly tasked in an arbitration clause with determining, say, the "Compensation" for something, then of necessity it must be inferred or implied that it is also empowered to determine and decide (and must have jurisdiction over) those individual, elements – whatever their nature – that collectively in the aggregate comprise or constitute the "Compensation" - even if those "separate elements" (or "discrete sub-issues") are not specifically or expressly enumerated with particularity in the arbitration clause.

For example, we could restate this as a formula in the hypothetical arbitration case⁴ where "C" (for "Compensation") equals "A" (for "Assets") times "V" (for "Value"). Of necessity, the hypothetical tribunal could only determine the "Compensation" if it first determines what the Assets are and what their Value is (and, on the latter point, what valuation method(s) are to be used or applied in determining the Assets' value – whether or not are not such valuation method(s) are separately or expressly enumerated in the arbitration clause or are "discrete sub-issues" thereof). To hold otherwise would be to "*kill the arbitration clause with the death of a thousand cuts*" where each "cut" constitutes yet another "discrete sub-issue" to argue about because it was not specifically or expressly enumerated in the arbitration clause (and thus, as the argument goes, is "not subject to arbitration"). If arbitration clauses were construed in such a manner, then the only thing standing between their enforcement and utter destruction would reside in the mind of creative lawyers, which is not the parties' intention in adding an arbitration clause to their contracts. It also runs afoul of the

⁴ While "Compensation" issues are obviously relevant to the current dispute, we state them in the hypothetical here because this Tribunal awaits the parties' evidence and arguments for what should comprise the appropriate "Compensation" formulas for damages in the instant case, which might include variables not mentioned in this simple formula. Our use of this hypothetical should not be construed as our having adopted any *a priori* determination of the formulas to be properly used in this case.

RULING ON JURISDICTIONAL AND DISMISSAL MOTIONS

Town of Carefree adv. Town of Cave Creek

AAA Case No. 01-19-0001-7178

spirit and intent of the arbitration statutes and their purposes, which are to streamline dispute resolution and minimize its expense.

(c) Third, having determined that valid and enforceable arbitration clauses exist in the Exhibit 1 IGA and the Exhibit 2 Water Agreement, Arizona law compels that questions regarding the “arbitrability” should be resolved in favor of arbitration – precisely for the reasons enumerated in the preceding subpoint.

As the court observed in *Foy v. Thorp*, 186 Ariz. 151, 153, 920 P.2d 31, 33 (Ct. App. 1996):

“Arizona law favors arbitration, both statutorily, see A.R.S. § 12–1501, and by the courts as a matter of public policy. *Clarke v. ASARCO Inc.*, 123 Ariz. 587, 589, 601 P.2d 587, 589 (1979). ‘Notwithstanding such public policy, an arbitrator cannot resolve issues which go beyond the scope of the submission agreement.’ *Id.* **Due to the public policy favoring arbitration, arbitration clauses should be liberally construed, and doubts regarding arbitrability should be resolved in favor of arbitration.** *U.S. Insulation, Inc. v. Hilro Constr. Co.*, 146 Ariz. 250, 258, 705 P.2d 490, 498 (App.1985); *New Pueblo Constructors, Inc. v. Lake Patagonia Recreation Ass’n*, 12 Ariz.App. 13, 16, 467 P.2d 88, 91 (1970).” (Bold emphasis added.)

For the reasons stated above (and others not enumerated), we agree with both the Superior Court and the *Foy* court that where an arbitration clause clearly exists in a parties’ agreement, *doubts regarding arbitrability should be resolved in favor of arbitration* and so we confirm our jurisdiction to decide the claims submitted to us in this arbitration (except as to the new claims raised in ¶8 of the Amended Demand for Arbitration, which are ordered dismissed).

2. Ruling on Various Motions to Dismiss. During the January 22, 2020 oral argument on the parties’ respective Jurisdictional Motions, Respondent Town of Cave Creek objected to the filing of the Amended Demand by the District and new, proposed Claimant Carefree Water Company on various grounds, which are stated in Respondent Town of Cave Creek’s Jurisdictional Motion and in its Response to Claimant District’s Jurisdictional Motion. After some discussion, it was stipulated by the parties that the Tribunal could conditionally accept the filing of the *Amended Demand for Arbitration*, subject to the condition subsequent that the same could be stricken depending upon the Tribunal’s Rulings on the Jurisdictional Motions and/or the Respondent’s Motions to Dismiss, which consist of the following four motions to dismiss:

1. Dismissal of ¶ 8 of the Amended Demand – breach of contract for failure to provide a “will serve” letter to a portion of the Carefree Service area at the northeast corner of Cave Creek Road and Carefree Highway;
2. Dismissal of the Carefree Water Company as a party;
3. Dismissal based on the Town of Carefree being the District’s “alter ego” and consequent failure to comply with a conditions precedent applicable to the Town should it wish to acquire a water utility in the absence of a controlling contract - that the District did not hold an election authorizing it to get into the utility business before condemning the Carefree Service Area as permitted by the IGA and Water Agreement; and
4. Dismissal of ¶ 7 of the Amended Demand for breach of contract for refusal to provide Claimants with access to books and records of the Cave Creek Water utility and negotiate in good faith.

We rule on these Motions to Dismiss as follows:

RULING ON JURISDICTIONAL AND DISMISSAL MOTIONS

Town of Carefree adv. Town of Cave Creek

AAA Case No. 01-19-0001-7178

(a) Respondent's Motion to Dismiss Claimants' claim asserted in ¶8 of the Claimant's Amended Demand is GRANTED and such claim is DISMISSED, without prejudice, and stricken from the Amended Demand:

(For the reasons set forth in Claimant District's Response to Cave Creek's Motions to Dismiss, §IV, subparagraphs A and B and in Respondent Town of Cave Creek's Reply to Claimant District's Response to Cave Creek's Motions to Dismiss, §II.) The following language of the Amended Demand is deemed stricken and dismissed:

~~(8) Whether Respondent breached the Agreement between the Carefree Water Company and the Town of Cave Creek, dated August 2, 2005, Exhibit 2 attached hereto, by refusing to provide water service to additional areas within the limits of the Town of Carefree, specifically the northeast corner of Cave Creek Road and Carefree Highway, as required by ¶ 4.3 of the Agreement.~~

(b) Respondent's Motion to Dismiss Clamant Carefree Water Company is GRANTED, and Clamant Carefree Water Company DISMISSED from the action.

(For the reasons set forth in Claimant District's Response to Cave Creek's Motions to Dismiss, §IV, subparagraphs A and B and in Respondent Town of Cave Creek's Reply to Claimant District's Response to Cave Creek's Motions to Dismiss, §II.)

(c) Respondent's Motion to Dismiss based on the Town of Carefree supposedly being the District's "alter ego" and its consequent failure to comply with a conditions precedent applicable to the Town of Carefree should it wish to acquire a water utility in the absence of a controlling contract - that the District did not hold an election authorizing it to get into the utility business before condemning the Carefree Service Area as permitted by the IGA and Water Agreement are DENIED.

(For the reasons set forth in Respondent Town of Cave Creek's Reply to Claimant District's Response to Cave Creek's Motions to Dismiss, §III.) See also A.R.S. § 48-708(B), "*On its formation, the [D]istrict is ... considered to be a municipal corporation and political subdivision of this state, separate and apart from the municipality or county.*" As a matter of law, the District is to be "considered... separate, distinct and apart" from the Town of Carefree, so there can be no 'alter ego' claim asserted against it here.

(d) Respondent's Motion to Dismiss ¶ 7 of the Amended Demand for breach of contract for refusal to provide Claimant District with access to books and records of the Cave Creek Water utility and negotiate in good faith is DENIED.

Respondent Town of Cave Creek's assertion that "*Certainly, Cave Creek has not agreed to arbitrate any of the discrete sub-issues raised therein, as none of those issues are related to the determination of just compensation for Claimant's prospective taking of the Carefree Service Area via condemnation, which is the sole purpose of this arbitration proceeding*" is unpersuasive for the reasons given above under our ruling on Arbitrator Jurisdiction. This arbitration proceeding concerns and affects claims in the Amended Demand for (among other things) the alleged breach of the Exhibit 1 IGA and the Exhibit 2 Water Agreement, including

RULING ON JURISDICTIONAL AND DISMISSAL MOTIONS

Town of Carefree adv. Town of Cave Creek

AAA Case No. 01-19-0001-7178

breach of the implied covenant of good faith and fair dealing in the Respondent’s performance of those agreements. These claims are altogether proper for adjudication before this Tribunal.

IT IS SO ORDERED.



DATED: Friday, February 21, 2020

Mark E. Lassiter, For the Tribunal⁵

Copies of this Order served by
E-mail on Friday, February 21, 2020 on:

Master Service List: JulieCollins@adr.org; ckramer@jsslaw.com; mwright@shermanhoward.com; mmcghee@shermanhoward.com; jconner@bakerdonelson.com; asanders@bakerdonelson.com; amullens@bakerdonelson.com; lrarkin@bakerdonelson.com; wjsims@simsmackin.com; ghays@lawgdh.com; keith@keithburnlaw.com; rgerber5@att.net; mlassiter@lassiterlawfirm.com

<p>Julie E Collins, Manager of ADR Services Direct Dial: (559) 408-5713 Email: JulieCollins@adr.org <i>AAA Case Manager</i></p>	<p>Mark E. Lassiter, Esq. – mlassiter@lassiterlawfirm.com Keith S. Burn, Esq. - keith@keithburnlaw.com Hon. Rudolph J. Gerber (Ret.) - rgerber5@att.net <i>Arbitrators</i></p>
<p>Christopher Kramer, Esq. Laura R. Curry, Esq. Jennings Strouss & Salmon, PLC 1 East Washington Street, Suite 1900 Phoenix, AZ 85004 Email: ckramer@jsslaw.com;</p>	<p>Joe Conner, Esq. & Adam C. Sanders, Esq. Laura M. Rankin* & Amy Mullens* Baker Donelson 633 Chestnut Street 1900 Republic Centre, Suite 1900 Chattanooga, TN 37450 Email:</p>
<p>Michael Wright, Esq. Marla McGhee* Sherman & Howard L.L.C. 7033 East Greenway Parkway, Suite 250 Scottsdale, AZ 85254 Email: mwright@shermanhoward.com; mmcghee@shermanhoward.com</p>	<p>jconner@bakerdonelson.com; asanders@bakerdonelson.com; lrarkin@bakerdonelson.com; amullens@bakerdonelson.com;</p>
<p><i>Co-Counsel for Claimant</i></p>	<p>William J. Sims, III, Esq. Sims Mackin, Ltd. 3101 North Central Avenue, Suite 870 Phoenix, AZ 85012 Tel: 602-772-5501 Fax: 602-772-5509 Email: wjsims@simsmackin.com</p> <p>Garry Dale Hays II, Esq. 1702 East Highland Avenue #204 Phoenix, AZ 85016 Tel: 602-308-0579 Fax: 480-205-0822 Email: ghays@lawgdh.com <i>Co-Counsel for Respondent</i></p>

* - Legal Assistants

⁵ Mr. Lassiter avows that this Ruling was joined by Arbitrators Gerber and Burn, who authorized him to sign on their behalf.

EXHIBIT 3

***Ruling on Claimant's Motion
for Virtual Hearing***

ARBITRATORS' DECISION ON THE MERITS

Town of Carefree adv. Town of Cave Creek

AAA Case No. 01-19-0001-7178

THE ARBITRATION TRIBUNALS OF THE AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration between:	) AAA Case No. 01-19-0001-7178
)
Town of Carefree, Arizona Utilities	) Maricopa County Superior Court Case No.
Community Facilities District,	) CV 2019-052592 [the "Underlying Action"
	) - STAYED PENDING ARBITRATION]
Claimant/Counter-respondent,)
	) RULING ON CLAIMANT'S
-and-	) MOTION FOR VIRTUAL HEARING
)
Town of Cave Creek, a municipal corporation)	) Julie E. Collins, Manager of ADR Services
of the State of Arizona,	) Direct Dial: (559) 408-5713
	) Email: JulieCollins@adr.org
Respondent/Counterclaimant.)
)

During a telephone conference call with all the Panel members and all parties' lead counsel at 5:00 p.m. on Friday, September 18, 2020, Claimant's counsel, Mr. Kramer, moved this Panel to conduct a "Virtual Hearing" in lieu of a live, in person hearing (the "Virtual Hearing Motion"). Respondent's counsel, Mr. Conner, advised that he would discuss the matter with his client on Monday, September 21, 2020 and would file any Response or Opposition to the same by noon on Thursday, September 24, 2020, which Response opposing the Virtual Hearing Motion was later timely filed. Mr. Kramer was ordered to file any Reply to the same by noon on Monday, September 28, 2020. We then conducted another telephone conference call on Tuesday, September 29, 2020 for oral argument on the matter, at which time the Panel GRANTED Claimant's Virtual Hearing Motion over Respondent's objections. This promised ruling comes following the parties' Zoom arbitration hearings, conducted in the last week of October and the first week of November 2020, wherein Respondent's standing objection to the virtual Zoom hearing was noted.

The Virtual Hearing Motion was prompted by, and memorialized in, the following September 18, 2020 email from Claimant's co-counsel, Mr. Kramer, which the Panel elected to treat as the Virtual Hearing Motion:

From: Kramer, Christopher W. <ckramer@jsslw.com>
Sent: Friday, September 18, 2020 12:33 PM
To: Mark Lassiter <mlassiter@lassiterlawfirm.com>; Conner, Joe <jconner@bakerdonelson.com>; AAA Julie Collins <JulieCollins@adr.org>; Body, Leslie L. <LBody@jsslw.com>; ghays@lawgdh.com; mwright@shermanhoward.com; Kapperman, Cameron <ckapperman@bakerdonelson.com>; wjsims@simsmackin.com; mmcghee@shermanhoward.com; Rudolph J. Gerber (rgerber5@att.net) <rgerber5@att.net>; Keith S. Burn (keith@keithburnlaw.com) <keith@keithburnlaw.com>
Subject: RE: Town of Carefree v. Town of Cave Creek - Case 01 19 0001 7178

Mr. Lassiter,

RULING ON VIRTUAL HEARING MOTION

Town of Carefree adv. Town of Cave Creek

AAA Case No. 01-19-0001-7178

In May, when the panel decided to postpone the hearing until October, I was hopeful, as I think we all were, that by now the COVID situation would have been resolved at least to the point where we could safely hold an in person proceeding. In my opinion that has not happened. Since then, I have had several family members, including my son and his family, come down with COVID. My own antibody test came back negative this morning, with the caveat that it does not necessarily mean I have not been exposed. Since my wife is a cancer survivor and my daughter has an auto-immune disorder, you can understand that I am especially sensitive about the dangers related to COVID and have gone out of my way to educate myself about them.

Community spread is a fact. Asymptomatic transmission is a fact. Social distancing only works to prevent transmission for a limited time in well ventilated spaces. Masks, coupled with other measures, work fairly well if universally worn and not taken off to speak. An infected person speaking without a mask for a couple of hours even in a large, well ventilated conference room could still expose everyone in the room, even if they are all masked themselves.

It is like Russian Roulette—you can try to increase the number of chambers, but it is still dangerous. It is not worth the risk to the participants, or to their families who did not consent to take part, but will be exposed just as certainly as those participating (absent draconian measures requiring people to be away from their friends and families for several weeks).

Anecdotally, I am a committee chair for the Transportation Research Board of the National Academies, which moved its 100th annual meeting to being entirely on line, I understand on the advice of the National Academy of Medicine, because even limiting attendance and using the massive facilities of the National Convention Center, it was considered too much of a risk to hold it in person. Planning for that meeting had been ongoing for at least two years. We are tentatively planning for our first in person meeting since January 2020 for July 2021.

I believe it would be unwise to hold an in person proceeding since there are viable alternative that do not require further delay, even if those alternatives are imperfect. I have no objection to those who do not share my concerns to appear in person, voluntarily. But speaking for myself and for those for whom I am responsible, we should be allowed to participate in the hearing by Zoom or other similar means. Just in case I'm being too subtle, I strongly object to anyone being required to appear in person.

...

Christopher W. Kramer

The Town of Cave Creek filed its Response, opposing the Virtual Hearing Motion, arguing, among other things, that (1) arbitration under the IGA was intended by the parties to occur in-person, (2) a virtual/remote arbitration hearing presents unnecessary logistical challenges, and (3) alternatively, the Panel had discretion to continue the arbitration hearing in lieu of ordering a virtual hearing.

In reply, the Town of Carefree noted various Arizona State Court and Gubernatorial orders relating to the COVID-19 pandemic, and essentially argued that if State Governments, including the courts,¹ could issue such orders for virtual hearings, then so could this Tribunal.

¹ See, e.g., Maricopa County Superior Court Modified Civil Department Operation during COVID - 19 Pandemic at <https://superiorcourt.maricopa.gov/media/6244/6-1-2020-modified-civil-department-operations-during-covid-19-pandemic.pdf>.

RULING ON VIRTUAL HEARING MOTION

Town of Carefree adv. Town of Cave Creek

AAA Case No. 01-19-0001-7178

The Town of Carefree's Reply also quoted from an article by Arbitrator Theo Cheng entitled [Whether and How to Compel Remote Arbitration](#) (click URL hyperlink to read), which noted:

But these are not normal times. It is difficult to imagine holding safe, let alone fulsome, in-person hearings when even vigorous disinfection, mask-wearing and social distancing do not necessarily guarantee personal health and safety. Moreover, the practicality of having witnesses testify during an in-person hearing raises potentially problematic issues because a mask can obfuscate a witness's appearance, demeanor and reactions.

With the realistic likelihood of scheduling in-person hearings being indefinitely postponed, parties, counsel and arbitrators are all mindful of the adage that "justice delayed is justice denied." Indeed, in many circumstances, a delay in the proceeding invariably advantages one party at the expense of another.

The Panel agrees with Claimant's arguments in its Virtual Hearing Motion and Reply, and incorporate them and the reasoning of the Cheng article [Whether and How to Compel Remote Arbitration](#) by this reference and grant the Virtual Hearing Motion for the same reasons.

Interestingly, we write this ruling following the arbitration hearing and with the benefit of hindsight. Frankly, the Panel unanimously agrees that no substance was lost in the holding of the arbitration hearing via Zoom. While there were occasional, minor technology "glitches," none of them materially affected or impaired this Panel's ability to see, observe and hear the witnesses or see their evidence, which was electronically displayed by the parties' lawyers' IT staff with extraordinary talent and garnered compliments by all. Given that experts testified from such remote locations as Boston, Chicago, San Diego, and St. Louis, and that Respondent's counsel presented their case flawlessly from Chattanooga, Tennessee, we also consider that tens of thousands of dollars were likely saved from not having incurred air travel, hotel accommodations, rental cars, per diems and the like for the arbitration hearing, which unexpectedly carried over into a second week. In hindsight, we see no downside to having conducted this matter as a virtual hearing.

IT IS SO ORDERED.

DATED: Friday, December 04, 2020



Mark E. Lassiter, Arbitration Panel Chair

RULING ON VIRTUAL HEARING MOTION

Town of Carefree adv. Town of Cave Creek

AAA Case No. 01-19-0001-7178

Copies of this Order served by

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20 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
21 IN AND FOR THE COUNTY OF MARICOPA

22 TOWN OF CAREFREE, ARIZONA
23 UTILITIES COMMUNITY FACILITIES
24 DISTRICT, a municipal corporation and
25 political subdivision of the State of Arizona,
26 a municipal district,

Plaintiff,

v.

TOWN OF CAVE CREEK, a municipal
corporation of the State of Arizona; and
UNKNOWN OWNERS AND
CLAIMANTS,

Defendants.

Case No. CV2019-052592

(Assigned to Hon. Sara Agne)

**STIPULATION FOR ENTRY OF
JUDGMENT**

The parties, through their respective attorneys, stipulate and agree as follows:

1. This is a condemnation action between plaintiff Town of Carefree, Arizona Utilities Community Facilities District and defendant Town of Cave Creek.
2. On September 10, 2019, the Court entered its Minute Entry Order staying

1 this action pending the completion of arbitration proceedings before the American Arbitration
2 Association, pursuant to the terms of an intergovernmental agreement dated August 2, 2005.

3 3. On January 14, 2021, the Commercial Arbitration Tribunals of the American
4 Arbitration Association entered its Partial Final Award in AAA Case No. 01-19-0001-7178
5 (“Award”). On March 2, 2021, the Arbitration Panel entered its Order modifying the Award.
6 By its terms, the Award is intended to be final and confirmable. A copy of the Award, which
7 includes a copy of the Order modifying the Award, is attached hereto as Exhibit A.

8 4. On March __, 2021, the parties entered into a Settlement Agreement
9 (“Agreement”) modifying certain rights and obligations determined by the Award. A copy of
10 the Agreement is attached hereto as Exhibit B.

11 5. Pursuant to the terms of the Award, as modified by the Agreement, the parties
12 stipulate and jointly request the Court to enter their proposed form of Stipulated Judgment
13 lodged with the Court this date.

14 6. While the Award is final and confirmable, the Arbitration Panel has reserved
15 jurisdiction over a potential claim between the parties which may result in the entry of another
16 confirmable arbitration award sometime in the future. Therefore, the parties request that this
17 action remain pending and that the Court’s Judgment confirming the Award be certified for
18 immediate appeal pursuant to Ariz. R. Civ. P. 54(b).

19 DATED this __ day of March, 2021.

20 **JENNINGS, STROUSS & SALMON, P.L.C.**

21
22 By: /s/ Christopher W. Kramer
Christopher W. Kramer
Paul G. Johnson

23
24 **SHERMAN & HOWARD LLC**

25 By: /s/ Michael W. Wright
Michael W. Wright
Attorneys for Plaintiff

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BAKER DONELSON BEARMAN CALDWELL & BERKOWITZ

By: _____
Joe Conner
Adam C. Sanders
Attorneys for Defendant

SIMS MACKIN LTD.

By: _____
Williams J. Sims III
Attorneys for Defendant

LAW OFFICES OF GARRY HAYS

By: _____
Garry Dale Hayes, II
Attorneys for Defendant

Original of the foregoing eFiled
this day of March, 2021.

/s/ Cathy Wamhoff

EXHIBIT A

(Partial Final Award to be added)

EXHIBIT B

(Settlement Agreement to be added)

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20 ATTORNEYS FOR PLAINTIFF

21
22
23 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
24 **IN AND FOR THE COUNTY OF MARICOPA**

25 **TOWN OF CAREFREE, ARIZONA**
26 **UTILITIES COMMUNITY FACILITIES**
27 **DISTRICT, a municipal corporation and**
28 **political subdivision of the State of Arizona,**
29 **a municipal district,**

30 **Plaintiff,**

31 **v.**

32 **TOWN OF CAVE CREEK, a municipal**
33 **corporation of the State of Arizona; and**
34 **UNKNOWN OWNERS AND**
35 **CLAIMANTS,**

36 **Defendants.**

Case No. CV2019-052592

(Assigned to Hon. Sara Agne)

STIPULATED JUDGMENT

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1 IT IS HEREBY ORDERED that Judgment is entered as follows:

2 1. The Partial Final Award (“Award”) entered by The Commercial Arbitration
3 Tribunals of the American Arbitration Association, dated January 14, 2021, as amended on
4 March 2, 2021, is confirmed, and shall be final and binding upon the parties except to the
5 extent that the rights and obligations determined by the Award have been expressly modified
6 by the Settlement Agreement entered into by the parties on March __, 2021.

7 2. Plaintiff Town of Carefree, Arizona Utilities Community Facilities District
8 has judgment condemning for its use the real property together with all improvements and
9 tangible assets described in the attached Exhibit A (the “Property”).

10 3. Defendant Town of Cave Creek has judgment against Plaintiff in the sum of
11 \$1,000,000.00 (One Million Dollars), inclusive of statutory interest, as total just
12 compensation for the taking and damages of any kind occurring to Defendant as a result of
13 the project for which the Property was condemned, or resulting from the severance of the
14 Property from Defendant Town of Cave Creek’s remaining property.

15 4. Upon payment in full of just compensation as set forth in Paragraph 3 above,
16 on or before July 14, 2021, Cave Creek shall promptly file a Satisfaction of Judgment with
17 the Court.

18 5. Upon filing of the Satisfaction of Judgment, the Court will enter its Final
19 Order of Condemnation vesting Carefree with title to all Property condemned, free and clear
20 of all claims, liens and encumbrances, and Defendant Town of Cave Creek shall have no
21 further right, title, estate, claim, lien, or interest of any kind whatsoever in or to the Property.

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6. The Court finds that there is no just reason for delay and expressly directs the entry of final Judgment pursuant to Rule 54(b), A.R.C.P.

DONE IN OPEN COURT this ___ day of _____, 2021.

Honorable Sara Agne
Judge, Maricopa County Superior Court

EXHIBIT A

Legal Description

A. All assets described in Paragraph 6 of the Complaint, incorporating Paragraph 5.1 of the Intergovernmental Agreement ("IGA") designated Exhibit D1 in the Arbitration proceedings, as follows:

"5.1 Carefree Service Area System. The Carefree Service Area System ("System") will consist of 1) the wells, pipelines, pumps, meters and other facilities located in the Carefree Service Area and used to provide water service to the Carefree Service Area on the date of the filing of the condemnation complaint and 2) the portion of the Cave Creek CAP subcontract water used to serve the Carefree Service Area ("System CAP"). The quantity of the System CAP water shall be the product of the following Formula in which the following symbols have the following meanings:

"CD" = the total water demand, in acre feet, of the retail customers of Cave Creek water utility located in the Carefree Service Area during the calendar year immediately preceding the year in which the condemnation complaint is filed;

"CC" = the total number of retail water customers of the Cave Creek water utility located in the Carefree Service Area on December 31 of the calendar year immediately preceding the year in which the condemnation complaint is filed;

"CU" = Carefree Service Area annual water use per customer

The Formula:

$$CD \div CC = CU$$

The System CAP will be the product of multiplying the CU by the total number of subdivided lots in the Carefree Service Area on the date of commencement of the arbitration hearing."

The System CAP, which has been calculated pursuant to the IGA, is 377.83 acre feet per year to be transferred from the Town of Cave Creek to the Town of Carefree, Arizona Utilities Community Facilities District; and

B. All other property condemned in the Complaint in Condemnation, including the real property and improvements thereon described and depicted in Exhibits 5, 6, 7, 8, 9 and 10 of the Complaint, attached and incorporated by reference collectively as Exhibit "A-1;" and

C. The Cave Creek Assets, defined in § III.9. of the Arbitrator's Decision on the Merits as "the physical assets and any undeveloped fee real properties and dedicated water main easements associated with Ocotillo Ridge Booster Pump Station ("BPS") #1, Ocotillo Ridge BPS #2, Hawksnest BPS #2 and Sentinel Rock BPS."

EXHIBIT A-1

EXHIBIT 5

Exhibit A

PARCEL NO. 4:

TRACTS D AND E, OF OCOTILLO RIDGE ESTATES, LOTS 1-22 AND TRACTS A-E, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER, OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 475 OF MAPS, PAGE 45.

EXCEPTING THEREFROM ALL COAL, OIL, GAS AND OTHER MINERALS DEPOSITS AS RESERVED IN THE PATENT TO THE LAND.

PARCEL NO. 8:

THAT PORTION OF UNIT 3A, OF OCOTILLO RIDGE ESTATES, A SUBDIVISION PLAT, RECORDED AS BOOK 581 OF MAPS, PAGE 39, MARICOPA COUNTY RECORDERS OFFICE, ALSO BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID UNIT 3A, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF SAID SECTION 23, MONUMENTED BY A STONE, FROM WHICH THE EAST QUARTER CORNER OF SAID SECTION 23, MONUMENTED BY A 3/4" PIPE, BEARS AS A BASIS OF BEARING NORTH 00 DEGREES 02 MINUTES 28 SECONDS EAST, A DISTANCE OF 2624.49 FEET;

THENCE NORTH 00 DEGREES 02 MINUTES 38 SECONDS EAST, ALONG THE EASTERLY LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 23, A DISTANCE OF 400.60 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF OCOTILLO RIDGE DRIVE AS SHOWN ON SAID PLAT, SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE SOUTHEASTERLY, WHOSE RADIUS POINT BEARS SOUTH 33 DEGREES 39 MINUTES 42 SECONDS EAST, A DISTANCE OF 670.00 FEET;

THENCE SOUTHWESTERLY ALONG SAID CURVE AND SAID SOUTHERLY RIGHT-OF-WAY LINE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 05 DEGREES 19 MINUTES 25 SECONDS, AN ARC DISTANCE OF 62.25 FEET TO A POINT OF NON-TANGENCY, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING;

THENCE SOUTH 40 DEGREES 25 MINUTES 08 SECONDS EAST, A DISTANCE OF 31.57 FEET;

THENCE SOUTH 49 DEGREES 34 MINUTES 52 SECONDS WEST, A DISTANCE OF 25.00 FEET;

THENCE NORTH 40 DEGREES 25 MINUTES 08 SECONDS WEST, A DISTANCE OF 31.72 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF OCOTILLO RIDGE DRIVE AS SHOWN ON SAID PLAT, SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE SOUTHEASTERLY, WHOSE RADIUS POINT BEARS SOUTH 41 DEGREES 07 MINUTES 25 SECONDS EAST, A DISTANCE OF 670.00 FEET;

THENCE NORTHEASTERLY ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 02 DEGREES 08 MINUTES 17 SECONDS, AN ARC DISTANCE OF 25.00 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 40:

ENTRY WALL, LANDSCAPE, BOOSTER STATION, PUBLIC UTILITY AND ACCESS EASEMENT AS CREATED IN 99-0510290 OF OFFICIAL RECORDS OVER THE FOLLOWING DESCRIBED PROPERTY:

COMMENCING AT THE MOST SOUTHERLY CORNER OF LOT 1, OCOTILLO RIDGE ESTATES, LOTS 1 - 22 AND TRACTS A - E, AS RECORDED IN BOOK 475 OF MAPS, PAGE 46, OFFICE OF THE MARICOPA COUNTY RECORDER, SAID CORNER BEING THE BEGINNING OF A CURVE, CONCAVE NORTHWESTERLY AND FOR WHICH THE RADIAL CENTER BEARS NORTH 01 DEGREES 55 MINUTES 57 SECONDS WEST A RADIUS OF 87.00 FEET;

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE TO THE LEFT AND THE SOUTHERLY BOUNDARY OF SAID LOT 1, THROUGH A CENTRAL ANGLE OF 38 DEGREES 45 MINUTES 46 SECONDS, A DISTANCE OF 58.86 FEET TO THE BEGINNING OF THE HEREIN DESCRIBED EASEMENT;

THENCE NORTH 04 DEGREES 36 MINUTES 55 SECONDS WEST, A DISTANCE OF 105.76 FEET;

THENCE NORTH 09 SECONDS 28 MINUTES 01 SECONDS EAST, A DISTANCE OF 10.17 FEET;

THENCE NORTH 36 DEGREES 24 MINUTES 07 SECONDS EAST, A DISTANCE OF 26.75 FEET;

THENCE NORTH 36 DEGREES 42 MINUTES 03 SECONDS EAST, A DISTANCE OF 27.97 FEET;

THENCE NORTH 57 DEGREES 32 MINUTES 19 SECONDS EAST, A DISTANCE OF 27.58 FEET;

THENCE NORTH 53 DEGREES 24 MINUTES 17 SECONDS EAST, A DISTANCE OF 42.87 FEET TO A POINT ON THE SOUTHEASTERLY BOUNDARY OF SAID LOT 1,

THENCE SOUTH 06 DEGREES 05 MINUTES 42 SECONDS WEST ALONG SAID SOUTHEASTERLY BOUNDARY OF LOT 1, A DISTANCE OF 37.27 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 69.00 FEET;

THENCE SOUTHWESTERLY ALONG SAID SOUTHEASTERLY BOUNDARY OF LOT 1 AND THE ARC OF SAID

CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 40 DEGREES 35 MINUTES 30 SECONDS, A DISTANCE OF 48.88 FEET TO A POINT ON A TANGENT, REVERSE CURVE, CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 56.00 FEET;

THENCE SOUTHWESTERLY ALONG SAID SOUTHEASTERLY BOUNDARY OF LOT 1 AND THE ARC OF SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 29 DEGREES 55 MINUTES 08 SECONDS A DISTANCE OF 29.24 FEET;

THENCE SOUTH 16 DEGREES 47 MINUTES 04 SECONDS WEST ALONG SAID SOUTHEASTERLY BOUNDARY OF LOT 1, A DISTANCE OF 56.84 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 87.00 FEET;

THENCE SOUTHWESTERLY ALONG SAID SOUTHEASTERLY BOUNDARY OF LOT 1 AND THE ARC OF SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 32 DEGREES 31 MINUTES 13 SECONDS, A DISTANCE OF 49.38 FEET TO THE POINT OF BEGINNING;

EXCEPT ANY PORTION LYING WITHIN TRACT "D" OF SAID OCOTILLO RIDGE ESTATES, LOTS 1 - 22 AND TRACTS A - E, AS RECORDED IN BOOK 475 OF MAPS, PAGE 46, OFFICE OF THE MARICOPA COUNTY RECORDER.

PARCEL NO. 43:

EASEMENT AGREEMENT AS CREATED IN 2002-0235563 OF OFFICIAL RECORDS OVER THE FOLLOWING DESCRIBED PROPERTY:

A PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 5 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5;

THENCE SOUTH 89 DEGREES 59 MINUTES 35 SECONDS WEST ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5, A DISTANCE OF 140.90 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF CAVE CREEK ROAD;

THENCE SOUTH 27 DEGREES 27 MINUTES 57 SECONDS WEST ALONG SAID EASTERLY RIGHT OF WAY LINE OF CAVE CREEK ROAD, A DISTANCE OF 22.54 FEET;

THENCE NORTH 89 DEGREES 59 MINUTES 35 SECONDS EAST A DISTANCE OF 151.27 FEET TO A POINT ON THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5;

THENCE NORTH 0 DEGREES 03 MINUTES 37 SECONDS EAST ALONG SAID EAST LINE, A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 45:

AN EASEMENT FOR WATER MAINS AS CREATED IN DOCKET 11757, PAGE 537, OVER THE FOLLOWING DESCRIBED PROPERTY:

THE EAST 75 FEET OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

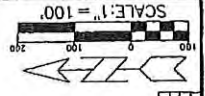
EXCEPT ANY PORTION LYING WITHIN THE SOUTH 460 FEET THEREOF.

EXHIBIT 6

EXHIBIT 7

MATCH LINE SEE SHEET 3 OF 3

* NOTE THE FLOOD ZONE IS SHOWN AS BASED UPON CURRENT INFORMATION PROVIDED BY THE FLOOD CONTROL DISTRICT OF MARICOPA COUNTY. A CONSERVATIVE CALCULATION OF THE FLOOD ZONE SHALL BE MADE TO THE CLIENT'S SATISFACTION. THE CLIENT SHALL BE RESPONSIBLE FOR VERIFYING THE ACCURACY OF THE FLOOD ZONE INFORMATION PROVIDED BY THE FLOOD CONTROL DISTRICT OF MARICOPA COUNTY. THE CLIENT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS ASSOCIATED WITH TRACT "I" FOR THE FUTURE WELL SITE, AND THE RIGHTS AND MONITORING ASSOCIATED WITH TRACT "A" HEREON FOR CONTIGUOUS TRACTS AND FUTURE DEVELOPMENT THEREON. THESE RIGHTS ARE NOT TO BE CONSIDERED AS A GUARANTEE OF ANY KIND.



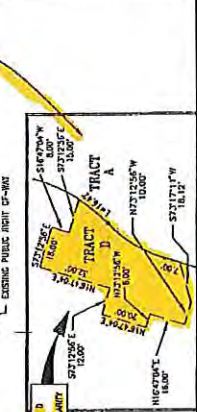
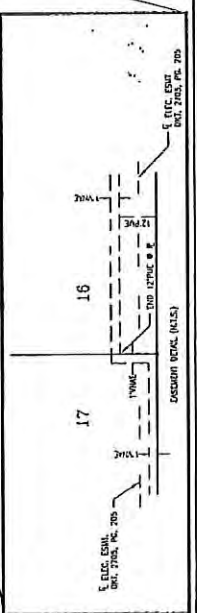
BOOK 475 PAGE 46
OFFICIAL RECORDS IN
MARICOPA COUNTY RECORDS
DATE OF RECORD: 08/27/2014
98-0645602
07/28/18 08:38

DATE: _____
REVISION: _____
CIRCLE DATA
NO. RADIUS DELTA LENGTH
1 45.00' 255.340' 200.27'

DESIGN: 08/20/14
SCALE: 1/4" = 1'-0"
DATE: 08/27/14
SHEET 3 OF 3



475-46



SEE TRACT 'D' FOR DIMENSIONS AND CALCULATIONS FOR CLARITY

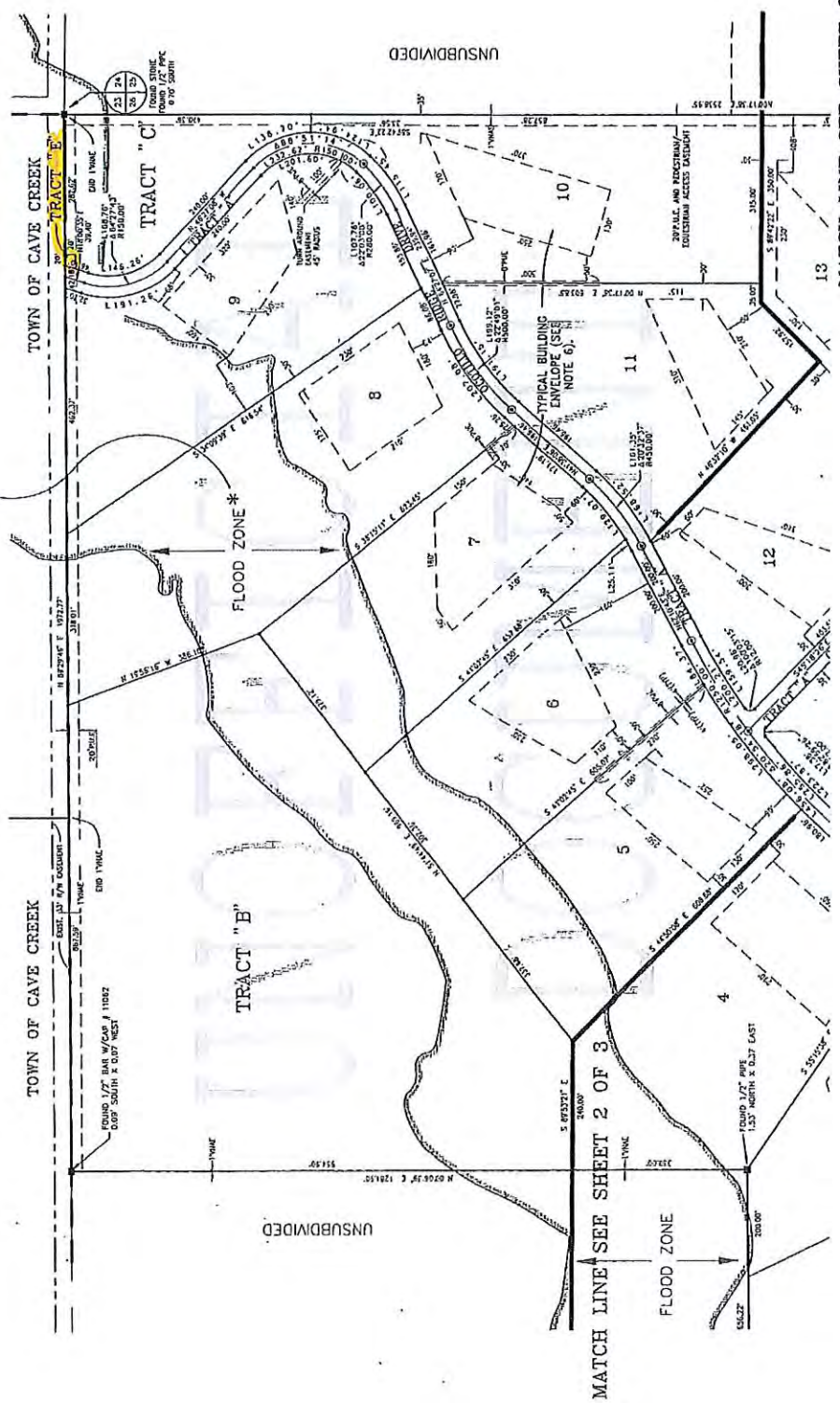
BOOK 408 PAGE 12005
THE CROSSHAIRS AT CLARINS II
N 09°10' E 120.00'
N 09°10' E 120.00'

THE CROSSHAIRS AT CLARINS II
N 09°10' E 120.00'
N 09°10' E 120.00'

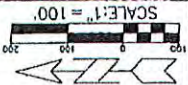
THE CROSSHAIRS AT CLARINS II
N 09°10' E 120.00'
N 09°10' E 120.00'

EXHIBIT 8

* NOTE: THE FLOOD ZONE AS SHOWN HEREON IS BASED UPON CURRENT INFORMATION PROVIDED BY THE FLOOD CONTROL DISTRICT OF MARICOPA COUNTY. A CONVEYANCE GRANTED OVER THE WATER WASH AND FLOOD ZONE SHALL BE LIMITED TO THE EXTENT OF THE FLOOD CONTROL DISTRICT'S CURRENT INFORMATION. THE RIGHTS AND PRIORITIES ASSOCIATED WITH TRACT "C" AND TRACT TO PERTAIN TO THE FLOOD CONTROL DISTRICT. THE RIGHTS AND PRIORITIES ASSOCIATED WITH TRACT "C" SHOULD BEAT WITH THE FLOOD CONTROL DISTRICT'S CURRENT INFORMATION. THE RIGHTS AND PRIORITIES ASSOCIATED WITH TRACT "A" HEREON FOR SHOULD BEAT WITH THE FLOOD CONTROL DISTRICT'S CURRENT INFORMATION.



BOOK 475 PAGE 46
 MARICOPA COUNTY RECORDS
 98-0645602
 07/28/98 00:38



MATCH LINE SEE SHEET 2 OF 3

FINAL PLAT
 OCOTILLO RIDGE
 ESTATES
 LOTS 1-22 & TRACTS A-E
 DATE: MAY '98 JOB NO. 9705
 SHEET 3 OF 3

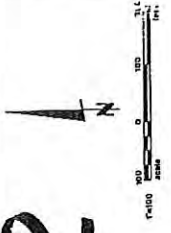


475-46

EXHIBIT 9

243-12

629-82



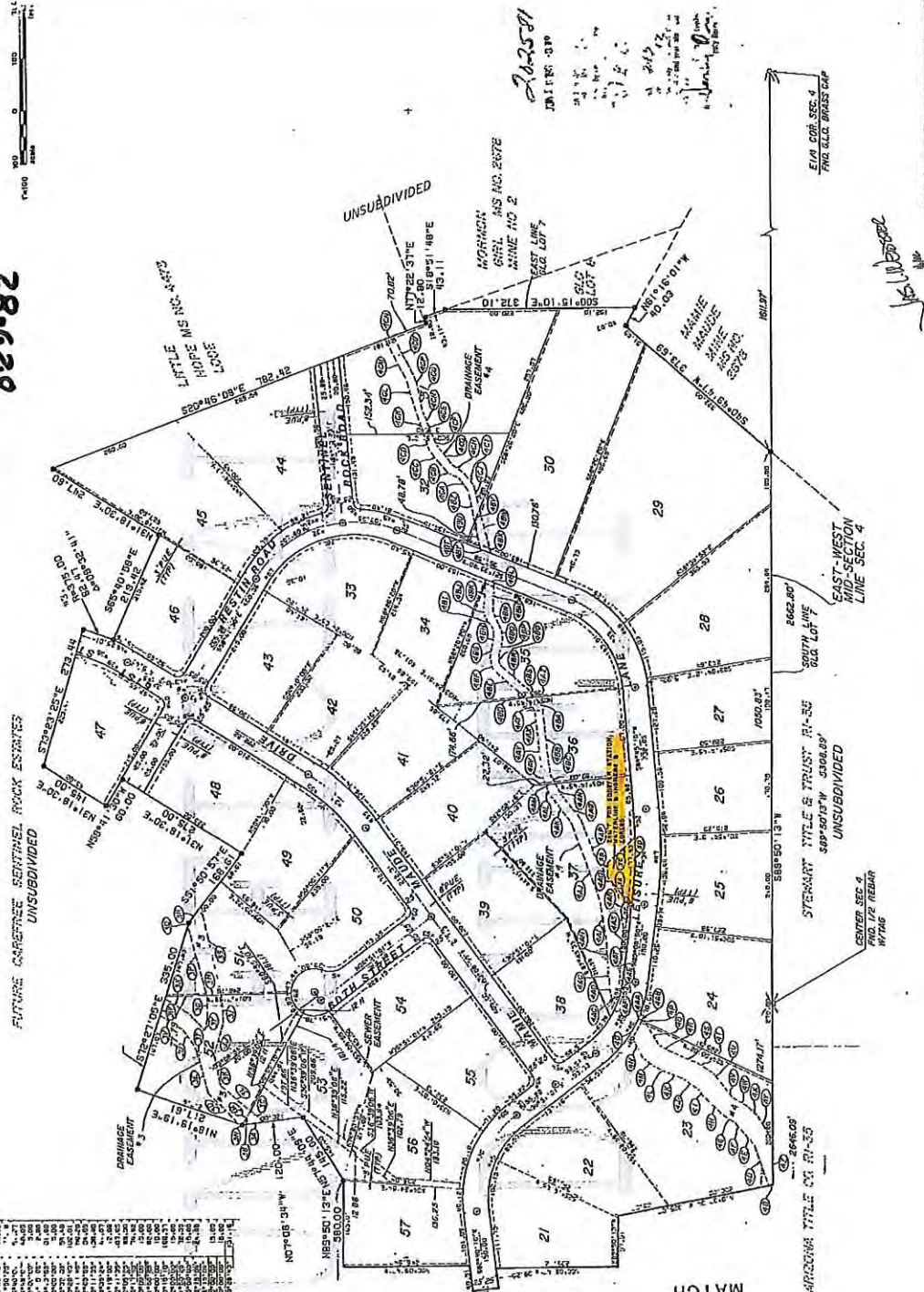
CURVE DATA

STATION	PC	PT	PI	PT	PIC	PC	PT	PI	PT	PIC	PC	PT	PI	PT	PIC
100+00	100+00	100+00	100+00	100+00	100+00	100+00	100+00	100+00	100+00	100+00	100+00	100+00	100+00	100+00	100+00

NO.	DESCRIPTION	AMOUNT	DATE
1
2

NO.	DESCRIPTION	AMOUNT	DATE
1
2

NO.	DESCRIPTION	AMOUNT	DATE
1
2



Handwritten notes:
 182581
 JAMES - 330
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WBC WBC CONSULTANTS, INC.
 408 NO. 5-616-024-30, SH. 3 OF 3

Handwritten: 6/13/82

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 WBC

EXHIBIT 10

**LIST OF UNRECORDED EASEMENTS BELONGING TO CAVE CREEK WATER
COMPANY AND/OR PACER EQUITIES COMPANY**

1. Black Mountain Mobile Home Park ---- 1989, Black Mountain Mobile Home Park Community Ctr., Grantor, water mains easement --- 8-foot easement located in the Southeast Quarter of Section 28, Township 6N, Range 4E.
2. Patterson ---- 1991, Michael and Charlene Patterson, Grantor, water mains easement --- located in a portion of the West Half Northwest Quarter of Section 5, Township 5N, Range 4E.
3. Cafferella ---- 1998, Joseph and Mary Cafferella, Grantor, water mains easement --- located in a portion of Section 35, Township 6N, Range 4E.
4. Cable ---- 2000, Ruth Cable, Grantor, water mains easement --- located in a portion of the Southwest Quarter of Section 35, Township 6N, Range 3E.
5. Collins ---- Floyd Collins, Grantor, water mains easement --- located in a portion of the Northeast Quarter of the Northeast Quarter of Section 28, Township 6N, Range 4E.
6. School House Rd. South Booster Station ---- 1994, Gary and Dawn Ford, Grantor, booster station and water mains easement --- a 15-foot by 15-foot booster site located in the Northeast Quarter of the Northeast Quarter of Section 33, Township 6N, Range 4E.
7. Cable-Woodworth LE ---- 1996, Norman and Linda Rash, Grantor, water mains easement --- located in a portion of the Southwest Quarter of Section 35, Township 6N, Range 3E.
8. Cable-Woodworth LE ---- 1996, Everette and Wilma Jean Baker, Grantor, water mains easement --- located in a portion of the Southwest Quarter of Section 35, Township 6N, Range 3E.
9. Cable-Woodworth LE ---- 1996, James Woodworth and Susan Holden, Grantor, water mains easement --- located in a portion of the Southwest Quarter of Section 35, Township 6N, Range 3E.
10. Cable-Woodworth LE ---- 1996, Ruth Cable, Grantor, water mains easement --- located in a portion of the Southwest Quarter of Section 35, Township 6N, Range 3E.
11. Cable-Woodworth LE ---- 1996, Andy Reichenberger, Grantor, water mains easement --- located in a portion of the Southwest Quarter of Section 35, Township 6N, Range 3E.
12. Gibson ---- 1976, Robert and Shirley Gibson, water mains easement --- located at the West 6 feet of the East Half of the Northwest Quarter of the Northeast Quarter of the Southeast Quarter of Section 5, Township 6N, Range 4E.

1 **BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, PC**

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ATTORNEYS FOR DEFENDANT TOWN OF CAVE CREEK

16 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

17 IN AND FOR THE COUNTY OF MARICOPA

18 TOWN OF CAREFREE, ARIZONA
19 UTILITIES COMMUNITY FACILITIES
20 DISTRICT, a municipal corporation and
political subdivision of the State of Arizona,
a municipal district,

21 Plaintiff,

22 v.

23 TOWN OF CAVE CREEK, a municipal
24 corporation of the State of Arizona; and
25 UNKNOWN OWNERS AND
CLAIMANTS,

26 Defendants.

Case No. CV2019-052592

(Assigned to Hon. Sara Agne)

SATISFACTION OF JUDGMENT

1 Defendant Town of Cave Creek, by and through undersigned counsel, hereby
2 acknowledges payment in full of the Judgment entered in its favor in the above entitled case
3 on _____, 2021.

4 DATED this ____ day of _____, 2021.

5 **BAKER, DONELSON, BEARMAN, CALDWELL**
6 **& BERKOWITZ, P.C**

7 By: /s/ Joe A. Conner

8 Joe Conner (*pro hac vice*)
9 Adam C. Sanders (*pro hac vice*)
633 Chestnut Street, Suite 1900
Chattanooga, TN 37450

10 William J. Sims
11 SIMS MACKIN, LTD
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12 Phoenix, AZ 85012

13 Garry D. Hays
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2198 E. Camelback Road, Suite 230
Phoenix, AZ 85016

15 Attorneys for Defendant Town of Cave Creek

16
17 Original of the foregoing eFiled
18 Via AZ Turbo Court on _____
, 2021, and a COPY emailed to:

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21 mwright@shermanhoward.com
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16 CHRISTOPHER W. KRAMER (AZ BAR No. 013289)

17 PAUL G. JOHNSON (AZ BAR No. 010309)

18 BRIAN IMBORNONI (AZ BAR No. 006894)

19 MINUTEENTRIES@JSSLAW.COM

20 ATTORNEYS FOR PLAINTIFF

21
22 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

23 IN AND FOR THE COUNTY OF MARICOPA

24 TOWN OF CAREFREE, ARIZONA
25 UTILITIES COMMUNITY FACILITIES
26 DISTRICT, a municipal corporation and
political subdivision of the State of Arizona,
a municipal district,

Plaintiff,

v.

TOWN OF CAVE CREEK, a municipal
corporation of the State of Arizona; and
UNKNOWN OWNERS AND
CLAIMANTS,

Defendants.

Case No. CV2019-052592

FINAL ORDER OF CONDEMNATION

(Assigned to the Hon. Sara Agne)

24 **IT APPEARING** to the Court that pursuant to the provisions of the Judgment in
25 Condemnation previously entered, this Court may now enter its Final Order of Condemnation;

26 **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that title to the

1 property, property rights, improvements and other assets described in the attached Exhibit A
2 is vested in Plaintiff Town of Carefree, Arizona Utilities Community Facilities District upon
3 recording of this Final Order of Condemnation.

4 **DONE IN OPEN COURT** this ____ day of _____, 2021.

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Sara Agne
Maricopa County Superior Court Judge

EXHIBIT A and A1
(Legal Description to be added)

Assignment Agreement
March 9, 2021

This Assignment Agreement (“Agreement”) is entered into effective as of the above date (“Effective Date”) by and among the Town of Carefree (“Assignor”), the Town of Carefree, Arizona Utilities Community Facilities District (“Assignee”) and the Town of Cave Creek (“Cave Creek”).

Assignor and Cave Creek are parties to that certain Intergovernmental Agreement Relating to Water Utility Service dated August 2, 2005 (“IGA”).

The IGA specifically permits the Assignee to acquire the Carefree Service Area System from Cave Creek by condemnation.

Paragraph 6.3 of the IGA, entitled “Assignment of IGA” prohibits assignment of the IGA or any interest therein except to successors of the Parties.

Assignee and the Town of Cave Creek have entered into a Settlement Agreement which allows for the Assignee to acquire the Carefree Service Area System by condemnation.

The Settlement Agreement provides that, upon the completion of the construction and transfer of accounts to Assignee, the IGA will terminate.

Assignor hereby conveys, transfers, assigns and delivers to Assignee all right, title and interest in and to the IGA.

Cave Creek waives the no assignment provision of Paragraph 6.3 of the IGA and consents to this assignment from Assignor to Assignee.

Assignee irrevocably accepts this assignment.

Assignor, Town of Carefree
By _____
Its _____

Assignee, UCFD
By _____
Its _____

Town of Cave Creek
By _____
Its _____