

CAGRD Agenda Number 4.

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MEETING DATE: September 15, 2016

AGENDA ITEM: Discussion and Consideration of Action to Recommend that the Board Approve Standard Form Documents for CAGRD Member Land De-enrollment

RECOMMENDATION: Staff recommends that the CAGRD & Underground Storage Committee recommend that the CAWCD Board of Directors Approve Standard Form Documents for CAGRD Member Land De-enrollment.

FINANCIAL IMPLICATIONS:

None. While de-enrollment of some CAGRD Member Lands will have a relatively minor impact on Annual Membership Dues revenues, de-enrollment has already been legislatively authorized. Board approval of standard form agreement documents will not impact the timing or level of de-enrollment activity.

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

2016 CAWCD Strategic Plan

- Replenishment: CAGRD Management and Oversight

PREVIOUS BOARD ACTION/ACTIVITY:

January 21, 2016 – Committee discussion of the approval of the standard form de-enrollment documents was tabled to allow ADWR additional time to review the proposed documents.

ISSUE SUMMARY/DESCRIPTION:

H.B. 2325 was signed into law by the Governor on April 9, 2015. This legislation allows CAGRD Member Lands to voluntarily de-enroll from the CAGRD, subject to all of the following conditions: 1) the land cannot have been sold or leased to a retail purchaser or lessee; 2) no public report for the property has been issued; 3) if the lot or parcel boundaries have been recorded, the planning agency (e.g. county) has vacated them; 4) a declaration with the county has been recorded specifying that the property's CC&Rs have been revoked; 5) the agreement between CAGRD and the municipal

provider has been revoked; and 6) if a Certificate of Assured Water Supply has been issued for the property, ADWR has revoked the Certificate.

CAGR D and Legal staff have developed the attached *Declaration Terminating Covenants, Conditions and Restrictions Regarding Membership in the Central Arizona Groundwater Replenishment District* (Attachment 1) and *Revocation of the Agreement and Notice of Municipal Provider Reporting Requirements Regarding Membership in the Central Arizona Groundwater Replenishment District* (Attachment 2) to implement de-enrollment of Member Lands. In the time since these documents were tabled by the Committee on January 21, 2016, CAGR D and Legal staff worked with ADWR and Arizona Department of Real Estate staff to thoroughly review the documents and make additional technical edits. Staff recommends that the Board of Directors approve these documents as "standard form" de-enrollment documents, similar to the Board's previous adoption of "standard form" CAGR D Member Land enrollment documents.

SUGGESTED MOTION:

I move that the CAGR D & Underground Storage Committee recommend that the CAWCD Board of Directors approve the attached Standard Form Documents for CAGR D Member Land De-enrollment.

Attachments.

**CAGRD Agenda Number 4.
Attachment 1.**

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

**DECLARATION TERMINATING COVENANTS, CONDITIONS
AND RESTRICTIONS FOR

REGARDING MEMBERSHIP IN THE CENTRAL ARIZONA
GROUNDWATER REPLENISHMENT DISTRICT**

This Declaration Terminating Covenants, Conditions and Restrictions for _____ Regarding Membership in the Central Arizona Groundwater Replenishment District is made this ___ day of _____, 2016, by_____.

RECITALS

A. Declarant is the Owner of the Property, legally described in Exhibit A attached and incorporated into this Declaration Terminating Covenants, Conditions, and Restrictions for _____ Regarding Membership in the Central Arizona Groundwater Replenishment District.

B. Declarant previously qualified the Property as a Member Land pursuant to the Groundwater Replenishment Statute. As a Member Land, the Property has been a member of the Central Arizona Groundwater Replenishment District, an operating subdivision of the CAWCD.

C. To qualify the Property as a Member Land, on _____, __, 20__ Declarant recorded the Original Declaration, which required, among other things, that the Owner subject the Property to certain annual fees.

D. As permitted by Arizona Revised Statutes § 48-3774(D), Declarant desires to de-enroll the Property from the Central Arizona Groundwater Replenishment District, terminate the Member Land status of the Property, and eliminate the covenants, conditions, and restrictions binding the Property pursuant to the Original Declaration.

NOW, THEREFORE, Declarant hereby declares:

ARTICLE 1 DEFINITIONS

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

1.2 "Declarant" means _____.

1.3 "Declaration" means this Declaration Terminating Covenants, Conditions and Restrictions for _____ Regarding Membership in the Central Arizona Groundwater Replenishment District.

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

1.5 "Director" shall mean the Director of the Department.

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

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

1.8 "Municipal Provider" is as defined in Arizona Revised Statutes § 48-3701(13).

1.9 "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.

1.10 "Original Declaration" means the Declaration of Covenants, Conditions and Restrictions for _____ Regarding Membership in the Central Arizona Groundwater Replenishment District, originally recorded on _____, 20__, as Instrument No. _____, official records of _____ County, Arizona, and any amendments.

1.11 "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.

1.12 "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.

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

1.14 “Retail Purchaser or Lessee” is as defined in Arizona Revised Statutes § 48-3774.E.

ARTICLE 2 REVOCATION OF ORIGINAL DECLARATION

2.1 No lot or Parcel of subdivided land within the Property has been sold or leased to a Retail Purchaser or Lessee.

2.2 The Arizona real estate commissioner has not issued a public report for the Property.

2.3 To the extent that lot or parcel boundaries were previously recorded for the Property, the planning agency having planning authority over the Property has approved a plat vacating the lot or parcel boundaries that were previously recorded for the Property.

2.4 The Agreement and Notice of Municipal Provider Reporting Requirements For _____ (ML#_____) Regarding Membership in the Central Arizona Groundwater Replenishment District recorded on _____, 20___, has been revoked by mutual agreement of the parties to that agreement and the Municipal Provider has recorded notice of the revocation in the official records of the county where the Property is located.

2.5 On _____, 20___, the Director has revoked the Certificate of Assured Water Supply number _____ issued for the Property.

2.6 The Original Declaration is hereby revoked.

ARTICLE 3 GENERAL PROVISIONS

3.1 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.

3.2 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.

3.3 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.

3.4 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, the Central Arizona Groundwater Replenishment District, and the Department have executed this Declaration as of the date first set forth above.

CAWCD: CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: _____
Theodore C. Cooke

Its: General Manager

STATE OF)
) ss.
County of)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by Theodore C. Cooke the General Manager of Central Arizona Water Conservation District.

Notary Public

DEPARTMENT: ARIZONA DEPARTMENT OF WATER RESOURCES

By: _____

Its: _____

STATE OF)
) ss.
County of)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by _____ the _____ of _____ on behalf of _____.

Notary Public

DECLARANT:

By: _____

Its: _____

STATE OF)
) ss.
County of)

The foregoing instrument was acknowledged before me this ____ day of
_____, 2016, by _____ the
_____ of _____ on behalf of _____.

Notary Public

080.02.01

EXHIBIT A

**CAGRD Agenda Number 4.
Attachment 2.**

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

**REVOCATION OF THE AGREEMENT AND NOTICE OF MUNICIPAL PROVIDER
REPORTING REQUIREMENTS FOR (ML# ____ - ____ - ____)
REGARDING MEMBERSHIP IN THE CENTRAL ARIZONA
GROUNDWATER REPLENISHMENT DISTRICT**

This Revocation of the Agreement and Notice of Municipal Provider Reporting Requirements for _____ Regarding Membership in the Central Arizona Groundwater Replenishment District ("Revocation") is made this ____ day of _____, 20__, among the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, _____, _____, and _____.

RECITALS

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

B. Owner previously qualified the Property as a Member Land, whereby the Municipal Provider agreed to provide water to the Property pursuant to the requirement that the Municipal Provider comply with certain annual reporting requirements in accordance with Arizona Revised Statutes § 48-3774(C). Owner and Municipal Provider complied with that requirement by executing the Agreement, which was recorded on _____, 20__.

C. As permitted by Arizona Revised Statutes § 48-3774(D), Owner desires to de-enroll the Property from the Central Arizona Groundwater Replenishment District and terminate the Member Land status of the Property.

D. Arizona Revised Statutes § 48-3774(D) requires and the Central Arizona Groundwater Replenishment District confirms that:

1. No lot or Parcel of subdivided land within the Property has been sold or leased to a Retail Purchaser or Lessee.

2. The Arizona real estate commissioner has not issued a public report for the Property.

3. To the extent that lot or parcel boundaries were previously recorded for the Property, the planning agency having planning authority over the Property has approved a plat vacating the lot or parcel boundaries that were previously recorded for the Property.

4. On _____, 20__, the Director of the Department has revoked the Certificate of Assured Water Supply number _____ issued for the Property.

E. In addition to the above de-enrollment requirements, the Agreement must be revoked by the original parties to the Agreement, and their successors or assigns.

F. Paragraph 4.3 of the Agreement provides that the Agreement may be revoked by the express written consent of the parties.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound, the parties hereby agree as follows:

ARTICLE 1 DEFINITIONS

1.1 "Agreement" means the Agreement and Notice of Municipal Provider Reporting Requirements for _____ Regarding Membership in the Central Arizona Groundwater Replenishment District, originally recorded on _____, 20__, as Instrument No. _____, official records of _____ County, Arizona, and any amendments.

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

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

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

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

1.6 "Municipal _____ Provider" means _____, and its successors and assigns.

1.7 "Owner" means _____,
and its successors and assigns.

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

1.9 "Revocation" means this Revocation of the Agreement and Notice of Municipal Provider Reporting Requirements for _____
Regarding Membership in the Central Arizona Groundwater Replenishment District, and any amendments.

ARTICLE 2 REVOCATION OF AGREEMENT

The Parties hereby agree to revoke the Agreement as of the date first set forth above. The recordation of this Revocation in the official records of _____
County, Arizona, constitutes the recorded notice required under Arizona Revised Statutes § 48-3774.D.5.

ARTICLE 3 GENERAL PROVISIONS

3.1 Entire Agreement. This Revocation constitutes the entire agreement among the parties and no understandings or obligations not expressly set forth in this Revocation are binding upon the parties.

3.2 Interpretation. This Revocation is governed by and 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.

3.3 Rules, Regulations and Successor Statutes. All references in this Revocation 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.

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

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

3.6 Consent to Recording. Owner hereby consents to the recording of this Revocation against the Property.

IN WITNESS WHEREOF, the Parties to this Revocation have executed this Revocation as of the date first set forth above.

CAWCD: CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: _____
Theodore C. Cooke

Its: General Manager

STATE OF ARIZONA)
) ss.
County of MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by Theodore C. Cooke, the General Manager of Central Arizona Water Conservation District.

Notary Public

MUNICIPAL
PROVIDER:

By: _____

Its: _____

STATE OF)
) ss.
County of)

The foregoing instrument was acknowledged before me this ____ day of ____
__, 20__, by _____, the _____ of _____.

Notary Public

OWNER:

By: _____

Its: _____

STATE OF)
) ss.
County of)

The foregoing instrument was acknowledged before me this ____ day of ____
__, 20 __, by _____, the _____ of _____
_____.

Notary Public

080.02.01

EXHIBIT A
The Property