

**Agenda Number 4.**

**CONTACT:** Laura Grignano Greg Adams  
623-869-2113 623-869-2124  
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**MEETING DATE:** Thursday, October 18, 2018

**AGENDA ITEM:** Discussion and Possible Consideration of Action to Recommend that the Board Approve Standard Form Member Land with Category 2 Enrollment Documents - Grignano

**RECOMMENDATION:** Staff recommends that the CAGR D & Underground Storage Committee recommend that the Board approve the attached standard form Member Land enrollment documents "Agreement and Notice of Reporting Requirements" and "Declaration of Covenants, Conditions and Restrictions" for new Member Lands that contain Category 2 Lands (Golf Course).

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**FISCAL IMPLICATIONS:** No

**Impact on Budget:**

None

Additional spending authority requested: None

**Impact on Reserves:**

None

**Impact on Rates:**

None

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

Replenishment: CAGR D Management and Oversight

**PREVIOUS BOARD ACTION/ACTIVITY:**

None

**ISSUE SUMMARY/DESCRIPTION:**

There are two categories of CAGR D Member Lands. Category 1 Member Lands and Category 2 Member Lands. Category 1 Member Lands include all parcels in a sub-division except golf course parcels. Category 2 Member Lands are parcels associated with a golf course.

Currently, enrollment of a Category 1 Member Land into the CAGR D can occur without individual Board

approval. This is because the Board has pre-approved standard form enrollment documents for Category 1 Member Lands. This pre-approval, however, does not cover sub-divisions with both Category 1 and Category 2 Member Lands.

Standard form enrollment documents for Member Lands that include Category 2 Lands have not been pre-approved by the Board and therefore, Member Land enrollment documents for Member Lands with Category 2 Lands must come to the Board for approval. Per statute, Category 2 Lands do not pay the replenishment reserve fee and annual replenishment reserve charges and thus are not eligible to receive credits from the replenishment reserve. Any additional costs incurred by the CAGR to satisfy groundwater replenishment for the Category 2 Member Lands during a year in which the replenishment reserve is utilized, must be attributed solely to the Category 2 Member Lands.

Pre-approval of standard form enrollment documents for Category 2 Member Lands will streamline the enrollment process for the enrollee by avoiding the month or two wait time required by the "two-step" Board approval process. The attached standard form enrollment documents are substantially similar to the Board pre-approved enrollment documents, with additional language relevant to Category 2 Lands.

**SUGGESTED MOTION:**

I move that the CAGR & Underground Storage Committee recommend that the Board approve the attached standard form Member Land enrollment documents "Agreement and Notice of Reporting Requirements" and "Declaration of Covenants, Conditions and Restrictions" for new Member Lands that contain Category 2 Lands (Golf Course).

**ATTACHMENTS:**

1. 2018-AGT - Golf Course Sub
2. 2018-CCR - Golf Course Sub

# 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

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

This Agreement and Notice of Municipal Provider Reporting Requirements for \_\_\_\_\_ Regarding Membership in the Central Arizona Groundwater Replenishment District is made this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, 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 is the owner of the Additional Property, legally described in Exhibit B attached and incorporated into this Agreement.

C. Owner 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. Owner and the Municipal Provider have executed a notice of intent to serve agreement, as required by the Department, whereby the Municipal Provider has agreed to provide water to the Property.

D. Owner of the Additional Property or its successor in interest may provide water to the Additional Property. The Municipal Provider may provide water to the Additional Property.

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

F. To qualify the Property and Additional Property as Member Land and to permit the delivery of Excess Groundwater to the Property and the Additional Property as Member Land, the Groundwater Replenishment Statute requires the Property and the Additional Property to be subject to the Declaration.

G. To qualify the Property and the Additional Property as Member Land, the Groundwater Replenishment Statute also requires the Municipal Provider to record this Agreement and comply with certain annual reporting requirements in accordance with Arizona Revised Statutes § 48-3774(C).

H. To assure that the Municipal Provider has the information from which to comply with the annual reporting requirements, Owner agrees, per Article 3 of this Agreement, that the Owner of each Parcel of the Additional Property will annually file with the Municipal Provider, commencing in 201\_, a report that contains the information for the preceding calendar year required by Arizona Revised Statutes § 48-3775(A)(1) and (2).

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 "Additional Property" means the real property legally described in Exhibit B attached and incorporated into this Agreement.

1.2 "Agreement" means this Agreement and Notice of Municipal Provider Reporting Requirements for \_\_\_\_\_ Regarding Membership in the Central Arizona Groundwater Replenishment District, as amended from time to time.

1.3 "Annual Groundwater Allowance" means the annual allotment of allowable groundwater use that continues in perpetuity as calculated by the Director in accordance with the Assured and Adequate Water Supply Rules adopted by the Department for the Active Management Area identified in Paragraph 1.8 of this Agreement, pursuant to Arizona Revised Statutes § 45-576(H). For the purposes of this Agreement, if the groundwater allowance determined by the Director is a lump sum rather than a perpetual volume, then the Annual Groundwater Allowance shall equal zero.

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

1.5 "Declaration" means the Declaration of Covenants, Conditions and Restrictions for \_\_\_\_\_ Regarding Membership in the Central

Arizona Groundwater Replenishment District recorded by Owner, as declarant, against the Property and the Additional Property.

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

1.7 "Director" means the director of the Department.

1.8 "Excess Groundwater" means the amount of Groundwater equal to the amount of Groundwater delivered to the Property and the Additional Property by the Municipal Provider in a calendar year in excess of the amount of Groundwater that may be used at the Property and the Additional 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), subject to the provisions of Paragraph 2.4 herein.

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

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

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

1.12 "Municipal Provider" means \_\_\_\_\_, and its successors and assigns.

1.13 "Owner" means \_\_\_\_\_, and its successors and assigns.

1.14 "Parcel" means any portion of the Property now existing or hereafter established for which the tax assessor for the county in which the Property and the Additional Property is located has issued a separate tax parcel number. The current tax parcel number for each Parcel is as shown in Exhibit C attached and incorporated into this Agreement.

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

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

1.17 "Report(s)" means the report(s) required to be prepared by the Municipal Provider in accordance with Arizona Revised Statutes § 48-3775(A) and this Agreement.

## **ARTICLE 2 REPORTING REQUIREMENTS**

2.1 Annual Reports. In accordance with Arizona Revised Statutes § 48-3775(A), on or before March 31 of each year after the recordation of this Agreement, the Municipal Provider shall file a Report with CAWCD and with the Director that contains the following information for the preceding calendar year, which is the reporting year:

2.1.1 The amount of Groundwater delivered by the Municipal Provider to each Parcel of the Property and the Additional Property, identified by the applicable tax parcel number, and the basis for the calculation of the amount of Groundwater delivered.

2.1.2 The amount of Groundwater delivered by the Owner to each Parcel of the Additional Property identified by the applicable tax parcel number, the right or rights pursuant to which Groundwater was delivered, well registration numbers of the wells from which the Groundwater was delivered, and the basis for the calculation of the amount of Groundwater delivered.

2.1.3 The total amount of Groundwater delivered by the Municipal Provider to the Property and the Additional Property, the total amount of Groundwater delivered by the Owner to the Additional Property and the basis for the calculation of the total amount of Groundwater delivered.

2.1.4 The amount of Excess Groundwater delivered by the Municipal Provider and the Owner to the Property and the Additional Property, and the basis for the calculation of the amount of Excess Groundwater delivered.

2.1.5 The Parcel Replenishment Obligation of each Parcel, identified by the applicable tax parcel number.

2.1.6 Such other information as CAWCD may reasonably require.

2.2 Records. In accordance with Arizona Revised Statutes § 48-3775(F), the Municipal Provider shall maintain current and accurate records of the information required to be included in the Reports.

2.3 Form of Reports. In accordance with Arizona Revised Statutes § 48-3777, CAWCD shall determine the form of the Reports to be submitted by the Municipal Provider in order to carry out the purposes of the Groundwater Replenishment Statute.

2.4 Formula for Calculating the Minimum Quantity of Excess Groundwater. The Municipal Provider shall report a minimum volume of Excess Groundwater delivered by the Municipal Provider and the Owner to the Property and the Additional Property each year during the term of this Agreement. The formula for calculating this minimum volume is as follows:

[Total GW – (Annual GWA + (Total Extinguishment Credits pledged in the next 100 years/100))] \* 2/3

Where: Total GW = Groundwater delivered by the Municipal Provider and the Owner to the Property and the Additional Property during the preceding year, which is the Reporting Year

Annual GWA = The volume of Annual Groundwater Allowance awarded to the Property and the Additional Property as calculated by the Director in accordance with the Assured and Adequate Water Supply Rules adopted by the Department for the Active Management Area provided in Paragraph 1.8, pursuant to Arizona Revised Statutes § 45-576(H)

2.5 Multi-Parcel Reporting Agreement. If the Municipal Provider delivers water to multiple Parcels that are served water through a single meter, the Municipal Provider and the Owner(s) of those Parcels shall enter into an agreement that specifies how the total volume of Groundwater delivered to the Parcels will be accounted for against each Parcel for purposes of this Agreement and reported to CAWCD. The Municipal Provider shall provide CAWCD with a copy of any agreement entered into pursuant to this Section 2.5 of the Agreement, or amendment to such agreement, within 30 days of the Municipal Provider and the Owner(s) of the affected Parcels executing any such agreement or amendment to such agreement.

### **ARTICLE 3 REPORTS OF WATER DELIVERIES TO THE ADDITIONAL PROPERTY**

3.1 On or before February 20 of each year, the Owner of each Parcel of Additional Property shall file with the Municipal Provider a report that contains the following information for the preceding calendar year, which is the reporting year.

3.1.1 The amount of Groundwater delivered by the Owner to each Parcel of the Additional Property, identified by the applicable tax parcel number, the right or rights Pursuant to which Groundwater was delivered, well registration numbers of the wells from which the Groundwater was delivered, and the basis for the calculation of the amount of Groundwater delivered.

3.1.2 The total amount of Groundwater delivered by the Owner to the Additional Property, and the basis for the calculation of the amount of Excess Groundwater delivered.

3.1.3 Any other information that the Municipal Provider deems necessary in order to prepare and file the Reports annually.

3.2 Any Owner of the Additional Property or any portion thereof shall cooperate fully with the Municipal Provider concerning the Municipal Provider's preparation and filling of the Reports.

3.3 The Owner of a Parcel of the Additional Property shall fully indemnify, defend and hold harmless the Municipal Provider, and its directors, agents, officers, employees and representatives from and against any liability, loss, claim, damage, penalty, violation or expense incurred by the Municipal Provider directly or indirectly arising in connection with this Agreement to the extent caused by the negligence or misconduct of that Owner of the Parcel of Additional Property or from nonperformance of the terms and conditions of this Agreement by the Owner of the Parcel of Additional Property.

#### **ARTICLE 4 ENFORCEMENT POWERS**

4.1 Penalty for Failure to Report. If the Municipal Provider fails to timely file a Report as required by CAWCD, CAWCD may assess a penalty in accordance with Arizona Revised Statutes § 48-3775(G). Provided, however, in the event that the Owner of a Parcel of the Additional Property fails to provide all information to the Municipal Provider as required by this Agreement, and that failure prevents the Municipal Provider from filing a complete Report as required by CAWCD, CAWCD may assess a penalty in accordance with Arizona Revised Statutes § 48-3775(G) and the Owner failing to so provide said information, and not the Municipal Provider, shall be required to pay all costs associated with the penalty.

4.2 Inspections, Investigations and Audits. The CAWCD has the rights provided under Arizona Revised Statutes § 48-3783 with respect to inspections, investigations and audits.

#### **ARTICLE 5 GENERAL PROVISIONS**

5.1 Binding Effect. The provisions of this Agreement inure to the benefit of and bind the respective successors and assigns of the parties hereto, provided that no assignment or transfer of this Agreement or any part or interest herein by the Municipal Provider is valid until approved by CAWCD, which approval may be withheld solely on the basis of CAWCD's determination that assignment would cause the Municipal Provider, Owner, or CAWCD to be out of compliance with the Groundwater Replenishment Statute or unable to meet its obligations under this Agreement or under the Groundwater Replenishment Statute. The Municipal Provider and Owner agree and covenant to CAWCD to execute and record any additional documentation which CAWCD may reasonably require to effectuate the intents and purposes of this Agreement and the Groundwater Replenishment Statute. Upon the sale or other transfer of a Parcel of



Property or Additional Property, the seller or transferor shall have no further obligation or liability as Owner under this Agreement from and after the date of the sale or conveyance, except that (a) the seller or transferor shall provide written notification to CAWCD and the Municipal Provider within thirty days of the sale or transfer indicating the name and address of the party to whom the Parcel of Property or Additional Property has been sold or transferred and the date on which the sale or transfer became effective, (b) the seller or transferor shall report the Groundwater information as required in Paragraph 3.1 for the year of the sale or transfer for deliveries of Groundwater to the Parcel of Property or Additional Property by the seller or transferor prior to the date of the sale or other transfer of the Parcel of Property or Additional Property, and (c) the obligations under Paragraph 3.3 shall survive as to claims for indemnity caused by the negligence or misconduct of the seller or transferor or from nonperformance of the terms and conditions of this Agreement by the seller or transferor prior to the date of the sale or transfer of the Parcel of Property or Additional Property. The Municipal Provider and Owner agree and covenant to CAWCD to execute and record any additional documentation which CAWCD may reasonably require to effectuate the intents and purposes of this Agreement and the Groundwater Replenishment Statute.

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

5.3 Amendments. This Agreement may be modified, amended or revoked only (i) by the express written agreement of the parties hereto; or (ii) by amendment statutes, rules or regulations or successor statutes, rules or regulations, as contemplated by Paragraph 5.5.

5.4 Interpretation. This Agreement 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.

5.5 Rules, Regulations and Successor Statutes. All references in this Agreement 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.

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

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

5.8 Notices. Except as otherwise required by law, any notice given in connection with this Agreement must be in writing and must be given by personal delivery, overnight delivery, facsimile, or United States certified or registered mail. Any such notice must be addressed to the appropriate party at the following address (or at any other address as a party may hereafter designate by written notice given as required by this paragraph):

CAWCD:

For delivery use: Central Arizona Water Conservation District  
23636 North 7th Street  
Phoenix, Arizona 85024  
Attn: Manager, Groundwater Replenishment District

For U.S. Mail use: Central Arizona Water Conservation District  
P.O. Box 43020  
Phoenix, Arizona 85080-3020  
Attn: Manager, Groundwater Replenishment District

Municipal  
Provider: \_\_\_\_\_

Owner: \_\_\_\_\_

Notice is deemed to have been given on the date on which notice is personally delivered, delivered to an overnight delivery service, transmitted by facsimile, or mailed. Notice is deemed to have been received on the date on which the notice is actually received or delivery is refused.

5.9 Consent to Recording. Owner hereby consents to the recording of this Agreement against the Property.

IN WITNESS WHEREOF, the Parties to this Agreement have executed this Agreement 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 \_\_\_\_\_, 201\_, 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 \_\_\_\_\_, 201\_, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_.

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

OWNER:

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF                    )  
                                  ) ss.  
County of                    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_ on behalf of \_\_\_\_\_.

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

EXHIBIT A

EXHIBIT B

EXHIBIT C  
Tax Parcel Numbers

Tax Assessor  
Parcel Number

Tax Year

County

AMA

## 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

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
\_\_\_\_\_ (ML# - - )  
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 \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_.

### RECITALS

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

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

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

D. 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 and the Additional Property as Member Land pursuant to the Groundwater Replenishment Statute. As Member Land, the Property and the Additional Property will be a member of the Central Arizona Groundwater Replenishment District, an operating subdivision of the CAWCD.

E. The Declarant has paid CAWCD an Enrollment Fee to enroll the Property as Member Land within the Central Arizona Groundwater Replenishment District.

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



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

H. Qualifying the Property and the Additional Property as Member Land and subjecting the Property and the Additional Property to the Parcel Replenishment Obligation, Replenishment Assessment, Activation Fee, Replenishment Reserve Fee, Annual Membership Dues, and Enrollment Fee directly benefit the Property and the Additional Property by increasing the potential of the Property and the Additional 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 and the Additional Property.

I. The Property will receive water service from Municipal Provider. The Additional Property may receive water service from Municipal Provider.

J. The Owner of the Additional Property, or its successors in interest, may provide water to the Additional Property. Such Owner, or its successors in interest, will annually report to the Municipal Provider the information called for in Arizona Revised Statutes § 48-3775(A)(1) and (2), as described in Article 8 to this Declaration.

K. The Additional Property will be used in conjunction with and for the benefit of the Property; therefore, both the Property and the Additional Property should be considered as Member Land for purposes of determining the Parcel Replenishment Obligation and the Replenishment Assessment.

NOW, THEREFORE, Declarant hereby declares that the Property and the Additional 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 and the Additional Property owned by the Owner.

1.2 "Additional Property" means the real property described in Exhibit B attached and incorporated into this Agreement.

1.3 "Annual Membership Dues" means the dues established annually by CAWCD pursuant to Arizona Revised Statutes § 48-3779.

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

1.5 "Declarant" means \_\_\_\_\_.

1.6 "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.

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

1.8 "Enrollment Fee" means the fee established by CAWCD to cover the costs of administrative activities related to the enrollment of lands as Member Lands of the Central Arizona Groundwater Replenishment District and to pay a portion of the costs associated with the acquisition and development of water supplies and infrastructure necessary for CAWCD to perform its obligations under Article 4 of the Groundwater Replenishment Statute. The amount of the Enrollment Fee is set pursuant to CAWCD's "CAGRDR Enrollment Fee and Activation Fee Policy."

1.9 "Excess Groundwater" means the amount of Groundwater equal to the amount of Groundwater delivered to the Property and the Additional Property by the Municipal Provider in a calendar year in excess of the amount of Groundwater that may be used at the Property and the Additional 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).

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

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

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

1.13 "Municipal Provider" means \_\_\_\_\_, and its successors and assigns.

1.14 "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.

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

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

1.17 "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.

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

1.19 "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.

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

1.21 "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.

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 is 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 and Additional 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 Additional 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 within the Property and Additional Property 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 in full or in part 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 and Additional 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 PAYMENT OF ANNUAL MEMBERSHIP DUES**

5.1 Annual Membership Dues. Each Parcel is hereby made subject to the Annual Membership Dues in accordance with Arizona Revised Statutes § 48-3779.

5.2 Levy of Annual Membership Dues. CAWCD shall levy the Annual Membership Dues against each Parcel in accordance with Arizona Revised Statutes § 48-3779.

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

## **ARTICLE 6 COVENANT FOR PAYMENT OF ENROLLMENT FEES**

6.1 Enrollment Fee. Each Parcel is hereby made subject to the Enrollment Fee.

6.2 Additional Enrollment Fees. If any portion of the Property and Additional Property is re-platted subsequent to the initial enrollment of the Property and Additional Property as Member Lands of the Central Arizona Groundwater Replenishment District and the number of Parcels within that re-platted portion of the Property and Additional Property increases, that re-platted portion of the Property and Additional Property is hereby subject to the payment of additional Enrollment Fees in accordance with the version of CAWCD's "CAGRDR Enrollment Fee and Activation Fee Policy" effective on the date that the re-platting of the Property and Additional Property is approved by the applicable platting authority.

6.3 Payment of Additional Enrollment Fees. Any additional Enrollment Fees due to CAWCD under Paragraph 6.2 of this Declaration must be paid to CAWCD by the Owner of the re-platted portion of the Property and Additional Property within 30 days of the date of CAWCD's invoice, or as otherwise agreed by the Owner and CAWCD.

6.4 Interest, Costs and Penalties. If any additional Enrollment Fees due under Paragraph 6.2 of this Declaration are not paid when due, CAWCD will be entitled to interest, costs and penalties as provided by law.

**ARTICLE 7**  
**COVENANT FOR CREATION OF LIEN**

7.1 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, Annual Membership Dues, and Enrollment Fee (including any additional Enrollment Fees due under Article 6 of this Declaration) 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, constitute a continuing lien on the Parcel against which such Replenishment Assessment and Annual Membership Dues are levied, as provided by Arizona Revised Statutes §§ 48-3778 and 48-3779. The Replenishment Assessment and Annual Membership Dues, together with interest, costs and penalties, are also personal obligations of each Person who was an Owner of a Parcel at the time such Replenishment Assessment and/or Annual Membership Dues came due.

7.2 Remedies for Nonpayment of Replenishment Assessment or Annual Membership Dues. In the event of the delinquency of payment of any Replenishment Assessment or Annual Membership Dues, CAWCD has the rights and remedies provided in Arizona Revised Statutes §§ 48-3778 and 48-3779.

**ARTICLE 8**  
**REPORTS OF WATER DELIVERIES TO THE ADDITIONAL PROPERTY**

8.1 On or before February 20 of each year, the Owner of each Parcel of Additional Property shall file with the Municipal Provider a report that contains the following information for the preceding calendar year, which is the reporting year.

8.1.1 The amount of Groundwater delivered by the Owner to each Parcel of the Additional Property, identified by the applicable tax parcel number, and the basis for the calculation of the amount of Groundwater delivered.

8.1.2 The total amount of Groundwater delivered by the Owner to the Additional Property, and the basis for the calculation of the amount of Groundwater delivered.

8.1.3 Such other information as CAWCD may require.

**ARTICLE 9  
GENERAL PROVISIONS**

9.1 Binding Effect. The Property and Additional 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 or the Additional 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.

9.2 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 and the Additional Property; or (ii) by amendment statutes, rules or regulations or successor statutes, rules or regulations, as contemplated by Paragraph 9.4 of this Declaration.

9.3 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.

9.4 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.

9.5 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.

9.6 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: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_





EXHIBIT A

EXHIBIT B