

RESOLUTION NO. 2179

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, ACCEPTING THE DECLARATION (INCLUDING COVENANTS, RESTRICTIONS, AND ESTABLISHMENT OF EASEMENTS AND RIGHTS) DESCRIBED IN EXHIBITS 1 AND 2 HERETO, ACCEPTING THE WARRANTY DEEDS FOR EASEMENTS AND A WELL SITE DESCRIBED IN EXHIBITS 3, 4, AND 5 ATTACHED HERETO, AND ACCEPTING THE PIPELINE EASEMENT DESCRIBED IN EXHIBIT 6 ATTACHED HERETO, ALL RELATING TO THE EAST PAYSON PIPELINE, THE R&H WELL SITE, AND THE PW1 AND PW2 WELL SITES.

WHEREAS, A.R.S. § 9-241 provides that the Town of Payson may receive real property necessary or proper to carry out the purposes of the municipal corporation, within or without its limits; and

WHEREAS, those declarations and certain real property interests described on Exhibits 1, 2, 3, 4, 5, and 6 attached hereto have been offered to the Town of Payson by R & H Boulder & Granite, LLC, and Terra-Star Valley 40, L.L.C.; and

WHEREAS, the Town of Payson desires to accept said declarations and real property interests,

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

Section 1. The Declaration (Including Covenants, Restrictions, and Establishment of Easements and Rights) of R & H Boulder & Granite, LLC, attached hereto marked Exhibit "1" and made a part hereof as though set forth in full at this point, be and is hereby accepted by the Town of Payson.

Section 2. The Declaration (Including Covenants, Restrictions, and Establishment of Easements and Rights) of Terra-Star Valley 40, L.L.C., attached hereto marked Exhibit "2" and made a part hereof as though set forth in full at this point, be and is hereby accepted by the Town of Payson.

Section 3. The Warranty Deed from R & H Boulder & Granite, LLC to the Town of Payson, attached hereto marked Exhibit "3" and made a part hereof as though set forth in full at this point, be and is hereby accepted by the Town of Payson.

Section 4. The Warranty Deed from Terra-Star Valley 40, L.L.C. to the Town of Payson, attached hereto marked Exhibit "4" and made a part hereof as though set forth in full at this point, be and is hereby accepted by the Town of Payson.

Prepared by Town of Payson Legal Department

SIS:drs May 4, 2006 (3:15PM)

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Page 1

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Section 5. The Warranty Deed from Terra-Star Valley 40, L.L.C. to the Town of Payson, attached hereto marked Exhibit "5" and made a part hereof as though set forth in full at this point, be and is hereby accepted by the Town of Payson.

Section 6. The Pipeline Easement from R & H Boulder & Granite, LLC, to the Town of Payson, attached hereto marked Exhibit "6" and made a part hereof as though set forth in full at this point, be and is hereby accepted by the Town of Payson.

Section 7. That the Town of Payson shall perform any and all other acts necessary or appropriate to accept said declarations, easements and well site, and to the use and control thereof, including, but not limited to, the maintenance thereof.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this ____ day of _____, 2006, by the following vote:

AYES ____ NOES ____ ABSTENTIONS ____ ABSENT ____

Barbara G. Brewer, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk

Samuel I. Streichman, Town Attorney

EXHIBIT "1"

to Resolution No. 2179

Gila County, AZ
Linda Haught Ortega, Recorder
04/21/2006
03:02PM
Doc Code: DRES

Doc Id: 2006-006826
Receipt #: 44025
Rec Fee: 21.00

PIONEER TITLE AGENCY RECORDING

When recorded return to:

G. Michael Horton
P.O. Box 279
Payson, AZ 85547



Gila County, AZ

DRES

2006-006826

Page: 1 of 10
04/21/2006 03:02P
21.00

DECLARATION

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

R & H BOULDER & GRANITE, LLC, an Arizona limited liability company ("R & H") as the sole owner of all of the property described in Exhibit A hereto (the "Property") hereby declares that all of the Property and the well site situated thereon shall be subject to all of the covenants, conditions, restrictions, easements, rights and other provisions set forth in this Declaration ("Declaration"). The well site is described on Exhibit B attached hereto (the "Well Site").

1. PURPOSE AND DEFINITIONS.

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

1.2 Definitions. For the purposes of this Declaration:

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

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

"Pipeline" means the 8-inch pipeline connecting the Water Well and transporting water to the Town's water system and located within the easement described below and on the Exhibit C attached hereto.

"Town" means the Town of Payson, Arizona, a municipal corporation.

"Water Well" means the water well owned and operated by the Town and situated on the Well Site, which well will be equipped with mechanized pumps.

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

2. EASEMENTS ON PROPERTY AND WELL SITES AND PIPELINE.



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

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

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

3. LIMITATIONS ON WELL DRILLING.

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

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

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

5. ENFORCEMENT.



Gila County, AZ

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

6. TERM.

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

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

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

7. AMENDMENTS.

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

8. LIMITATION ON LIABILITY.

The Town shall not be liable to any Owner for any act or failure to act, for any decision made by the Town, or for any damages, injuries, losses, costs or expenses of any kind or nature whatsoever arising from or related to any of the obligations or rights of the Town under this Declaration, and each Owner hereby waives any and all claims or causes of the Town for all of the same; provided, however, that nothing limits the liability of each such party for its own gross negligence or intentional misconduct. For purposes of this Section, "the Town" shall include its officers, members, employees, agents, contractors and representatives.



9. DISPUTE RESOLUTION.

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

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

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

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

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



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

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

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

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

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

10. GENERAL

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

A. Notices. Any notice to any party under this Declaration shall be in writing and shall be effective on the earlier of (i) the date when delivered in care of the party's address, or (ii) the date which is three (3) days after mailing (postage prepaid) by certified or registered mail, return receipt requested, to the party's address, or (iii) the date on which sent by facsimile to the party's address with electronic confirmation of receipt thereof and with a copy sent on the same date to the party utilizing one of the other methods of notice specified in this section. Each Owner shall designate to the Town their address (including telephone and facsimile numbers) for notices and may change their address for notices at any time by giving notice in writing in accordance with the provisions of this paragraph. The Town shall make all current address information available to each other Owner. If an Owner does not designate their address, then any party may use any address for such Owner believed in good faith by such party to be an address of such Owner.

B. Severability; Further Negotiations. If any provision of this Declaration is declared void or unenforceable, such provision shall be deemed modified to the minimum extent necessary to make it enforceable, the Declaration shall otherwise remain in full force and effect. In the event applicable laws, including any future statutes or rules, prevent or interfere with the



consummation of the transactions contemplated hereby in the manner so contemplated, or any provision of this Declaration is declared void or unenforceable, all Owners shall promptly negotiate in good faith to the end that they will agree upon an appropriate amendment of this Declaration to comply with applicable laws, in a manner that preserves and implements to the maximum extent possible the economic terms and conditions and the purposes of this Declaration.

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

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

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

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

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

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

I. Remedies. Except as otherwise specifically provided herein, the Irrigation District and each Owner shall have all rights and remedies permitted by this Declaration or applicable law for a breach by any Owner of any provisions of this Declaration, including without limitation specific performance and/or injunctive relief.

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

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



Gila County, AZ

DRES

shall not be deemed relevant in construing this Declaration.

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

EXECUTED as of the Effective Date above:

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

By: *Roy H*
Printed Name: Roy HAUGHT
Title: MANAGEMENT PARTNER

UNOFFICIAL COPY



Gila County, AZ

DRES

STATE OF ARIZONA)
) ss.
County of Gila)

On this, the 13th day of April, 2006, before me, the undersigned Notary Public, personally appeared Roy Haight, the management partner of R+H Boulder + Granite, and acknowledged to me that he, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the company by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Olga Zlotnik
Notary Public

My Commission Expires:
Nov. 30, 2009

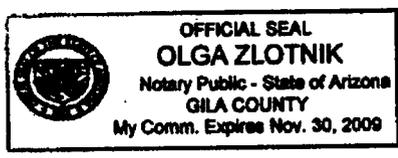




Exhibit A
and
Exhibit B

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

COMMENCING at the West corner of Parcel Three of Record of Survey / Minor Land Division Map No. 1624, Gila County Records, said Corner being a point on the North line of Parcel One of said Map No. 1624 and being a 5/8" rebar with brass tag, L.S. #18436;
THENCE South 00°07'40" West leaving said North line, 312.02 feet to a point on the South line of said Parcel One;
THENCE South 89°52'20" East, (Record = South 89°53'00" East), along the South line of said Parcel One and Parcel Three, a distance of 576.76 feet;
THENCE North 00°07'40" East, leaving said South line, 34.52 feet to the POINT OF BEGINNING;
THENCE North 89°52'20" West, 50.00 feet;
THENCE North 00°07'40" East, 60.00 feet;
THENCE South 89°52'20" East, 60.00 feet;
THENCE South 00°07'40" West, 60.00 feet;
THENCE North 89°52'20" West, 10.00 feet to the POINT OF BEGINNING.

(Basis of Bearings = North 01°16'00" West, (distance = 1227.90 feet) line between Corner No. 9 of Homestead Entry Survey No. 418 and a P.K. nail with brass tag #18436 along the East line of said Homestead Entry Survey No. 418).

AND

An easement for access, water main, water lines and electric lines described as follows:

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

BEGINNING at the West corner of Parcel Three of Record of Survey / Minor Land Division, Map No. 1624, Gila County Records, said Corner being a point on the North line of Parcel One of said Map No. 1624 and being a 5/8" rebar with brass tag, L.S. #18436;
THENCE South 89°52'23" East (Record = South 89°52'48" East) along said North line, 20.00 feet;
THENCE South 00°07'40" West leaving said North line 292.02 feet;
THENCE South 89°52'20" East, parallel with the South line of said Parcel One and Parcel Three, a distance of 536.76 feet;
THENCE North 00°07'40" East, 34.52 feet;
THENCE South 89°52'20" East, parallel with the South line of said Parcel Three, a distance of 20.00 feet;
THENCE South 00°07'40" West, 54.52 feet to a point on the South line of said Parcel Three, where the Southeast corner of said Parcel Three bears South 89°52'20" East, 97.85 feet;
THENCE North 89°52'20" West (Record = North 89°53'00" West) along the South line of said Parcel Three and Parcel One, a distance of 576.76 feet;
THENCE North 00°07'40" East, leaving said South line, 312.02 feet to the POINT OF BEGINNING.

(Basis of Bearings = North 01°16'00" West (distance = 1227.90 feet) line between Corner No. 9 of Homestead Entry Survey No. 418 and a P.K. nail with brass tag #18436 along the East line of said Homestead Entry Survey No. 418).

AND

An easement for ingress, egress and public utilities more particularly described as follows:

COMMENCING at the Northwest corner of Parcel One of Record of Survey / Minor Land Division, Map No. 1624, Gila County Records;
THENCE South 89°53'51" East (Record = South 89°52'48" East) leaving said centerline and along the North line of said Parcel One, a distance of 120.95 feet (Record = 120.75 feet) to a 5/8" rebar with brass tag, L.S. #18436, being a point on the Easterly easement line of said State Route Highway 260 and the TRUE POINT OF BEGINNING;



THENCE continuing South 89°53'51" East (Record = South 89°52'48" East) along said North line, 300.85 feet (Record = 300.86 feet) to a 5/8" rebar with brass tag, L.S. #18436;
THENCE South 00°07'40" West, leaving said North line, 40.00 feet to a 1/2" rebar with brass tag, L.S. #24516;
THENCE North 89°53'51" West, parallel with said North line, 278.93 feet to the 1/2" rebar with brass tag, L.S. #24516;
THENCE South 35°12'56" West, 96.42 feet to a 1/2" rebar with brass tag, L.S. #24516;
THENCE North 54°47'04" West, 40.00 feet to a 1/2" rebar with brass tag, L.S. #24516 and a point on the Easterly easement line of said State Route Highway 260;
THENCE North 35°12'56" East, along said Easterly easement line, 66.27 feet to an A.D.O.T. Alum. Cap;
THENCE North 34°09'46" East (Record = North 33°52'38" East), along said Easterly easement line, 50.28 feet (Record = 50.29 feet) to the POINT OF BEGINNING.

UNOFFICIAL COPY

EXHIBIT "2"

to Resolution No. 2179



Gila County, AZ
Linda Haught Ortega, Recorder
04/21/2006
03:02PM
Doc Code: DRES

Doc Id: 2006-006827
Receipt #: 44025
Rec Fee: 20.00

PIONEER TITLE AGENCY RECORDING

When recorded return to:

G. Michael Horton
7975 N. Hayden Rd., Ste C-360
Scottsdale, AZ 85258



2006-006827
Page: 1 of 9
04/21/2006 03:02P
20.00

DECLARATION

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

TERRA-STAR VALLEY 40, L.L.C., an Arizona limited liability company ("TP"), as the sole owner of all of the property described in Exhibit A attached hereto (the "Property"), hereby declares that all of the Property and the well sites situated thereon shall be subject to all of the covenants, conditions, restrictions, easements, rights and other provisions set forth in this Declaration ("Declaration"). The well sites are described on Exhibit B attached hereto (collectively, the "Well Site").

PURPOSE AND DEFINITIONS.

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

1.2 Definitions. For the purposes of this Declaration:

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

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

"Town" means the Town of Payson, Arizona, a municipal corporation.

"Water Wells" means two water wells and situated on the Well Sites.

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

2. EASEMENTS ON PROPERTY AND WELL SITES AND PIPELINE.

2.1 Easements and Rights. There are hereby created for the benefit of, and use by, the Town all of the permanent, nonexclusive easements and rights in, to, over, under, through and across the Property for access to the Water Wells. The easement shall extend to any additional



adjacent areas reasonably needed for access to the Water Wells.

2.2 No Interference. No Owner shall use this easement in any manner that interferes with the Water Wells.

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

3. LIMITATIONS ON WELL DRILLING.

The Town shall have the right to pump the Water Wells on the property and to construct and pump replacement Water Wells; however, the Owner or Owners of the Property may from time to time drill one or more wells thereon with the Town's consent, provided that any such well or combination of wells has a maximum capacity of five (5) gallons per minute ("gpm") or less, no more than eight (8) acre feet of water is withdrawn from all wells in any calendar year, and no well may be located within one hundred (100) feet of the Water Wells. If the Town determines that the drilling and use of such wells will interfere with the Water Wells, the Town may withhold consent to the location of such wells. The drilling and use of any such new wells shall be subject to any well spacing, monitoring or other reasonable requirements and conditions determined by the Town. Except as specifically provided herein, no well shall be drilled on the Property without the Town's prior written consent, and no Owner shall drill or install a new replacement well in violation of this Section.

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

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

5. ENFORCEMENT.

Any provision of this Declaration that imposes any obligation or restriction upon an Owner or an Owner's Parcel may be enforced by any other Owner or the Town. Any provision of this Declaration relating to the Water Wells may be enforced by the Town. In the event of a default by any Owner with respect to any provision of this Declaration, each other Owner and the Town shall have all rights and remedies provided by this Declaration and applicable law,



including without limitation the right to seek damages, injunctive relief or specific performance, and all such rights and remedies are cumulative and not exclusive.

6. TERM.

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

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

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

7. AMENDMENTS.

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

8. LIMITATION ON LIABILITY.

The Town shall not be liable to any Owner for any act or failure to act, for any decision made by the Town, or for any damages, injuries, losses, costs or expenses of any kind or nature whatsoever arising from or related to any of the obligations or rights of the Town under this Declaration, and each Owner hereby waives any and all claims or causes of the Town for all of the same; provided, however, that nothing limits the liability of each such party for its own gross negligence or intentional misconduct. For purposes of this Section, "the Town" shall include its officers, members, employees, agents, contractors and representatives.

9. DISPUTE RESOLUTION.

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

9.2 Mediation. If a dispute, controversy, or claim arises out of or relates to this Declaration or the breach, termination or invalidity hereof, and if the dispute cannot be settled



through amicable resolution, the parties agree to try in good faith to settle the dispute by mediation before resorting to binding arbitration. The party seeking to have the dispute resolved shall propose at least five (5) neutral mediators, each of whom shall be a lawyer experienced in mediation and licensed to practice by the State of Arizona for at least fifteen (15) years. The other party shall select the mediator from the proposed list. The parties shall split the cost of the mediator equally. The parties agree that no documents or testimony prepared for the mediation will thereby be discoverable in any subsequent arbitration or litigation between the parties. The parties further agree that any applicable statute of limitations will be tolled and extended during this period of mediation. The parties agree that nothing in this clause shall preclude any party from commencing arbitration if said mediation does not reach a resolution of the dispute within sixty (60) days after notice that the mediation period has been commenced.

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

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

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

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

9.7 Governing Substantive Law. The arbitrator(s) shall determine the rights and obligations of the parties according to the substantive laws of the State of Arizona (excluding



conflicts of laws principles) as though acting as a court of the State of Arizona. The parties expressly prohibit the arbitrator(s) from reaching decisions as amiable compositeur.

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

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

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

10. GENERAL

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

A. Notices. Any notice to any party under this Declaration shall be in writing and shall be effective on the earlier of (i) the date when delivered in care of the party's address, or (ii) the date which is three (3) days after mailing (postage prepaid) by certified or registered mail, return receipt requested, to the party's address, or (iii) the date on which sent by facsimile to the party's address with electronic confirmation of receipt thereof and with a copy sent on the same date to the party utilizing one of the other methods of notice specified in this section. Each Owner shall designate to the Town their address (including telephone and facsimile numbers) for notices and may change their address for notices at any time by giving notice in writing in accordance with the provisions of this paragraph. The Town shall make all current address information available to each other Owner. If an Owner does not designate their address, then any party may use any address for such Owner believed in good faith by such party to be an address of such Owner.

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

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

D. Authority. Each of the Owners represents and warrants to each other party hereto that



each instrument delivered hereunder by such Owner, when so delivered, will have been duly authorized by all necessary action, constitutes and will constitute a binding obligation of each such party, and has been duly and validly executed on behalf of such party.

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

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

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

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

I. Remedies. Except as otherwise specifically provided herein, the Irrigation District and each Owner shall have all rights and remedies permitted by this Declaration or applicable law for a breach by any Owner of any provisions of this Declaration, including without limitation specific performance and/or injunctive relief.

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

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

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

[Signature Pages to Follow.]



2006-006827

Page: 7 of 9

04/21/2006 03:02P

20.00

Gila County, AZ

DRES

EXECUTED as of the Effective Date above.

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

By: *[Signature]*

Printed Name: *Le Mitchell Porter*

Title: *President*

UNOFFICIAL COPY



Gila County, AZ

DRES

STATE OF ARIZONA)
) ss.
County of Gila)

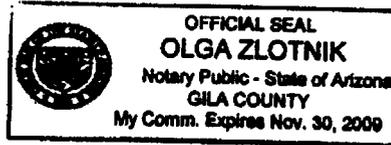
On this, the 21st day of April, 2006, before me, the undersigned Notary Public, personally appeared G. Michael Hart, the President of Terra-Star Valley 40, L.L.C., an Arizona limited liability company, and acknowledged to me that he, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the company by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Olga Zlotnik
Notary Public

My Commission Expires:

Nov. 30, 2009





2006-006827

Page: 9 of 9

04/21/2006 03:02P

20.00

Gila County, AZ

DRES

Exhibit A and Exhibit B

Wellsite "PW-1" and Wellsite "PW-2", as shown on amended Record of Survey / Minor Land Division, recorded November 30, 2005, in Survey Map No. 2985A and 2985B, records of Gila County, Arizona, being a portion of Government Lot 3, Section 32, Township 11 North, Range 11 East of the Gila and Salt River Base and Meridian, Gila County, Arizona.

UNOFFICIAL COPY

EXHIBIT "3"

to Resolution No. 2179



Gila County, AZ
 Linda Haught Ortega, Recorder
 04/21/2006
 03:02PM
 Doc Code: WD

Doc Id: 2006-006828
 Receipt #: 44025
 Rec Fee: 13.00

PIONEER TITLE AGENCY RECORDING



2006-006828
 Page: 1 of 3
 04/21/2006 03:02P
 13.00

Gila County, AZ

WD

When recorded mail to:
TOWN OF PAYSON
303 N. BEELINE HWY.
PAYSON, AZ 85541

Tax Code: A portion of 302-59-009E and
 302-59-009D

WARRANTY DEED

For the consideration of Ten Dollars, and other valuable consideration, I or we,
R & H BOULDER & GRANITE, LLC, an Arizona limited liability company
 do/does hereby convey to

TOWN OF PAYSON, a municipal corporation
 the following real property situated in Gila County, Arizona:
 See Exhibit A attached hereto and made a part hereof.

NO TRANSFER FEE NECESSARY - EXEMPT PURSUANT TO ARS 11-1134 A 3.

SUBJECT TO: Current taxes and other assessments, reservations in patents and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record.

The Grantor warrants the title against all persons whomsoever.

DATED this 7th day of April, 2006

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

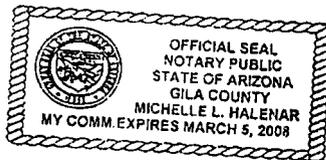
By: *Roy Haught*
ROY HAUGHT, Member

By: *Marie Haught*
MARIE HAUGHT, Member

By: **PAYSON CONCRETE & MATERIALS,**
 INC., an Arizona corporation, Member

By: *George C. Randall*
GEORGE C. RANDALL, President

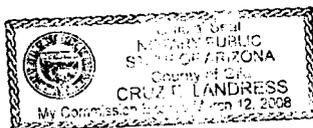
State of Arizona }
 County of Gila } ss



This instrument was acknowledged before me this
7th day of April, 2006 by
ROY HAUGHT and MARIE HAUGHT, as
Member of R & H BOULDER & GRANITE,
LLC, an Arizona limited liability company.

Michelle L. Halenar
 Notary Public

State of Arizona }
 County of Gila } ss



My commission will expire _____
 This instrument was acknowledged before me this
7th day of April, 2006 by
GEORGE C. RANDALL, as President of
PAYSON CONCRETE & MATERIALS, INC.,
an Arizona corporation, as Member of R & H
BOULDER & GRANITE, LLC., an Arizona
limited liability company.

Cruz E. Landress
 Notary Public

My commission will expire _____



Exhibit A

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

COMMENCING at the West corner of Parcel Three of Record of Survey / Minor Land Division Map No. 1624, Gila County Records, said Corner being a point on the North line of Parcel One of said Map No. 1624 and being a 5/8" rebar with brass tag, L.S. #18436;
 THENCE South 00°07'40" West leaving said North line, 312.02 feet to a point on the South line of said Parcel One;
 THENCE South 89°52'20" East, (Record = South 89°53'00" East), along the South line of said Parcel One and Parcel Three, a distance of 576.76 feet;
 THENCE North 00°07'40" East, leaving said South line, 34.52 feet to the POINT OF BEGINNING;
 THENCE North 89°52'20" West, 50.00 feet;
 THENCE North 00°07'40" East, 60.00 feet;
 THENCE South 89°52'20" East, 60.00 feet;
 THENCE South 00°07'40" West, 60.00 feet;
 THENCE North 89°52'20" West, 10.00 feet to the POINT OF BEGINNING.

(Basis of Bearings = North 01°16'00" West, (distance = 1227.90 feet) line between Corner No. 9 of Homestead Entry Survey No. 418 and a P.K. nail with brass tag #18436 along the East line of said Homestead Entry Survey No. 418).

AND

An easement for access, water main, water lines and electric lines described as follows:

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

BEGINNING at the West corner of Parcel Three of Record of Survey / Minor Land Division, Map No. 1624, Gila County Records, said Corner being a point on the North line of Parcel One of said Map No. 1624 and being a 5/8" rebar with brass tag, L.S. #18436;
 THENCE South 89°52'23" East (Record = South 89°52'48" East) along said North line, 20.00 feet;
 THENCE South 00°07'40" West leaving said North line 292.02 feet;
 THENCE South 89°52'20" East, parallel with the South line of said Parcel One and Parcel Three, a distance of 536.76 feet;
 THENCE North 00°07'40" East, 34.52 feet;
 THENCE South 89°52'20" East, parallel with the South line of said Parcel Three, a distance of 20.00 feet;
 THENCE South 00°07'40" West, 54.52 feet to a point on the South line of said Parcel Three, where the Southeast corner of said Parcel Three bears South 89°52'20" East, 97.85 feet;
 THENCE North 89°52'20" West (Record = North 89°53'00" West) along the South line of said Parcel Three and Parcel One, a distance of 576.76 feet;
 THENCE North 00°07'40" East, leaving said South line, 312.02 feet to the POINT OF BEGINNING.

(Basis of Bearings = North 01°16'00" West (distance = 1227.90 feet) line between Corner No. 9 of Homestead Entry Survey No. 418 and a P.K. nail with brass tag #18436 along the East line of said Homestead Entry Survey No. 418).

AND

An easement for ingress, egress and public utilities more particularly described as follows:

COMMENCING at the Northwest corner of Parcel One of Record of Survey / Minor Land Division, Map No. 1624, Gila County Records;
 THENCE South 89°53'51" East (Record = South 89°52'48" East) leaving said centerline and along the North line of said Parcel One, a distance of 120.95 feet (Record = 120.75 feet) to a 5/8" rebar with brass tag, L.S. #18436, being a point on the Easterly easement line of said State Route Highway 260 and the TRUE POINT OF BEGINNING;



THENCE continuing South 89°53'51" East (Record = South 89°52'48" East) along said North line, 300.85 feet (Record = 300.86 feet) to a 5/8" rebar with brass tag, L.S. #18436;
THENCE South 00°07'40" West, leaving said North line, 40.00 feet to a 1/2" rebar with brass tag, L.S. #24516;
THENCE North 89°53'51" West, parallel with said North line, 278.93 feet to the 1/2" rebar with brass tag, L.S. #24516;
THENCE South 35°12'56" West, 96.42 feet to a 1/2" rebar with brass tag, L.S. #24516;
THENCE North 54°47'04" West, 40.00 feet to a 1/2" rebar with brass tag, L.S. #24516 and a point on the Easterly easement line of said State Route Highway 260;
THENCE North 35°12'56" East, along said Easterly easement line, 66.27 feet to an A.D.O.T. Alum. Cap;
THENCE North 34°09'46" East (Record = North 33°52'38" East) along said Easterly easement line, 50.28 feet (Record = 50.29 feet) to the POINT OF BEGINNING.

UNOFFICIAL
COPY

EXHIBIT "4"

to Resolution No. 2179



Gila County, AZ
Linda Haught Ortega, Recorder
04/21/2006
03:02PM
Doc Code: WD

Doc Id: 2006-006829
Receipt #: 44925
Rec Fee: 13.00

PIONEER TITLE AGENCY RECORDING

When recorded mail to:
TOWN OF PAYSON
303 N. BEELINE HWY.
PAYSON, AZ 85541



2006-006829

Page: 1 of 2
04/21/2006 03:02P
13.00

Gila County, AZ

WD

Tax Code: A portion of 302-59-009E

WARRANTY DEED

For the consideration of Ten Dollars, and other valuable consideration, I or we,

TERRA-STAR VALLEY 40, LLC, an Arizona limited liability company

do/does hereby convey to

TOWN OF PAYSON, a municipal corporation

the following real property situated in Gila County, Arizona:

See Exhibit A attached hereto and made a part hereof.

NO TRANSFER FEE NECESSARY - EXEMPT PURSUANT TO ARS 11-1134 A 3.

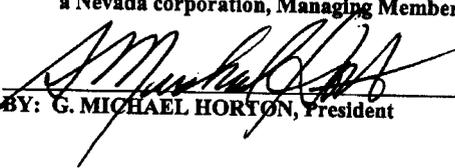
SUBJECT TO: Current taxes and other assessments, reservations in patents and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record.

The Grantor warrants the title against all persons whomsoever.

DATED this 7th day of April, 2006

TERRA-STAR VALLEY 40, LLC,
an Arizona limited liability company

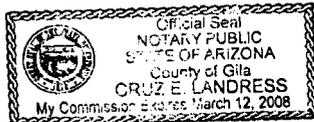
BY: **TERRA CAPITAL GROUP INC.,**
a Nevada corporation, **Managing Member**


BY: **G. MICHAEL HORTON, President**

State of Arizona

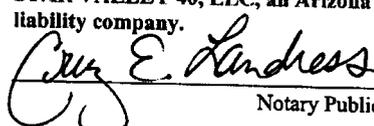
County of Gila

} SS



This instrument was acknowledged before me this
7th day of April, 2006 by

**G. MICHAEL HORTON, as President of
TERRA CAPITAL GROUP INC., a Nevada
corporation, as Managing Member of TERRA-
STAR VALLEY 40, LLC, an Arizona limited
liability company.**


Notary Public

My commission will expire _____



Exhibit A

An easement for wellsite described as follows:

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

COMMENCING at the West corner of Parcel Three of Record of Survey / Minor Land Division, Map No. 1624, Gila County Records, said Corner being a point on the North line of Parcel One of said Map No. 1624 and being a 5/8" rebar with brass tag, L.S. #18436;
 THENCE South 00°07'40" West leaving said North line, 312.02 feet to a point on the South line of said Parcel One;
 THENCE South 89°52'20" East (Record = South 89°53'00" East), along the South line of said Parcel One and Parcel Three, a distance of 576.76 feet;
 THENCE North 00°07'40" East, leaving said South line, 34.52 feet to the POINT OF BEGINNING;
 THENCE North 89°52'20" West, 50.00 feet;
 THENCE North 00°07'40" East, 60.00 feet;
 THENCE South 89°52'20" East, 60.00 feet;
 THENCE South 00°07'40" West, 60.00 feet;
 THENCE North 89°52'20" West, 10.00 feet to the POINT OF BEGINNING.

(Basis of Bearings = North 01°16'00" West, (distance = 1227.90 feet) line between Corner No. 9 of Homestead Entry Survey No. 418 and a P.K. nail with brass tag #18436 along the East line of said Homestead Entry Survey No. 418).

AND

An easement for access, water main, water lines and electric lines described as follows:

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

BEGINNING at the West corner of Parcel Three of Record of Survey / Minor Land Division, Map No. 1624, Gila County Records, said Corner being a point on the North line of Parcel One of said Map No. 1624 and being a 5/8" rebar with brass tag, L.S. #18436;
 THENCE South 89°52'23" East (Record = South 89°52'48" East) along said North line, 20.00 feet;
 THENCE South 00°07'40" West leaving said North line 292.02 feet;
 THENCE South 89°52'20" East, parallel with the South line of said Parcel One and Parcel Three, a distance of 536.76 feet;
 THENCE North 00°07'40" East, 34.52 feet;
 THENCE South 89°52'20" East, parallel with the South line of said Parcel Three, a distance of 20.00 feet;
 THENCE South 00°07'40" West, 54.52 feet to a point on the South line of said Parcel Three, where the Southeast corner of said Parcel Three bears South 89°52'20" East, 97.85 feet;
 THENCE North 89°52'20" West (Record = North 89°53'00" West) along the South line of said Parcel Three and Parcel One, a distance of 576.76 feet;
 THENCE North 00°07'40" East, leaving said South line, 312.02 feet to the POINT OF BEGINNING.

(Basis of Bearings = North 01°16'00" West (distance = 1227.90 feet) line between Corner No. 9 of Homestead Entry Survey No. 418 and a P.K. nail with brass tag #18436 along the East line of said Homestead Entry Survey No. 418).

EXHIBIT "5"

to Resolution No. 2179



Gila County, AZ
 Linda Haught Ortega, Recorder
 04/21/2006
 03:02PM
 Doc Code: LD

Doc Id: 2006-006830
 Receipt #: 44025
 Rec Fee: 13.00

PIONEER TITLE AGENCY RECORDING

When recorded mail to:
TOWN OF PAYSON
303 N. BEELINE HWY.
PAYSON, AZ. 85541

 **2006-006830**
 Page: 1 of 1
 Gila County, AZ MD 04/21/2006 03:02P
 13.00

Tax Code: A portion of 302-59-006D

WARRANTY DEED

For the consideration of Ten Dollars, and other valuable consideration, I or we,
TERRA-STAR VALLEY 40, LLC, an Arizona limited liability company
 do/does hereby convey to

TOWN OF PAYSON, a municipal corporation.

EXEMPT PER ARS11-1134 (13)

the following real property situated in Gila County, Arizona:

Wellsite "PW-1" and Wellsite "PW-2", as shown on amended Record of Survey / Minor Land Division, recorded November 30, 2005 in Survey Map No. 2985A and 2985B, records of Gila County, Arizona, being a portion of Government Lot 3, Section 32, Township 11 North, Range 11 East of the Gila and Salt River Base and Meridian, Gila County, Arizona.

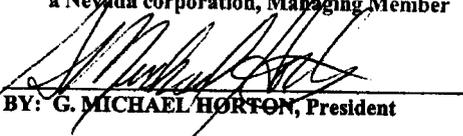
SUBJECT TO: Current taxes and other assessments, reservations in patents and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record.

The Grantor warrants the title against all persons whomsoever.

DATED this 17th day of April, 2006

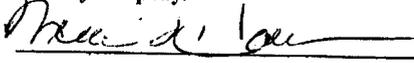
TERRA-STAR VALLEY 40, LLC,
 an Arizona limited liability company

By: **TERRA CAPITAL GROUP INC.,**
 a Nevada corporation, Managing Member


 BY: **G. MICHAEL HORTON, President**

State of Arizona }
 County of Gila } ss

This instrument was acknowledged before me this
17th day of April, 2006 by
G. MICHAEL HORTON, as President of
TERRA CAPITAL GROUP INC., a Nevada
corporation, as Managing Member of TERRA-
STAR VALLEY 40, LLC, an Arizona limited
liability company.


 Notary Public

My commission will expire _____

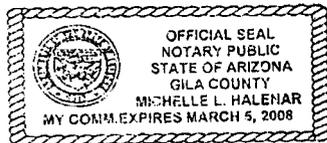


EXHIBIT "6"

to Resolution No. 2179

TO BE GREEN SHEETED