

**Agenda Number 5.e.**

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**MEETING DATE:** November 6, 2014

**AGENDA ITEM:** Approval of Revised Standard Form Declaration of Covenants, Conditions and Restrictions Regarding Membership in CAGR in Response to New Activation Fee Payment Options

**RECOMMENDATION:**

Staff recommends that the Board approve the attached revised standard form Declaration of Covenants, Conditions and Restrictions Regarding Membership in the Central Arizona Groundwater Replenishment District.

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**FINANCIAL IMPLICATIONS:** None

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**LINKAGE TO STRATEGIC PLAN, POLICY, STATUTE OR GUIDING PRINCIPLE:**

- CAWCD Board of Directors 2010 Strategic Plan
  - Replenishment: Water Supply
- A.R.S. § 48-3772 –Duties and powers of district regarding replenishment

**PREVIOUS BOARD ACTION/ACTIVITY:**

January 2014 – CAWCD Board approved the revised standard form Declaration of Covenants, Conditions and Restrictions Regarding Membership in the CAGR in Response to the Establishment of the Annual Membership Dues by CAWCD

December 2003 – CAWCD Board approved the standard form Declaration of Covenants, Conditions and Restrictions for all new member lands enrolling in the Central Arizona Groundwater Replenishment District

**ISSUE SUMMARY/DESCRIPTION:**

In 2014, legislation was passed allowing an option for the Activation Fee to be paid in two equal installments, effective January 1, 2015. Staff recommends that the standard form declaration be revised to include language reflecting this legislated change.

A red-line version of the revised standard form declaration is attached.

**SUGGESTED MOTION:**

I move that the Board of Directors approve the revised standard form Declaration of Covenants, Conditions, and Restrictions Regarding Membership in the Central Arizona Groundwater Replenishment District.

Attachment.

**Agenda Number 5.e.  
Attachment.**

When recorded, please return to:  
Central Arizona Water  
Conservation District  
P.O. Box 43020  
Phoenix, Arizona 85080-3020  
Attn: Manager, Groundwater  
Replenishment District

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR**

**REGARDING MEMBERSHIP IN THE CENTRAL ARIZONA  
GROUNDWATER REPLENISHMENT DISTRICT**

This Declaration of Covenants, Conditions and Restrictions for Regarding Membership in the Central Arizona Groundwater Replenishment District is made this day of \_\_\_\_\_, 2015, by \_\_\_\_\_.

**RECITALS**

A. Declarant is the owner of the Property, legally described in Exhibit A attached and incorporated into this Declaration.

B. Declarant has applied to the Department for a certificate of assured water supply for the property pursuant to Arizona Revised Statutes Title 45, Chapter 2, Article 9.

C. As permitted by Arizona Revised Statutes § 45-576.01(B), Declarant desires to satisfy one requirement for obtaining a certificate of assured water supply by qualifying the Property as Member Land pursuant to the Groundwater Replenishment Statute. As Member Land, the Property will be a member of the Central Arizona Groundwater Replenishment District, an operating subdivision of the CAWCD.

D. To qualify the Property as Member Land, the Groundwater Replenishment Statute requires Declarant to subject the Property to this Declaration.

E. To permit the delivery of Excess Groundwater to the Property as Member Land, each Parcel must be subject to the Parcel Replenishment Obligation, the Replenishment Assessment, the Activation Fee, the applicable Replenishment Reserve Fee and the Annual Membership Dues to be determined by CAWCD.

F. Qualifying the Property as Member Land and subjecting the Property to the Parcel Replenishment Obligation, the Replenishment Assessment, the Activation Fee, the Replenishment Reserve Fee and the Annual Membership Dues directly benefit the Property by increasing the potential of the Property to qualify for a certificate of assured water supply issued by the Department pursuant to Arizona Revised Statutes Title 45, Chapter 2, Article 9, thereby allowing the development, use and enjoyment of the Property.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the covenants, conditions and restrictions contained in this Declaration.

## **ARTICLE 1 DEFINITIONS**

1.1 "Activation Fee" means the fee established by CAWCD for the purpose of raising funds to pay a portion of the costs associated with acquisition and development of water supplies and infrastructure necessary for CAWCD to perform its obligations under Article 4 of the Groundwater Replenishment Statute. The Activation Fee is equal to the per-unit fee established by the CAWCD Board of Directors multiplied by the total number of housing units to be constructed within that portion of the Property owned by the Owner.

1.2 "Annual Membership Dues" means the dues established annually by CAWCD pursuant to Arizona Revised Statutes § 48-3779 and collected along with the Replenishment Assessment.

1.3 "CAWCD" means the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, and any successor political subdivision.

1.4 "Declarant" means \_\_\_\_\_.

1.5 "Declaration" means this Declaration of Covenants, Conditions and Restrictions for \_\_\_\_\_ Regarding Membership in the Central Arizona Groundwater Replenishment District, as amended from time to time.

1.6 "Department" means the Arizona Department of Water Resources, an agency of the State of Arizona, and any successor agency.

1.7 "Excess Groundwater" means the amount of Groundwater equal to the amount of Groundwater delivered to the Property in a calendar year in excess of the amount of Groundwater that may be used at the Property in that calendar year consistent with the applicable Assured and Adequate Water Supply Rules adopted by the Department for the \_\_\_\_\_ Active Management Area pursuant to Arizona Revised Statutes § 45-576(H).

1.8 "Groundwater" is as defined in Arizona Revised Statutes § 45-101(5).

1.9 "Groundwater Replenishment Statute" means Arizona Revised Statutes Title 48, Chapter 22.

1.10 "Member Land" is as defined in Arizona Revised Statutes § 48-3701(10).

1.11 "Owner" means the Person or Persons who individually or collectively own fee title to a Parcel, provided that if fee title to a Parcel is vested in a trustee under a deed

of trust under Arizona Revised Statutes Title 33, Chapter 6.1, the owner of the trustor's interest under the deed of trust is deemed to be the "Owner" of that Parcel.

1.12 "Parcel" means any portion of the Property now existing or hereafter established for which the tax assessor for the county in which the Property is located has issued a separate tax parcel number.

1.13 "Parcel Replenishment Obligation" means, with respect to any particular Parcel, an amount of Groundwater that is equal to the amount of Groundwater delivered to the Parcel in a calendar year multiplied by the percentage that the Excess Groundwater of the Property for that year bears to the total amount of Groundwater delivered to the Property during that year.

1.14 "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, limited liability company, limited liability partnership, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.15 "Property" means the real property described in Recital A.

1.16 "Replenishment Assessment" means the annual assessment levied by CAWCD against a Parcel in a calendar year based on the Parcel Replenishment Obligation applicable to that Parcel during that year, including any applicable Replenishment Reserve Charge.

1.17 "Replenishment Reserve Charge" means the charge established annually by CAWCD pursuant to Arizona Revised Statutes § 48-3772(E) and included in the Replenishment Assessment.

1.18 "Replenishment Reserve Fee" means the fee that must be levied by CAWCD pursuant to Arizona Revised Statutes § 48-3774.01. The fee is equal to twice the Replenishment Reserve Charge multiplied by the total projected annual Excess Groundwater demand for \_\_\_\_\_ as reported by the Department pursuant to Arizona Revised Statutes § 45-578(F).

## **ARTICLE 2 COVENANT FOR REPLENISHMENT ASSESSMENT**

2.1 Replenishment Assessment. Each Parcel is hereby made subject to the Replenishment Assessment based on the Parcel Replenishment Obligation in an amount to be determined by CAWCD as necessary to allow CAWCD to perform its obligations under Article 4 of the Groundwater Replenishment Statute. Each parcel is also hereby made subject to the Annual Membership Dues in accordance with Arizona Revised Statutes § 48-3779.

2.2 Levy of Replenishment Assessment. CAWCD shall levy the Replenishment Assessment against each Parcel in accordance with Arizona Revised Statutes § 48-3778.

2.3 Interest, Costs and Penalties. If the Replenishment Assessment and Annual Membership dues are not paid when due, CAWCD will be entitled to interest, costs and penalties as provided by law.

### **ARTICLE 3 COVENANT FOR REPLENISHMENT RESERVE FEE**

3.1 Replenishment Reserve Fee. Each Parcel that has qualified as a Category 1 member land pursuant to Arizona Revised Statutes § 48-3774.01 is hereby made subject to the Replenishment Reserve Fee based on a pro rata distribution of the total projected annual Excess Groundwater demand for \_\_\_\_\_ as reported by the Department pursuant to Arizona Revised Statutes § 45-578(F).

3.2 Payment of Replenishment Reserve Fee. In accordance with Arizona Revised Statutes § 45-576(C), the Replenishment Reserve Fee must be paid by the Owner to CAWCD prior to the issuance of a public report by the state real estate commissioner authorizing the sale or lease of subdivided lands within that portion of the Property owned by the Owner. With the approval of CAWCD and the Department, long-term storage credits, as defined in Arizona Revised Statutes § 45-802.01, may be assigned by the Owner to CAWCD's replenishment reserve subaccount in lieu of paying the Replenishment Reserve Fee.

3.3 Interest, Costs and Penalties. If the Replenishment Reserve Fee is not paid when due, CAWCD will be entitled to interest, costs and penalties as provided by law.

3.4 Not Applicable to Category 2 Member Land. This Article 3 shall not apply to those parcels of the Property that have qualified as Category 2 member land pursuant to Arizona Revised Statutes § 48-3774.01.

### **ARTICLE 4 COVENANT FOR PAYMENT OF ACTIVATION FEE**

4.1 Activation Fee. Each subdivision that qualifies as a member land pursuant to Arizona Revised Statutes § 48-3774 is hereby made subject to the Activation Fee.

~~4.2 Payment of Activation Fee. The Activation Fee must be paid by the Owner to CAWCD prior to the issuance of a public report by the state real estate commissioner authorizing the sale or lease of subdivided lands within that portion of the Property owned by the Owner.~~

4.2 Payment of Activation Fee. The Activation Fee must be paid by the Owner in full or in part to CAWCD prior to the issuance of a public report by the Arizona Real Estate Commission authorizing the sale or lease of subdivided lands within that portion of the Property owned by the Owner. The Activation Fee may be paid in two equal installments. The first installment shall be paid before issuance of the public report. The second installment shall be paid within 30 days of the date of CAWCD's invoice for the second installment, or as otherwise agreed by the Owner and CAWCD.

4.3 Interest, Costs and Penalties. If the Activation Fee is not paid when due, CAWCD will be entitled to interest, costs and penalties as provided by law.

## **ARTICLE 5 COVENANT FOR CREATION OF LIEN**

5.1 Creation of Lien and Personal Obligation. Declarant, for each Parcel, hereby covenants and agrees, and each Owner (other than Declarant), by becoming the Owner of a Parcel, is deemed to covenant and agree, to pay the Replenishment Assessment, Activation Fee, Replenishment Reserve Fee and Annual Membership Dues to CAWCD in accordance with this Declaration and the Groundwater Replenishment Statute. The Replenishment Assessment and Annual Membership Dues, together with interest, costs, and penalties as provided by law, constitutes a continuing lien on the Parcel against which such Replenishment Assessment is levied, as provided by Arizona Revised Statutes § 48-3778. The Replenishment Assessment and Annual Membership Dues, together with interest, costs and penalties, is also a personal obligation of each Person who was an Owner of a Parcel at the time such Replenishment Assessment and/or Annual Membership Dues came due.

5.2 Remedies for Nonpayment of Replenishment Assessment. In the event of delinquency of any Replenishment Assessment, CAWCD has the rights and remedies provided in Arizona Revised Statutes § 48-3778.

## **ARTICLE 6 GENERAL PROVISIONS**

6.1 Binding Effect. The Property shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any portion of or any interest in the Property, each Owner is bound by all the covenants, conditions and restrictions now or hereafter imposed by this Declaration. The covenants, conditions and restrictions contained in this Declaration run with the land and bind Declarant, all Owners, and all successors and assigns of Declarant or any Owner. Declarant agrees and covenants to CAWCD to execute and record any additional documentation which CAWCD may reasonably require to effectuate the intents and purposes of this Declaration and the Groundwater Replenishment Statute.

6.2 Amendments. This Declaration may be modified, amended or revoked only (i) by the express written agreement of CAWCD, the Department and the Owners of 67% of the total area of the Property; or (ii) by amendment statutes, rules or regulations or successor statutes, rules or regulations, as contemplated by Paragraph 6.4.

6.3 Interpretation. This Declaration must be construed and interpreted in accordance with and in reference to the laws of the State of Arizona, including but not limited to the Groundwater Replenishment Statute.

6.4 Rules, Regulations and Successor Statutes. All references in this Declaration to Arizona Revised Statutes include all rules and regulations promulgated by the Department under such statutes and all amendments and successor statutes, rules and regulations to such statutes, rules and regulations.

6.5 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable does not affect the validity or enforceability of any other provision of this Declaration.

6.6 Captions. All captions, titles or headings in this Declaration are used for the purpose of reference and convenience only and do not limit, modify or otherwise affect any of the provisions of this Declaration.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first set forth above.

DECLARANT:

STATE OF                             )  
  ) ss.  
County of                            )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_ the \_\_\_\_\_ of \_\_\_\_\_ on behalf of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public



EXHIBIT A