

RESOLUTION NO. 07-842

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CHINO VALLEY, YAVAPAI COUNTY, ARIZONA, APPROVING A WATER RESOURCES AGREEMENT AND LEASE OF HISTORICALLY IRRIGATED ACRES WITH CHINO GRANDE, LLC, AND ENACTING SAID RESOLUTION AS AN EMERGENCY MEASURE TO ENSURE PROTECTION OF THE HEALTH, WELFARE, AND SAFETY OF THE CITIZENS OF CHINO VALLEY.

WHEREAS, the Town of Chino Valley has previously authorized the Town's staff and attorneys to investigate: (i) the availability of water rights associated with "historically irrigated acres" ("HIA") (as that term is defined in A.R.S. § 45-555) in the Big Chino Groundwater Sub-basin; and (ii) the means by which such water rights may be transported into the Prescott Active Management Area ("AMA") to ensure the long-term health, welfare, and safety of the citizens of Chino Valley; and

WHEREAS, Chino Grande, LLC ("Chino Grande"), owner of the Chino Grande Ranch located in the Big Chino Groundwater Sub-basin, owns at least 740, and possibly 1,000 or more, acres of HIA lands; and

WHEREAS, Chino Grande has offered to lease, and subsequently transfer in fee title, all of its HIA lands to the Town and to secure private financing to construct the infrastructure necessary to withdraw and transport groundwater associated with those HIA lands into the Prescott AMA for the use and benefit of the citizens of Chino Valley (the "Water Transportation System");

WHEREAS, Chino Grande has made this offer for a limited period of time, thereby requiring immediate action by the Town Council; and

WHEREAS, the Town Council has determined that it is in the best interests of the citizens of Chino Valley to: (i) lease and subsequently acquire in fee title the HIA lands currently owned by Chino Grande in order to secure a water supply for the Town; and (ii) arrange for construction of the Water Transportation System by means of private financing to protect the fiscal resources of the Town; and

WHEREAS, the form of the Agreement negotiated by Town staff and Chino Grande is attached hereto as **Attachment A** (the "Agreement"); and

WHEREAS, the Town Council's consideration of the Agreement was properly published in the Town Council's notice of public meeting and agenda for its public meeting scheduled for May 10, 2007; and

WHEREAS, consideration of the Agreement having come on regularly for hearing at such public meeting, and the matter having been called for hearing at such time, and an opportunity having been given to all interested parties to be heard; and

WHEREAS, approval of the Agreement will protect the health, safety, and welfare of the citizens of Chino Valley; and

NOW THEREFORE, BE IT RESOLVED by the Town Council of the Town of Chino Valley, Arizona as follows:

1. The Agreement between the Town and Chino Grande in the form attached to this resolution as **Attachment A** is hereby approved by the Town Council.

2. The Mayor, by her signature on this Resolution, confirms her approval of the Agreement and this Resolution pursuant to A.R.S. § 19-342.

3. Because the Town has a strictly limited time within which it may enter into the Agreement, which Agreement will allow the Town to obtain an essential supply of potable water to serve the needs of its citizens and will ensure construction of the Water Transportation System in a timely manner, this resolution is declared to be an emergency measure necessary for the immediate preservation of the peace, health, safety, and general welfare of the citizens of this Town, and shall take effect immediately upon approval by the Town Council as provided by law.

4. The Mayor, Town Manager, Town Clerk, and each of them, are hereby authorized and directed to take all necessary actions to carry out the intent of this resolution, including execution of the Agreement and such other actions as may be required to fulfill the intent of this Resolution.

PASSED AND ADOPTED by the Mayor and Town Council of the Town of Chino Valley, Arizona this 10th day of May, 2007.

Karen Fann, Mayor

ATTEST:

APPROVED AS TO FORM:

Linda York, Deputy Town Clerk

L. William Staudenmaier,
Town Water Attorney

WATER RESOURCES AGREEMENT AND LEASE OF HISTORICALLY IRRIGATED ACRES

THIS WATER RESOURCES AGREEMENT AND LEASE OF HISTORICALLY IRRIGATED ACRES (this “Agreement”) is entered into as of May ____, 2007, by and between the Town of Chino Valley, a political subdivision of the State of Arizona (the “Town”), and Chino Grande, LLC (“Chino Grande”), a Missouri limited liability company authorized to do business in Arizona. Collectively, the Town and Chino Grande are sometimes referred to in this Agreement as the “Parties” and each is referred to as a “Party.”

RECITALS

- A. The Town is a municipal water provider serving potable water for municipal use.
- B. Chino Grande estimates that it owns approximately 1,000 acres of “Historically Irrigated Acres” (as that term is defined in A.R.S. § 45-555(C)(3)), or “HIA,” located within the boundaries of CV Ranch (“CV HIA Lands”). Groundwater may be withdrawn from Confirmed CV HIA Lands (“CV HIA Water”) or from Confirmed Town HIA Lands (as those terms are defined herein) and transported into the Prescott Active Management Area (the “Prescott AMA”) by the Town pursuant to A.R.S. § 45-555. Maps depicting a.) the boundaries of CV Ranch and b.) the locations of both Confirmable CV HIA Lands (as defined in Section 3.3 below) and Confirmed CV HIA Lands, and c.) Confirmed Town HIA Lands are attached to this Agreement at **Exhibits “A-1 to A-3,”** respectively.
- C. The Town desires to lease, and subsequently purchase under an option to purchase, Confirmed CV HIA Lands from Chino Grande, to allow for the withdrawal and transportation of CV HIA Water to the Town, and Chino Grande desires to lease to the Town and grant to the Town an option to purchase the CV HIA Lands, on the terms and conditions set forth in this Agreement.
- D. The Town currently has the legal right to withdraw approximately 648 acre-feet per

year of groundwater (“Town HIA Water”) from approximately 216 acres of HIA near Paulden, Arizona (“Confirmed Town HIA Lands”) for transportation to the Town, and the Town continues to pursue acquisition of additional Historically Irrigated Acres in the Big Chino Groundwater Sub-basin. CV HIA Water and Town HIA Water are collectively referred to in this Agreement as “HIA Water.” The term Town HIA Water shall include all water that may be transported by the Town into the Prescott AMA from Town-owned HIA Lands, whether such lands are currently owned by the Town or are acquired by the Town after the Effective Date.

- E. On April 20, 2007, the Town submitted an application for an analysis of assured water supply to demonstrate physical availability of water from certain wells located near Paulden, Arizona, which are currently owned or to be acquired by the Town (the “HIA Wells”), and the Town contemplates that this application will demonstrate sufficient physical availability to support importation of CV HIA Water and Town HIA Water. A map depicting the locations of the HIA Wells is attached to this Agreement at **Exhibit “B.”**
- F. In order to import HIA Water to the Town, a pipeline must be constructed extending from the HIA Wells to the Town’s municipal water system.
- G. The Parties desire to memorialize their full agreement with respect to terms and conditions governing, among other things, the construction of a water pipeline for the transportation of HIA Water to the Town, the lease of the CV HIA Lands by Chino Grande to the Town, and the Town’s option to purchase the Leased CV HIA Lands from Chino Grande.

EXHIBITS

Attached to this Agreement, and incorporated herein by this reference, are the following exhibits:

- **Exhibit “A-1”:** Map of the CV Ranch
- **Exhibit “A-2”:** Map of HIA on the CV Ranch, showing both Confirmed HIA Lands and Confirmable CV HIA Lands

- **Exhibit “A-3”:** Map of Confirmed Town HIA Lands
- **Exhibit “B”:** Map of the Town’s HIA Wells
- **Exhibit “C”:** Well Modification Specifications
- **Exhibit “D”:** ADWR HIA Report
- **Exhibit “E-1”:** Legal Description of Confirmed CV HIA Lands [Legal description to be provided upon completion of survey.]
- **Exhibit “E-2”:** Legal Description of Confirmable CV HIA Lands [Legal description to be provided upon completion of survey.]
- **Exhibit “F”:** Legal Description of Confirmable CV HIA Lands confirmed subsequent to Effective Date pursuant to A.R.S. § 45-555 [Legal descriptions to be provided as lands are confirmed.]
- **Exhibit “G”:** Sample calculation showing the first and second CV HIA Water Price adjustments
- **Exhibit “H”:** Form of Special Warranty Deed
- **Exhibit “I”:** Memorandum of Water Resources Agreement and Lease

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Effective Date. This Agreement shall be effective as of the date it is (i) approved by the Town Council authorizing the execution of this Agreement by a representative of the Town; and (ii) fully executed by authorized representatives of the Town and Chino Grande (the “Effective Date”).

2. HIA Water Transportation System.

2.1. Water Transportation System Construction. Subject to the Town's preparation and delivery of the "DCR" as defined in Section 2.3, and in order to make the CV HIA Water available to the Town, Chino Grande shall select an entity that is approved by the Town (the "WTS Company") that will own, and will arrange for and manage the design, construction and installation, or cause to be designed, constructed and installed, a pipeline, including all pumps, pipes, valves, appurtenances, storage tanks, meters, leak detection system, telemetry system, back-up power generation, and related water distribution infrastructure and wellhead modifications made pursuant to this Agreement (collectively, the "Water Transportation System") necessary to pump, treat, store, and transport HIA Water from the HIA Wells to a point of interconnection with the Town's existing potable water system, as more particularly described in the Final Plans (defined below) for an estimated price of fifteen million dollars. Chino Grande shall be able to deduct for income tax and other purposes the cost of the Water Transportation System. The Water Transportation System shall be exclusively used for the transportation of HIA Water, or any other waters that may lawfully be transported through the Water Transportation System, provided that any such other waters may not be transported in a manner that would displace transportation of CV HIA Water. The Water Transportation System shall be constructed with new materials and in accordance with (i) this Section 2; (ii) applicable state and local laws, rules, and regulations, including, without limitation, the public bidding requirements of A.R.S. § 34-101 *et seq.* (the "Public Bidding Statutes") (as to which, the Town shall satisfy any requirements applicable solely to public entities); and (iii) Prudent Industry Practices. In this Agreement, "Prudent Industry Practices" means practices, methods, and acts that: (a) at the time that such practice, method or action is employed, and in the exercise of reasonable judgment in light of the facts known at such time, would be expected to accomplish the desired result consistent with applicable law, good business practices, safety, reliability, efficiency, and expedition; and (b) when engaged in, are commonly used or approved by prudent water infrastructure industries operating in the State of Arizona. Prudent Industry Practices are not to be interpreted, construed as, or limited to the optimum industry practices,

methods, or acts, but rather as a range of acceptable practices, methods, or acts. Notwithstanding anything to the contrary contained herein, Chino Grande shall have no obligation or liability with respect to the design, construction and/or installation of the Water Transportation System, other than to secure financing as set forth in Section 2.11 below, and to cause the WTS Company to: (i) undertake the obligations applicable to the WTS Company as set forth in this Agreement; and (ii) enter into a contract with the Town incorporating the obligations applicable to the WTS Company as set forth in this Agreement. All other obligations relating to design, construction and installation of the Water Transportation System shall be satisfied by the WTS Company in a manner consistent with this Agreement. The WTS Company shall agree in writing to assume all such obligations. All obligations, liabilities and warranties made to the Town by the WTS Company with respect to the Water Transportation System shall be deemed also made to Chino Grande.

- 2.2. Wellhead Modification. The WTS Company shall modify, or cause to be modified, the existing HIA Well(s), including any required wellhead treatment, to the extent necessary to make the HIA Wells suitable for potable water production and to increase pumping capacity in accordance with the Town's specifications, a copy of which is attached to this Agreement at **Exhibit "C."** The Town shall provide, at no cost to the WTS Company, plans and technical assistance in connection with the wellhead modifications to be performed hereunder. The WTS Company shall perform, or cause to be performed, any testing and inspections necessary to ensure conformance with the wellhead modification requirements of this Section 2.2. The Town shall permit access and grant any and all permissions required to access the HIA Well(s) for purposes of the modifications thereto. The Town will further waive all permits and fees for these modifications to the full extent it is permitted by law to do so. Upon completion of any needed modification, the pump capacity of each of the HIA Wells shall not be less than 1,000 gallons per minute.

- 2.3. Water Transportation System Design and Alignment; Final Design Specifications. The Town shall be responsible for producing a design concept report specifying the general design of the Water Transportation System and,

upon completion, shall provide to the WTS Company a draft design concept report, which when approved in writing by the WTS Company shall become the final design concept report (“DCR”). The Town and its architect(s) and engineer(s) shall certify to the WTS Company and Chino Grande that the DCR is appropriate and meets all of the Town’s requirements. Upon receipt of the DCR, the WTS Company and, as necessary to comply with the requirements of the Public Bidding Statutes, the Town shall as expeditiously as practicable offer a “design-build” contract (the “Construction Contract”) in a manner consistent with all applicable requirements of the Public Bidding Statutes for construction of the Water Transportation System. Prior to execution of the Construction Contract, the Town shall have the right to review, comment on, and approve the same, which approval shall not be unreasonably withheld, conditioned or delayed. The Town shall either be a party to, or an express third-party beneficiary of, the Construction Contract, with full right of notice pursuant to the same. The contractor selected to construct the Water Transportation System shall produce final plans and specifications (“Final Plans”) for construction of the Water Transportation System, and thereafter shall upon approval of such Final Plans by the Town, as expeditiously as practicable, proceed with construction. The Town shall approve or disapprove the Final Plans not later than 30 days from the date submitted to the Town. The Final Plans shall be consistent with the DCR and the Town shall have the right to review and approve any preliminary plans and the Final Plans to ensure such consistency.

2.3.1. Cost of Construction. If the total cost of the Construction Contract exceeds \$15 million, the Parties shall, prior to executing the Construction Contract, confer regarding alternative design or construction options intended to reduce the total cost of construction. If after consultation the Parties cannot find an alternative design or construction options that will reduce the total costs of construction to \$15 million or less then Chino Grande shall have the option to terminate this Agreement, upon thirty (30) day’s prior written notice to the Town, with neither Party having any further obligation hereunder, and if Chino Grande so elects, the costs expended by each Party shall be borne by that Party, unless the Town agrees in writing prior to the termination of this Agreement by Chino Grande to be responsible for any amounts in excess of \$15 million.

2.4. Master Schedule. Within 30 days after selection of the WTS Company, or such other timeframe as the Parties may mutually agree, the Town and the WTS Company shall meet to agree on a master design and construction schedule (the “Master Schedule”), which shall establish dates for the design and construction of the Water Transportation System as contemplated by this Section 2. Unless otherwise agreed to in writing by the Parties, the Master Schedule shall require the use of commercially reasonable efforts to substantially complete the Water Transportation System by December 31, 2009, provided construction must commence on or before July 1, 2008, unless otherwise consented to in writing by Chino Grande. The Master Schedule, once approved by both Parties, shall become a part of this Agreement.

2.4.1. Construction Progress Reports. During the course of construction of the Water Transportation System, the WTS Company or the contractor selected to construct the Water Transportation System shall provide the Town with monthly written reports regarding the status of construction activities, and advise the Town promptly of any problems encountered in the course of construction, including prompt written notice of the occurrence of any event that would materially interfere with the WTS Company’s ability to complete the Water Transportation System in accordance with the Master Schedule.

2.5. Easements and Rights-of-Way. Prior to the commencement of construction, the Town shall prepare documentation for and acquire, at the Town’s expense, all easements, rights-of-way, and other property rights necessary to construct, operate, maintain, repair, and replace the Water Transportation System.

2.6. Licenses and Permits.

2.6.1. As to WTS Company. Prior to the commencement of construction, the WTS Company shall acquire, at its expense, all licenses, permits, and other governmental approvals necessary to construct the Water Transportation System. The Town shall expeditiously cooperate with the WTS Company in obtaining all such required licenses, permits, and governmental approvals in a timely manner. The Town agrees to waive all fees for any licenses, permits, or approvals issued by the Town in connection with the activities

contemplated by this Section 2 to the full extent the Town is permitted by law to do so.

2.6.2. As to the Town. Prior to the commencement of construction, the Town shall be responsible for obtaining on or before December 31, 2007, an analysis of assured water supply from the Arizona Department of Water Resources (“ADWR”) pursuant to A.A.C. R12-15-703, as amended, which analyzes the hydrologic conditions of the aquifer and use of the HIA Wells to determine whether there is sufficient physical availability to support the withdrawal of no less than 5,000 acre-feet of water per annum for a period of 100 years. If the foregoing analysis is not obtained by the stated date, then at Chino Grande’s election, and upon 30 days written notice to the Town, this Agreement shall terminate and neither Party shall have any further obligation hereunder, and the costs expended by each Party shall be borne by that Party. The Town shall further be responsible for obtaining, maintaining in good standing, and complying with all necessary permits, licenses, and certifications for the operation of the Water Transportation System. Chino Grande and the WTS Company shall cooperate with the Town in obtaining all such determinations, permits, licenses, and certifications in a timely manner. The Town shall be responsible for metering the pumpage from its HIA Wells in conformance with ADWR’s regulations applicable to non-exempt wells, and will share metering information with Chino Grande upon request. Chino Grande shall also be permitted to independently examine, from time to time, the metering of the pumpage and metering records of the Town.

2.7. Town’s Right to Inspect and Complete.

2.7.1. Right to Inspect. During the course of construction, the Town and its agents shall have the right, but not the obligation, to inspect construction of the Water Transportation System for the purpose of auditing, testing, inspecting, examining, including subsurface exploration and testing, as the Town, in the exercise of its reasonable discretion, deems necessary, convenient, or proper to determine whether the Water Transportation System is in compliance with the Final Plans, as amended with the Town’s written consent, Prudent Industry Practices, and state and local laws, rules, and regulations. Any such inspection shall be upon reasonable notice to Chino

Grande and the WTS Company by the Town, and both Parties shall coordinate the timing of any such inspections. The Town shall prepare written reports of its inspections and promptly share such reports with the WTS Company, with a copy being delivered to Chino Grande. The contract with the WTS Company required by Section 2.1 above shall require the WTS Company or its contractors to make such corrections to the construction as may be reasonably directed by the Town to conform to the Final Plans and shall do so in a timely manner to conform to the Master Schedule. Any inspections conducted by the Town pursuant to this Section are not intended nor shall they be construed to constitute an approval or ratification by the Town of the quality or fitness of the Water Transportation System.

2.7.2. Right to Complete. If the WTS Company fails to make commercially reasonable efforts to complete the Water Transportation System in conformance with the Master Schedule and the Final Plans, becomes insolvent or bankrupt, or is in any other material manner impaired or prevented from completing the Water Transportation System in conformance with the Master Schedule and the Final Plans, the Town, following thirty days written notice to the WTS Company which provides a right to cure, and provided that the Town is not in Default of this Agreement, and provided further that no Force Majeure Event has occurred, shall have the right, but not the obligation, to complete construction of the Water Transportation System. The exercise of such right shall not terminate the obligation of the Town under any other provision of this Agreement.

2.8. Meetings. At either Party's request, the Parties shall meet as reasonably requested to discuss issues related to construction of the Water Transportation System or the transportation of HIA Water.

2.9. Acceptance and Dedication.

2.9.1. Completion. When construction of the Water Transportation System is complete, the WTS Company shall notify the Town in writing that the Water Transportation System is ready for final inspection and cause the engineer of the Water Transportation System to certify to the Town and Chino Grande that the Water Transportation System has been constructed in

compliance with the Final Plans. Such certificate shall include any approved material deviations from the Final Plans as indicated by the “as-built” drawings described in Section 2.9.2 below. Any material deviations shall require the Town’s written approval. For purposes of this Section 2.9.1, the Water Transportation System shall be deemed substantially “complete” once all the following have occurred: (i) the Water Transportation System has been constructed in substantial compliance with the Final Plans; (ii) the Water Transportation System has been fully tested and is operational for the purposes for which it is intended; (iii) the Arizona Department of Environmental Quality has determined that the Water Transportation System is built in conformance with all applicable regulatory requirements and has provided its approval to operate; and (iv) any material construction defect or item of non-conformance with the Final Plans has been remedied or corrected to the Town’s reasonable satisfaction. Any non-material items remaining to be completed will be listed on a punch list for completion following acceptance of the completion of construction. Such punch list items shall not constitute a Default (as defined in Section 11.1 below), but the WTS Company shall be obligated to cause all punch list items to be corrected, solely at its cost.

2.9.2. As-Built Requirement. Upon completion of the Water Transportation System, the WTS Company shall furnish the Town with three sets of “as-built” drawings for these works on reproducible Mylar prints and in digital format (GIS shape file format with Metadata existing in NAD 83, Central Arizona Projection, units in feet, or digital files that can be imported into Town’s GIS ESRI software ARCVIEW 9.2) marked as approved by a professional engineer licensed to practice engineering in Arizona.

2.9.3. Lien-Free Requirement. Upon completion of the Water Transportation System, the WTS Company shall cause the Water Transportation System to be free and clear of all liens and encumbrances, except for (i) any liens and encumbrances associated with the financing of the design and construction and related costs of the Water Transportation System, including any such liens and encumbrances the Parties are obligated to place on the rights-of-way or easements through which the Water Transportation System is located in order to secure financing pursuant to Section 2.11 and (ii)

any liens or encumbrances permitted or occasioned by the Town or acts of the Town (collectively, the “Permitted WTS Encumbrances”); and shall certify and deliver evidence reasonably satisfactory to the Town that the Water Transportation System is free and clear of same.

2.9.4. Final Inspection. The Town or its agents shall perform a final inspection (the “Final Inspection”) of the Water Transportation System within 30 days after the WTS Company satisfies the requirements of Sections 2.9.1, 2.9.2, and 2.9.3 above (the “Final Inspection Period”). In connection with the Final Inspection, the WTS Company shall provide the Town copies of all tests and inspections conducted by the WTS Company or its contractors or consultants and documented by written reports. Within the Final Inspection Period, The Town shall issue its written letter of acceptance (the “Letter of Acceptance”); provided, however, in the event the Town identifies any material defects in materials or workmanship, or material non-conformance with the requirements of Sections 2.1, 2.2, or 2.3 above, the Town shall notify Chino Grande and the WTS Company in writing of such defects (the “Defect Notice”) within the Final Inspection Period and the WTS Company shall use commercially reasonable efforts to cure such defects as soon as practicable. After correction of the defects or non-conformance, the WTS Company shall send a supplemental completion notice to the Town. The Town shall have 15 days after the date of such supplemental completion notice to re-inspect the defective portions of the Water Transportation System and issue its Letter of Acceptance. In the event the Town determines that any defects have not been corrected, the Town shall notify the WTS Company in writing, and the WTS Company shall proceed to remedy or correct such defects in accordance with this Section 2.9.4 until the Water Transportation System is accepted by the Town. Any dispute over whether materials or workmanship is defective or not in conformance with the Final Plans shall be resolved in accordance with the terms of the Construction Contract.

2.9.5. Acceptance; Conveyance. Within thirty days following the WTS Company’s receipt of the Letter of Acceptance from the Town, the WTS Company shall cause the Water Transportation System to be conveyed to the Town pursuant to a bill of sale at a cost of no more than \$100 to the Town and free of liens and encumbrances, except for the Permitted WTS Encumbrances.

The date on which this conveyance is made is referred to herein as the “Conveyance Date.” Any such conveyance shall include the warranties set forth in Section 2.9.6 below. Subject to the provisions of Section 2.9.6 below, as of the Conveyance Date, the Town shall thereafter own, operate, and maintain the Water Transportation System at its sole cost and expense, and may use the Water Transportation System for any lawful purpose, including, but not limited to, the transportation of HIA Water, provided, however, that no such use shall result in displacing the transportation of CV HIA Water. All charges and recording fees associated with the conveyance of the Water Transportation System pursuant to this Section 2.9.5 shall be solely borne by the Town and the Town will not levy any tax, assessment or charge of any type whatsoever upon Chino Grande arising out of or related to this Agreement, except to the extent provided for in Section 5.7 in cases of CV HIA Water sold to third parties and transported through the Water Transportation System. Upon conveyance of the Water Transportation System to the Town, the Town shall assume the risk of loss with respect to the Water Transportation System and shall insure the Water Transportation System against any loss or damage thereto.

2.9.6. Warranty. Upon conveyance to the Town of the Water Transportation System, any and all contractors engaged by the WTS Company in the course of designing, constructing or installing the Water Transportation System shall provide a written warranty to the Town warranting, for a period of one year following conveyance of the Water Transportation System to the Town, that: (i) the Water Transportation System will be operational for its intended purposes; (ii) all materials and workmanship for the construction of the Water Transportation System will be of good quality, new and in good working order; (iii) the Water Transportation System will be free from defects; and (iv) the Water Transportation System will conform with the requirements of this Agreement.

2.10. Manuals and Warranties. Upon conveyance of the Water Transportation System to the Town, the WTS Company shall furnish the Town with all manuals provided to it from all contractors and materialmen that are required for operation and maintenance of the Water Transportation System, and shall assign to the Town all warranties received by Chino Grande and/or the WTS

Company from contractors and materialmen in connection with the Water Transportation System so conveyed, whether such warranties arise under the terms of this Agreement or otherwise.

2.11. Construction Financing.

2.11.1. Limited Obligation. It is the intention of the Parties that the costs of constructing and installing the Water Transportation System and modifying the existing HIA Wells, including all direct and indirect costs (collectively, the “Water Transportation System Costs” as defined in Section 2.11.7), be payable solely from the revenues generated under the Water Rights Commitment Agreements (as defined below). The Parties acknowledge and agree that in order to facilitate the completion of the Water Transportation System and the other improvements contemplated by this Agreement in a timely manner, Chino Grande and the Town will have to make monetary advances and secure construction financing (the “Construction Financing”). Notwithstanding any provision herein to the contrary, neither Chino Grande, its principals and Affiliates, nor the Town shall be obligated to incur any personal financial liabilities with respect to the financing of the Water Transportation System Costs. This Section 2.11.1 shall not be construed as creating any indebtedness or general obligation of the Town. As provided in Section 2.11.7 below, any and all advances of funds to pay Water Transportation System Costs shall, subject to proper documentation, be reimbursed from the revenues generated under the Water Rights Commitment Agreements.

2.11.2. Negotiation of Construction Financing. Chino Grande shall be responsible for structuring, negotiating, and obtaining the Construction Financing on terms and conditions consistent with this Agreement. The Town shall cooperate with Chino Grande in structuring, negotiating, and obtaining the Construction Financing in a timely manner. The Town shall provide to Chino Grande, at no expense, the use of any staff of the Town with expertise needed to accomplish the foregoing. Prior to execution of any Construction Financing documents, the Town shall have the right to review, comment on, and approve the same, which approval shall not be unreasonably withheld, conditioned or delayed. The Town shall either be a party to, or shall be an

express third-party beneficiary of, all Construction Financing documents, with a full right to notice pursuant to the same. If Chino Grande and the Town determine that, after making commercially reasonable efforts, the Construction Financing is not available on terms and conditions consistent with this Agreement, the Parties shall negotiate in good faith to develop commercially reasonable financing alternatives. The date on which an irrevocable commitment letter or other financing commitment acceptable to both Parties is obtained pursuant to this Section 2.11 shall hereinafter be referred to as the "Financing Date." If, after Chino Grande makes commercially reasonable efforts, Construction Financing or a commercially reasonable financing alternative is not obtained by December 31, 2007, either Party may, upon 30 days written notice to the other Party, terminate this Agreement with no further obligation by either Party hereunder, and the costs expended by each Party shall be borne by that Party. Any Construction Financing shall be on terms and conditions acceptable to Chino Grande, which shall contain all or a portion of the following: (a) a repayment term of up to ten (10) years; (b) principal amortization on at least a ten year term; (c) interest currently paid or cumulated to a periodic payment date or a balloon date as negotiated with the lender; (d) financing to be secured solely by Commitment Payment Agreements (including, if applicable in bond financing, a debt service reserve fund equal to one year's scheduled principal and interest payments on the bonds) and in a manner set forth in an intercreditor agreement between any holder of a mortgage on the CV HIA Lands and the Construction Financing lender, if applicable, which enables existing land acquisition financing to be retired as acreages are released to close the sale of land related to a Commitment Payment Agreement; and (e) on such other terms and conditions as deemed appropriate and acceptable to Chino Grande.

2.11.3. Advances for Costs of Issuance. Chino Grande shall be responsible for advancing all costs and fees associated with undertaking the Construction Financing ("Costs of Issuance"), to the extent the same cannot be capitalized from the proceeds of the Construction Financing. Any advances of Costs of Issuance by Chino Grande under this Section 2.11.3 shall be, subject to proper documentation, reimbursed from the revenues generated under the Water Rights Commitment Agreements.

2.11.4. Advances for Interest Expense. As of the date on which the Town issues its Letter of Acceptance pursuant to Section 2.9.4, the Town shall be responsible for payment of the accrued interest that becomes payable under the Construction Financing, to the extent the same cannot be capitalized with the proceeds of the Construction Financing. All advances by the Town under this Section 2.11.4 shall be subject to annual appropriations by the Town. Any advances of interest expense shall be, subject to proper documentation, reimbursed from the revenues generated under the Water Rights Commitment Agreements.

2.11.5. Collateral Assignment. The Parties consent to the collateral assignment of the Water Rights Commitment Agreements (defined below) and the Commitment Payments (defined below) for purposes of securing the Construction Financing. This Section 2.11.5 shall not be construed as creating or conveying any lien, charge, encumbrance, or security interest upon any CV HIA Lands.

2.11.6. Disbursement Agent. Unless this Agreement is earlier terminated pursuant to Section 2.11.2 above, within 120 days of the Effective Date, the Parties shall negotiate a custodial agreement (the “Disbursement Agreement”) with a mutually agreeable corporate trust agent (the “Disbursement Agent”) to provide the priorities, terms, and conditions under which proceeds of the Commitment Payments will be disbursed, including, without limitation, repayment of the Construction Financing and the priorities for reimbursement of advances for Costs of Issuance, interest expense, and other expenses authorized for reimbursement under this Section 2.11. The Disbursement Agreement shall provide that the Commitment Payments shall be disbursed in the manner set forth in this Section 2.11.6 within twenty (20) days after Escrow Agent’s delivery of such payments to Disbursement Agent for each Semi-Annual Period. It is contemplated by the Parties that the priorities waterfall for retention of funds and distributions to be set forth in the Disbursement Agreement will be as follows, unless reordered or changed by Chino Grande with the consent of the Town:

- (1) disbursement to any secured lender with a lien on the CV HIA Land as of the Effective Date (or any replacement of such lien that does not increase

the amount of indebtedness secured by such lien) in the amount necessary to obtain a release of the CV HIA Lands or other acreage being sold which is conveyed in exchange for the Commitment Payments or purchase consideration from other third party CV HIA Land sales;

- (2) perpetual and replenished (as drawn upon) funding of all or part of one year's debt service or such other amount as negotiated with any lender on the Construction Financing or other indebtedness incurred for WTS construction, and related costs of land carry such as property taxes and insurance, with disbursements to be made as debt payments and other costs are incurred and paid;
- (3) disbursement to Chino Grande in a cumulative amount under this subsection (3) equal to the highest combined federal and state marginal ordinary income tax rate on all recognized gain, as adjusted if applicable as a result of an amended return or audit, from CV HIA Land sales prior to the date of such disbursement with such computation assuming that Chino Grande's sole source of income and expense is from CV HIA Land sales and related costs;
- (4) payment, or reimbursement to Chino Grande, of all costs of obtaining licenses, permits, governmental approvals, final inspection and corrective costs, if any, and any other authorization or undertaking required to construct the WTS;
- (5) payment or reimbursement to Chino Grande or the Town (whichever may incur such costs), of all costs associated with CV HIA Land sales such as surveying, Marketing Agent commissions, prorated property taxes and other closing costs;
- (6) payment or reimbursement to the Town of the costs of the DCR and other engineering services if not funded out of the Construction Financing or other indebtedness incurred for WTS construction pursuant to Section 2.11.7 hereof;
- (7) disbursement to Chino Grande to reimburse it for any Costs of Issuance for Construction Financing advanced by it pursuant to Section 2.11.3, hereof;
- (8) disbursement to the Town to reimburse it for any advances of interest accruing on the Construction Financing pursuant to Section 2.11.4, hereof;

- (9) perpetual and replenished (as drawn upon) funding on one year's Disbursement Agent costs and fees, with disbursements to be made as costs are invoiced and approved;
- (10) disbursement to Chino Grande of the net proceeds of any third party CV HIA Land sale as to which the Town does not exercise its right of first refusal under Section 5.5 hereof;
- (11) payment of the Construction Financing in full;
- (12) reimbursement *pari passu* of Chino Grande's and the Town's third party (not in house/staff) attorneys' fees to negotiate and draft this Agreement, the Construction Agreement and any other agreements required as part of the Construction Financing including the Disbursement Agreement;
- (13) other Water Transportation System Costs not otherwise specified above, incurred by either Party and which are mutually agreed to by the Parties;
- (14) disbursement to Chino Grande of any remaining funds after items (1) through (13) above.

2.11.7. Water Transportation System Costs. As used in Section 2.11.1 above, and subject to proper documentation, the term "Water Transportation System Costs" shall include any and all applicable direct and indirect costs incurred by either Party to structure and implement this Agreement and the projects contemplated hereunder, including, but not limited to, (i) the cost of the DCR and other engineering services; (ii) attorneys' fees to negotiate and draft this Agreement, the Construction Agreement, and any other agreements required as a part of the Construction Financing, including, without limitation, the Disbursement Agreement; and (iii) the acquisition of required rights-of-way pursuant to Section 2.5 above. No costs shall be included for services provided by employees, staff, or in-house personnel of the Parties. All such costs shall be reimbursed to the Party which incurred the costs either from the proceeds of the Construction Financing, to the extent authorized by the terms of the Construction Financing, as soon as practicable following the closing of the Construction Financing, or, if not authorized by the terms of the Construction Financing, then pursuant to the disbursement waterfall provisions of Section 2.11.6 above.

2.11.8. Limitation. Nothing in this Agreement shall require either Party to expend more than \$500,000 in out of pocket costs directly related to the implementation of this Agreement between the Effective Date and the date on which funds are released following the closing of the Construction Financing. If the out of pocket costs of either Party exceed \$250,000 during this period, the Parties, prior to incurring any additional costs, shall meet and confer regarding the extent to which additional expenditures are necessary or advisable and shall make additional expenditures in excess of \$250,000 per Party only if mutually agreed upon.

3. Lease of Confirmed CV HIA Lands; Option to Lease CV HIA Lands.

3.1. Confirmation of HIA Status. CV HIA Lands that on the Effective Date have been officially determined to be Historically Irrigated Acres by ADWR pursuant to A.R.S. § 45-555(B) are referred to herein as “Confirmed CV HIA Lands.” Those lands that have been so confirmed by ADWR as of the Effective Date are depicted in the ADWR report entitled “Identification of Historically Irrigated Acres in the Big Chino Sub-basin,” which report is attached hereto as **Exhibit “D.”** Within 30 days after the Effective Date, Chino Grande shall, at its sole expense, initiate the preparation of an ALTA survey of the CV HIA Lands (which may include consultation with ADWR to obtain agency-approved descriptions of the CV HIA Lands), which survey shall be performed by a qualified surveyor acceptable to the Title Company (as defined in Section 7.1) and completed as expeditiously as commercially practicable. Upon completion, the Parties shall have the right to review and approve the survey. The survey shall set forth the legal descriptions of the Confirmed CV HIA Lands and Confirmable CV HIA Lands, which shall be added hereto as **Exhibits “E-1” and “E-2,”** respectively. The survey also shall determine the legal description of the Confirmable CV HIA Lands, which shall be added hereto in accordance with Section 3.3 below.

3.2. Exclusive Lease of Confirmed CV HIA Lands; Use, Occupancy and Control
In consideration of the Rent described in Section 3.5 below and the payments set forth in Section 4.5 below, effective as of the Effective Date Chino Grande hereby leases to the Town and the Town hereby leases from Chino Grande, all of the Confirmed CV HIA Lands. The leasehold interest in the Confirmed CV

HIA Lands granted to the Town pursuant to this Section 3.2 is hereinafter referred to as the “Lease.” The Confirmed CV HIA Lands subject to the Lease, and the Confirmable CV HIA Lands, if and at such time as they become subject to this Lease in accordance with Section 3.3 below, are collectively referred to as the “Leased CV HIA Lands.” The rights granted to the Town under the Lease shall include the exclusive right to occupy, control, and use, but not develop, the Leased CV HIA Lands, subject to the terms and conditions of this Agreement, including Chino Grande’s retained grazing rights as set forth in Section 3.6.

3.3. Right to Lease Confirmable CV HIA Lands Confirmed After the Effective Date. It is Chino Grande’s intent to prepare documentary evidence after the Effective Date to support a determination by ADWR that additional property within CV Ranch (“Confirmable CV HIA Lands”) qualifies as Historically Irrigated Acres. The Town shall cooperate with Chino Grande as Chino Grande prepares such documentary evidence and, once prepared, the Town shall submit the same to ADWR. Immediately upon being officially determined to be Historically Irrigated Acres by ADWR pursuant to A.R.S. § 45-555(B), any such additionally confirmed acres shall automatically be deemed Confirmed CV HIA Lands, and shall be included as Leased CV HIA Lands in the Lease as of the date(s) of such determination(s) (the “Subsequent Confirmation Date(s)”). The legal description of the Confirmable CV HIA Lands confirmed as Historically Irrigated Acres after the Effective Date shall be added hereto as **Exhibit “F.”** All costs associated with the determination of Confirmable CV HIA Lands pursuant to this Section 3.3 shall be borne by Chino Grande.

3.4. Lease Term; Extensions.

3.4.1. Term of Lease. The term of the Lease (the “Term” or the “Lease Term”) (i) of Confirmed CV HIA Lands pursuant to Section 3.2 above shall be 110 years from the Effective Date; and (ii) of Confirmable CV HIA Lands confirmed after the Effective Date pursuant to Section 3.3 above shall be 110 years from the Subsequent Confirmation Date(s); provided, however, that the Town shall have the right to extend such terms pursuant to Section 3.4.2 below; and provided further that the Lease has not been terminated in whole

or in part due to the operation of subsection 3.4.3., below.

3.4.2. Extensions to Lease Term. For so long as the Lease is in effect and has not been terminated as provided herein, and provided no Default has occurred which remains uncured, the Town shall have the right to extend the Term of the Lease with respect to those Leased CV HIA Lands subject to the Lease from time to time for the period of time necessary to make the CV HIA Water available to the Town for 100 years from the date of the issuance of any Certificate of Assured Water Supply (“CAWS”) pursuant to A.A.C. R12-15-704, as amended, that is based upon the CV HIA Water. The Town may extend the Term of the Lease by giving notice to Chino Grande in the manner provided for in Section 14.3 below, which notice shall specify the length of time the Town desires to extend the Lease and the Leased CV HIA Lands as to which the Lease is being extended. Upon giving such notice to Chino Grande, the Lease shall be extended as to the applicable Leased CV HIA Lands for a period of 100 years from the date provided in said notice without further action by either Party. The Town shall provide Chino Grande with copies of all CAWS for which an extension of the Lease Term is required pursuant to this subsection within 30 days of the Town’s receipt of the originals of such CAWS from ADWR.

3.4.3. Partial Termination for Non-Performance. The Lease of Leased CV HIA Lands is partially terminable due to the operation of subsection 5.4, pertaining to Town’s failure to meet the Annual Commitment requirement set forth therein.

3.5. Rent. The Town shall pay to Chino Grande a one-time rent payment of \$10.00 for each acre of the Leased CV HIA Lands (the “Rent”) as follows:

3.5.1. As to Leased CV HIA Lands Confirmed as of Effective Date. The Rent applicable to each acre of Leased CV HIA Lands confirmed as of the Effective Date (approximately 740 acres) shall be paid to Chino Grande by the Town by December 31, 2007. One hundred percent of the Rent shall be reimbursed to the Town out of proceeds from the commitment of CV HIA Water pursuant to Section 4 below.

- 3.5.2. As to Leased CV HIA Lands Confirmed after Effective Date. The Rent applicable to each acre of Leased CV HIA Lands confirmed after the Effective Date by ADWR pursuant to Section 3.3 above (up to approximately 260 acres) shall be paid to Chino Grande by the Town within 60 days of the Subsequent Confirmation Date. One hundred percent of the Rent shall be reimbursed to the Town out of proceeds from the commitment of CV HIA Water pursuant to Section 4 below.
- 3.6. Retained Grazing Rights. The CV Ranch, including without limitation the Leased CV HIA Lands, is as of the Effective Date subject to a grazing lease and a farming lease. The Town acknowledges that the grazing lease does not interfere with the use and occupancy contemplated under its Lease of the CV HIA Lands. The Parties agree, however, that the farming lease shall be terminated within 30 days after the Effective Date, and Chino Grande shall take all steps necessary to ensure that the farming lease is terminated and all irrigation activities cease on the Leased CV HIA Lands within such 30 day period. In consideration for the Town's right to purchase CV HIA Lands as set forth in Section 4.5 of this Agreement, the Town agrees that Chino Grande shall retain the right to graze livestock on the Leased CV HIA Lands until such time, if any, that the Town shall purchase all or a portion of such lands from Chino Grande in accordance with Section 4.5 of this Agreement.
- 3.7. Other Expenses During Lease Term. Each Party shall pay all of its own costs and expenses arising in connection with the Leased CV HIA Lands.
- 3.8. Insurance. The Town and Chino Grande shall each obtain and keep in force during the Term a policy of commercial general liability insurance in a commercially reasonable amount written on an occurrence basis insuring against any liability arising out of their respective use and occupancy of the Leased CV HIA Lands and all areas appurtenant thereto.
- 3.9. Memorandum of Lease, Option to Purchase, and Grantor's Right to Reserve Easement and Covenants. Within 30 days after a legal description of the Confirmed and Confirmable CV HIA Lands has been prepared, if requested by either Party, a Memorandum of Lease shall be recorded as provided in Section 13 evidencing the Lease and the Option to Purchase the Leased CV

HIA Lands granted to the Town.

- 3.10. Termination of Lease. Any termination of this Agreement will terminate the lease of the CV HIA Lands to the Town. Upon such termination, the Parties will record a notice of termination terminating the memorandum set forth in Section 3.9.

4. Water Commitments; Payment of CV HIA Water Price; Option to Purchase; Transfer of Title to Leased CV HIA Lands; Title Review.
 - 4.1. CV HIA Water Commitments. Pursuant to Section 5 below, the Town shall use commercially reasonable efforts to commit CV HIA Water (a “CV HIA Water Commitment”) for use by developers and any other party to whom it has the lawful right to make such commitments (“CV HIA Water Beneficiaries”) to enable them to obtain an assured water supply for developments within the Prescott AMA to be served by the Town’s municipal water utility. The Town shall make such commitments pursuant to terms and conditions established by the Town in separate agreements with such CV HIA Water Beneficiaries (the “Water Rights Commitment Agreements”). Alternatively, if ADWR designates the Town as having an assured water supply on the basis of the CV HIA Water, the Town shall make commercially reasonable efforts to commit the CV HIA Water for use by CV HIA Water Beneficiaries who will not be required to separately obtain CAWS for their developments within the Town. The price charged to CV HIA Water Beneficiaries by the Town for a CV HIA Water Commitment made prior to the start of the second Contract Year (defined below) shall be not less than \$45,000 per acre-foot (or \$9,000 per residential unit permitted pursuant to each applicable subdivision plat, whichever is greater) of 100-year supply of CV HIA Water so conveyed, as upwardly adjusted pursuant to Sections 4.2 and 4.3 (the “CV HIA Water Price”). Beginning at the start of the second Contract Year and at the start of each Contract Year thereafter, the CV HIA Water Price shall be subject to adjustment pursuant to Section 4.2 below. Calendar year 2008 shall constitute the first “Contract Year” and each successive calendar year thereafter during the term of this Agreement shall also constitute a “Contract Year.”

- 4.2. CV HIA Water Price Adjustment. The CV HIA Water Price for each Contract Year of this Agreement after the first Contract Year shall be adjusted at the beginning of each Contract Year by the amount of any change during the preceding Contract Year as determined by reference to the Construction Cost Index and Building Cost Index published in the Engineering News-Record, the average of which indices is hereinafter referred to as the “ENR Index,” provided that said adjustment shall not result in a decrease in the CV HIA Water Price. The month of January shall be the month referenced in the ENR Index for purposes of making the adjustments required by this Section 4.2, and the reference period for each adjustment shall be the previous Contract Year. The formula to be used to adjust the CV HIA Water Price shall be: $[(\text{Current ENR Index} - \text{Previous ENR Index}) \div \text{Previous ENR Index} + 1] \times \text{Previous CV HIA Water Price} = \text{Adjusted CV HIA Water Price}$. For example, for the adjustment to be made in 2008, the calculations shall be as follows: The ENR Index for January 2007 shall be subtracted from the ENR Index for January 2008. The result shall then be divided by the ENR Index for January 2007. One shall then be added to the resulting quotient, and that result shall then be multiplied by the CV HIA Water Price of the previous year to determine the CV HIA Water Price for the then existing year. In the event the ENR Index is discontinued, the Parties shall agree to substitute another index generally recognized to be reasonably comparable. A sample calculation showing the first and second CV HIA Water Price adjustments is attached to this Agreement as **Exhibit “G”**.
- 4.3. Minimum Price for CV HIA Water. Sections 4.1 and 4.2 above notwithstanding, the CV HIA Water Price shall not be lower than the highest amount previously received by the Town for Town HIA Water.
- 4.4. CV HIA Water Beneficiaries’ Payment for CV HIA Lands. The Water Rights Commitment Agreements shall provide that the CV HIA Water Beneficiaries shall remit 100 percent of payments for the CV HIA Water Commitment in cash, by wire transfer or via certified check (the “Commitment Payments”) to the Escrow Agent (defined below). The Town shall be obligated to ensure that CV HIA Water Beneficiaries pay, and Chino Grande has the right to receive, the CV HIA Water Price in an amount not less than the Commitment Payment, subject to the payment waterfall priorities set forth in Section 2.11.6

above, as payment for conveyance of the Confirmed CV HIA Lands pursuant to Section 4.5.

4.5. Exercise of Option to Purchase; Transfer of Commitment Payments to Chino Grande; Conveyance of Leased CV HIA Lands to the Town.

4.5.1. During the term of this Agreement, provided no Default has occurred which remains uncured, the Town shall have the option to purchase the Leased CV HIA Lands. The option may be exercised only as and to the extent that the applicable Commitment Payments are deposited by CV HIA Water Beneficiaries with the Escrow Agent. The Town may exercise its option only by delivering written notice (the "Election Notice") to Escrow Agent and Chino Grande from time to time on or before the last business day of each January and July in each Contract Year. The Election Notice shall specify the amount of the Commitment Payments deposited with the Escrow Agent in the preceding semi-annual period (January – June and July – December) (each a "Semi-Annual Period") and the Town's election to exercise the option to purchase the acreage of Leased CV HIA Lands corresponding to such Commitment Payments.

4.5.2. The closing of the transfer of Leased CV HIA Lands to the Town shall occur at the offices of the Escrow Agent in accordance with the following procedure and the escrow instructions of the Parties which are not inconsistent with this Agreement. Subject to Section 4.5.3 below, throughout the term of this Agreement, on or before the last business day of each January and July, Chino Grande shall deliver to the Escrow Agent a special warranty deed in substantially the recordable form attached as **Exhibit "H"** (the "Special Warranty Deed") conveying the number of acres to be conveyed based on Commitment Payments which have been delivered to Escrow Agent for the preceding Semi-Annual Period. At the Closing, the Escrow Agent shall, in accordance with Section 7 below, (i) release to the Disbursement Agent the total amount of Commitment Payments received by the Escrow Agent during the immediately preceding Semi-Annual Period, together with interest received thereon, less the Rent paid by the Town for the relevant Leased CV HIA Lands pursuant to Section 3.5 above; (ii) release to the Town an amount equal to such Rent payments; (iii) record the Special Warranty

Deed delivered by Chino Grande conveying to the Town fee simple title to the applicable number of Leased CV HIA Lands in accordance with the requirements of Section 4.6 below; (iv) deliver, or issue an unconditional commitment to deliver, the Title Policy (defined in Section 6.1 below) to the Town; and (v) deliver to the Town an affidavit from Chino Grande stating that Chino Grande is not a “foreign person” as defined in the Internal Revenue Code of 1986, or other appropriate evidence that the Town is not required to withhold taxes under Section 1445(a) of the Internal Revenue Code. To the extent less than 40 acres of Leased CV HIA Lands remain after all other Leased CV HIA Lands have been conveyed hereunder (the “Odd-Lot Acres”), the Escrow Agent shall, pursuant to this Section 4.5.2 and Section 7 below, convey to the Town the entire quantity thereof (i.e., an amount less than forty acres) by a single Special Warranty Deed after the Escrow Agent has received, in full, Commitment Payments for the CV HIA Water applicable to the Odd-Lot Acres (i.e., Odd-Lot Acres x 3 x the then-applicable CV HIA Water Price).

4.5.3. If, at the conclusion of a Semi-Annual Period, the Escrow Agent has not received Commitment Payments for at least 120 acre-feet of CV HIA Water (the “Minimum Closing Amount”), the Escrow Agent shall hold such Commitment Payments and not release them or record a Special Warranty Deed conveying Leased CV HIA Lands until the conclusion of the following Semi-Annual Period (or such subsequent Semi-Annual Period in which the Minimum Closing Amount has been deposited).

4.5.4. In the event that Chino Grande shall find it advisable to seek an alternative Escrow Agent to hold the funds transferred by the Town as provided herein, the Town and Chino Grande shall work cooperatively to select a successor escrow agent.

4.6. Orderly Conveyance of Leased CV HIA Lands. So as to avoid random transfer of title of Leased CV HIA Lands, the Leased CV HIA Lands conveyed to the Town pursuant to Section 4.5.2 above shall be conveyed in contiguous blocks of 40 acres or more beginning with the northernmost Leased CV HIA Lands and progressing in a southerly direction as additional Leased CV HIA Lands are conveyed. Upon the Town’s delivery of an

Election Notice, Chino Grande shall identify the applicable acreage for conveyance to the Town, attempting insofar as practicable to ensure that the acres of Leased CV HIA Lands thereafter conveyed shall be contiguous to another acre of Leased CV HIA Lands previously conveyed, and shall direct the surveyor to prepare a legal description therefor and deliver it to the Escrow Agent.

- 4.7. Chino Grande Conveyance subject to Restrictive Covenants and Reservation of Easements. Prior to conveying title to the Leased CV HIA Lands, or any portion thereof, Chino Grande may reserve ingress and egress easements over, under, across and through such Leased CV HIA Lands for future utilities and roadways serving lands retained by Chino Grande. In addition, such other non-water consuming uses upon which the Parties may subsequently agree (such as, by way of example and not limitation, grazing), and the Parties shall meet to determine the location and precise scope of such uses. Any easements shall be in such form and substance as is necessary to satisfy requirements of applicable government authorities including without limitation those approving any subdivision plat for lands retained by Chino Grande. The Town shall assist and cooperate with Chino Grande with respect to the foregoing. Prior to the conveyance of the CV HIA Lands pursuant to this Section 4.7, Chino Grande shall further have the right to record perpetual restrictive covenants on the Leased CV HIA Lands which run with the land and which prohibit the development of such lands and require that they shall remain substantially in their natural state as open space.
- 4.8. Retirement of CV HIA Lands from Irrigation. Within 30 days after the Effective Date, Chino Grande shall retire from irrigation all Leased CV HIA Lands in exchange for ADWR approval for the Town to withdraw and transport CV HIA Water pursuant to that certain application known as Request for Transportation of Groundwater Withdrawn in the Big Chino Sub-basin to the Prescott Active Management Area (form number 761659) filed by the Town with respect to the CV HIA Land on April 26, 2007, as such application may be supplemented or amended from time to time (the "Transportation Application"). The Parties hereby agree that if ADWR rejects the Transportation Application, Chino Grande shall have the right to reinstitute irrigation of the CV HIA Lands. Any lands retired from irrigation

pursuant to this Section 4.8 may be used by Chino Grande for grazing purposes, provided no water is withdrawn from such lands for stockwatering use.

- 4.9. Title Review Within 15 days after a legal description of the Confirmed and Confirmable CV HIA Lands has been prepared and delivered to Escrow Agent, Escrow Agent shall deliver to the Town and Chino Grande a Commitment by the Title Company (the “Title Commitment”) to issue the Title Policy. The Title Commitment shall be accompanied by legible copies of all documents referred to therein as exceptions to title. The Town shall have 15 days after its receipt of the Title Commitment and legible copies (or best copies available to the Title Company) to review the Title Commitment and deliver to Chino Grande and Escrow Agent written notice of its objection to any title exception reflected in the title documents delivered to the Town. If the Town delivers a title objection notice, Chino Grande may, but shall not be required to, attempt to eliminate the disapproved title matter within 15 days thereafter (“Title Cure Period”). If Chino Grande does not eliminate or cure the disapproved title matter within such 15 day period, the Town’s sole and exclusive remedy shall be either to terminate this Agreement by giving written notice of termination, or to agree to take title subject to the disapproved title matter. If written notice terminating the Agreement is not delivered by the Town within 5 days after expiration of the Title Cure Period, the Town shall be deemed to have elected to take title subject to the disapproved title matter which, together with all other matters shown on the Title Commitment, shall be deemed “Permitted Encumbrances.”

5. Minimum Annual HIA Water Commitment.

- 5.1. Town’s Minimum Annual Commitment. The Town shall make commercially reasonable efforts to commit to HIA Water Beneficiaries the right to rely upon (for assured water supply purposes) a minimum of 280 acre-feet of CV HIA Water each Contract Year (the “Annual Commitment”). The Annual Commitment obligation of the Town shall only be satisfied upon: (i) delivery of the corresponding Commitment Payments to the Escrow Agent pursuant to Section 4.4 above; (ii) submittal of an Election Notice to the Escrow Agent by the Town for the corresponding number of acres of CV HIA Lands; and (iii)

the transaction for such acres closes no later than the end of the next Semi-Annual Period following the Contract Year in question. However, provided the Town has not exercised its right of first refusal as detailed in Section 5.5 below, Chino Grande shall have the right to sell a quantity of CV HIA Water (and the corresponding number of acres of CV HIA Lands) equivalent to the amount by which the Town fails to satisfy its Annual Commitment. The Town and Chino Grande shall cooperate in identifying and securing the services of a qualified independent water marketing professional or firm (the "Marketing Agent"), and the fees assessed by the Marketing Agent shall be paid by the Disbursement Agent as provided in Section 2.11.6 above.

- 5.2. Preliminary Commitments. Commitments of CV HIA Water, if any, effectuated between the Effective Date and December 31, 2007 shall be credited as commitments during the first Contract Year.
- 5.3. Additional Commitments by the Town. After fulfilling its minimum commitment obligation (the Annual Commitment) in any Contract Year, the Town shall have the right to commit (for assured water supply purposes), and to receive Commitment Payments for, Town HIA Water in quantities equivalent to 20 percent of the quantity of CV HIA Water committed during that same Contract Year. During 2007, the Town shall be free to commit up to 100 acre-feet of Town HIA Water regardless of the quantity of CV HIA Water committed in 2007, and the Town shall use a portion of the proceeds of such commitments of Town HIA Water to defray the Town's costs incurred in relation to this Agreement.
- 5.4. Failure to Meet Annual Commitment. If the Town fails to meet the Annual Commitment in any Contract Year, Chino Grande shall have the right, subject to Section 5.5 below, to convey in the subsequent Contract Year a quantity of CV HIA Water equal to the number of acre-feet by which the Town failed to meet the Annual Commitment (a "Commitment Shortage"), provided such water is conveyed to a third party for use outside of the Town's municipal boundaries. For example, if in the second Contract Year the quantity of CV HIA Water committed by the Town equals 190 acre-feet, Chino Grande may market up to 30 acres of Leased CV HIA Lands and up to 90 acre-feet of CV HIA Water for use outside of the Town's boundaries, provided the Town has

first declined to purchase such amount of CV HIA Water pursuant to Section 5.5 below. A quantity of Leased CV HIA Lands equal to the number of acre-feet of CV HIA Water conveyed to third parties pursuant to this Section 5.4 or Section 5.6 below divided by three shall be released from the Lease.

- 5.5. Town's Right of First Refusal. At least 30 days prior to consummating a transaction with a third party as contemplated by Section 5.4 above, Chino Grande shall notify the Town that it has 30 days to purchase from Chino Grande a quantity of CV HIA Water equal to the amount Chino Grande seeks to convey pursuant to a bona fide offer to purchase from a third party (the "Offer"). The Town will have the right to purchase CV HIA Water pursuant to the terms of the Offer by giving written notice to Chino Grande within ten days after Town's receipt of the Offer ("Acceptance Notice"). If the Town timely and properly elects to exercise the Right of First Refusal upon the terms contained in the Offer, the Town will be bound to purchase the same strictly in accordance with the terms of the Offer. If (i) the Town notifies Chino Grande in writing that the Town elects not to match an Offer upon the Town's receipt of any Offer, or (ii) the Town does not timely deliver an Acceptance Notice to Chino Grande with respect to any Offer, then Chino Grande shall have no further obligation to the Town under this Section 5.5 with respect to the applicable Offer, and Chino Grande shall thereafter have the right to sell the CV HIA Water to the third party who initially made the Offer in accordance with the terms of such Offer. Notwithstanding the foregoing to the contrary, once Chino Grande and a third party purchaser have entered into a purchase and sale agreement for the CV HIA Water and opened escrow, Chino Grande shall have the right to revise the terms of such purchase and sale agreement in a manner that does not materially change the terms of the Offer as presented to the Town, including the right to adjust the purchase price specified in the Offer by not more than three percent, without incurring any liability to Town under this Section 5.5. The Town shall not allow the Right of First Refusal to be placed of record. The entire amount of CV HIA Water purchased by the Town pursuant to the Right of First Refusal, or conveyed to a third party after the Town declines or fails to exercise its Right of First Refusal, shall be credited towards the Annual Commitment of the immediately preceding Contract Year and the difference between the Annual Commitment and such quantity purchased shall represent the new

Commitment Shortage (if any) from that year. For example, if in the first Contract Year the Town commits 190 acre-feet pursuant to its obligations under Section 5.1 above and in the second Contract Year purchases 30 acre-feet of CV HIA Water pursuant to the Right of First Refusal, the Commitment Shortage in the first Contract Year shall equal 60 acre-feet. Time is strictly of the essence of each and every provision in this Section 5.5.

- 5.6. Cumulative Effect of Town's Failure to Meet its Annual Commitment Obligation. Beginning with the first Contract Year, a running cumulative total of the Annual Shortage and Annual Surplus (defined herein as the number of acre-feet of CV HIA Water committed by the Town in a Contract Year pursuant to Section 5.1 above, plus any water conveyed to a third party pursuant to Section 5.4 or acquired by the Town pursuant to Section 5.5, minus the Annual Commitment) shall be determined for each Contract Year. If, after the conclusion of a Contract Year, the cumulative total of all Annual Shortages less the cumulative total of all Annual Surpluses equals or exceeds that year's Cumulative Deficit (as defined below), the Town shall have 180 days to: (i) commit to third parties who make Commitment Payments to the Escrow Agent, or acquire (by making direct payment to the Escrow Agent), the necessary quantity of CV HIA Water to reduce the Cumulative Deficit below the quantity specified for that Contract Year; (ii) submit an Election Notice to the Escrow Agent for the corresponding number of acres of CV HIA Lands; and (iii) close the transaction for such acres no later than the end of the next Semi-Annual Period following the Contract Year in question. For purposes of this Section 5.6, the term "Cumulative Deficit" shall mean, in the first Contract Year 180 acre-feet, in the second Contract Year 170 acre-feet, in the third Contract Year 160 acre-feet, in the fourth Contract year 150 acre-feet, and in each subsequent Contract Year after the fourth Contract Year, 140 acre-feet. The Town's failure to convey or purchase such amount of CV HIA Water after such 180-day period shall constitute a Default for purposes of Section 11 below, and shall entitle Chino Grande to terminate this agreement pursuant to Section 11, provided, however, in the event the Water Transportation System has been completed, the terms and provisions of Section 5.7 shall survive termination of this Agreement and shall extend to marketing efforts for CV HIA Water beyond Section 5.4. The amount of any CV HIA Water sold to third parties by Chino Grande for use outside of the

Town's municipal boundaries during the above-referenced 180-day period shall be credited against the Cumulative Deficit.

- 5.7. Covenant of Cooperation. To the extent commercially reasonable, the Town covenants to cooperate with Chino Grande in its efforts to market HIA water to third parties, to effectuate Chino Grande's rights to market such water rights as authorized under Section 5.4 hereof, including by providing available capacity (*i.e.*, capacity not then being used to deliver water to customers of the Town's municipal water utility) in the Water Transportation System and those portions of the Town's water mains that may be interconnected to the Water Transportation System, provided that Chino Grande or the third party acquiring such water rights from Chino Grande shall pay the Town's established, non-discriminatory utility rates for transportation of potable water in the Town's municipal water system, excluding the cost of distribution of water to the Town's retail water customers. The Town shall also cooperate with Chino Grande or any third party acquiring water rights pursuant to Section 5.4 in obtaining a water storage permit for storage of such water in the Town's existing or future permitted water storage facilities, provided that Chino Grande or the third party acquiring such water rights shall pay all costs of obtaining the water storage permit and shall thereafter pay an annual fee sufficient to cover the proportionate share of the cost of operating, maintaining and repairing the water storage facilities (and a proportionate share of the cost of constructing any future permitted water storage facilities not in existence on the Effective Date). CV HIA Lands sold to third party buyers will operate as a partial termination of the Lease as to those lands, and the Parties will amend the Memorandum of Water Resources Agreement and Lease to reflect the revised legal description. In the event the Water Transportation System has been completed, the terms and provisions of this Section 5.7 shall survive termination of this Agreement and shall extend to marketing efforts for CV HIA Water beyond Section 5.4.

6. Conditions to Lease and Subsequent Purchase; Environmental Site Assessment.
 - 6.1. Contingencies to Lease and Subsequent Exercise of Options. The Town's obligation to lease the CV HIA Lands, and to subsequently purchase the Leased CV HIA Lands upon exercise of the option to purchase, is subject to the satisfaction of

the following conditions: (i) Chino Grande's representations and warranties set forth in Section 12.1 below are materially true, complete, and correct, on and as of the Effective Date and the date of conveyance pursuant to Section 4.5.2 above; (ii) the environmental site assessments conducted pursuant to Section 6.2 below have confirmed there are no recognized environmental conditions affecting the Leased CV HIA Lands; (iii) Chino Grande has the legal power, authority and ability to deliver to the Town exclusive possession of the Leased CV HIA Lands, subject to the Permitted Activities; and (iv) as of the date of conveyance, deliver to the Town a policy of title insurance insuring the Town's fee simple title to the CV HIA Lands conveyed pursuant to Section 4.5.2 above (the "Title Policy"). The Title Policy required by this Section 6.1 shall be an ALTA Extended Owner's Policy of Title Insurance and shall be subject to standard preprinted exceptions and the Permitted Encumbrances. The Title Policy shall be in an insured amount equal to the designated land value as provided in Section 7.2 and shall insure the Town's fee simple title to the property being conveyed. The Town may at its election and its cost obtain such endorsements as are deemed necessary by the Town and reflected in the Title Commitment.

6.2. Environmental Site Assessment.

6.2.1. After the Financing Date. Within 10 days after the Financing Date, Chino Grande shall, at its sole expense, cause to be commenced (and completed as expeditiously as commercially practicable) a Phase I Environmental Site Assessment of the Confirmed and Confirmable CV HIA Lands in accordance with the American Society for Testing and Materials ("ASTM") Standard E 1527 – 05 for the purpose of identifying the existence of any recognized environmental conditions in connection with the CV HIA Lands. If Chino Grande has previously secured a Phase I Environmental Site Assessment that satisfies ASTM Standard 1527 – 05, it may have that Phase I updated, provided that the environmental professional performing such site assessment confirms in writing that the Town shall be entitled to rely on the contents thereof. If the environmental professional conducting the Phase I Environmental Site Assessment determines that below ground testing for recognized environmental conditions (*i.e.*, a Phase II Environmental Site Assessment) is warranted, the Parties shall promptly meet to confer regarding how to proceed; provided, however, the Town, at its sole discretion, may immediately terminate this Agreement as to any future performance owed by

the Town. Chino Grande shall provide to the environmental professionals conducting the site assessment such historical information regarding the CV HIA Lands as may be reasonably requested to facilitate the site assessment, and shall make available for meetings with the environmental professionals appropriate personnel having knowledge of such matters. Any and all environmental reports prepared pursuant to this Section 6.2 shall be for the benefit of the Town, and the environmental professional preparing the reports shall expressly confirm in writing that the Town shall be entitled to rely on the contents thereof.

6.2.2. Upon Conveyance of CV HIA Lands. The Town may, at its expense (but subject to reimbursement pursuant to Section 2.11.6), update the Phase I Environmental Site Assessment required under Section 6.2.1 above pursuant to ASTM Standard E 1527 – 05 as to any CV HIA Lands conveyed to the Town pursuant to Section 4.5.2 of this Agreement. Any environmental conditions found to exist at such time shall, if caused by Chino Grande, be remediated to the extent they are no longer a recognized environmental condition and do not present a significant risk to human health and the environment. If Chino Grande fails or is unable to successfully remediate such environmental conditions in accordance with the foregoing standard, the Town may accept the CV HIA Lands or decline to acquire the CV HIA Lands.

7. Closing; Escrow.

7.1. The Town and Chino Grande shall provide written instructions to Chicago Title Insurance Company, Attn: Melissa Cocanower, Branch Manager, 2398 East Camelback Road, Suite #250, Phoenix, Arizona 85016 (the “Escrow Agent”) to hold all documents and Commitment Payments required for the water commitments contemplated under Section 4.5.2 of this Agreement, including, without limitation, the Special Warranty Deed and the escrow instructions, which escrow instructions shall contain the provisions set forth in the form attached as **Exhibit “I”** to this Agreement and such other instructions as are appropriate consistent with this Agreement (the “Escrow Instructions”). From the date of deposit until closing of each conveyance of Confirmed CV HIA Lands pursuant to Section 4.5.2 above, the Commitment Payments shall be invested in an account (the “Escrow Account”) for the

benefit of and at the direction of Chino Grande, and Escrow Agent shall be so instructed. The Parties may provide additional instructions to the Escrow Agent provided they are agreed to in writing by both Parties and are not inconsistent with the Escrow Instructions. As used in this Agreement, the term “Title Company” means Chicago Title Insurance Company.

- 7.2. Upon the conveyance of Confirmed CV HIA Lands in accordance with Section 4.5.2 above (a “Closing”), the Escrow Agent shall: (i) record the Special Warranty Deed with the County Recorder for the County of Yavapai, Arizona, for recordation in the Official Records of Yavapai County; (ii) deliver to Disbursement Agent the Commitment Payments (less the Rent reimbursement to the Town pursuant to Section 3.5 above) applicable to the relevant Confirmed CV HIA Lands in accordance with the Settlement Statement (as defined in the Escrow Instructions); (iii) remit to the Town the Rent reimbursement applicable to the relevant Confirmed CV HIA Lands pursuant to Section 3.5 above; and (iv) deliver the Title Policy to the Town. The Town and Chino Grande shall furnish to the Escrow Agent, in a timely manner, any information requested by the Escrow Agent that is necessary for the Escrow Agent to perform its duties in connection with Chino Grande’s conveyance of Confirmed CV HIA Lands to the Town and the transfer of the Commitment Payments to the Disbursement Agent.
- 7.3. Closing Costs. All costs and expenses of closing pursuant to this Section 7, including recording and escrow fees and charges and the costs of any title reports associated with the conveyance of the Confirmed CV HIA Lands pursuant to Section 4.5.2 above shall be divided equally between the Town and CV.
8. Groundwater Pumping: Mitigation and Conservation.
 - 8.1. Water Conservation. The Town and Chino Grande shall work cooperatively to develop and implement continuing water conservation measures applicable to the CV HIA Lands, which conservation measures shall include the perpetual prohibition of water-intensive uses of such lands. The uses of the CV HIA Lands may include recreation and open-space with native vegetation, but any irrigation after retirement is strictly prohibited. The CV HIA Lands

shall not be developed, and no permanent structures may be constructed thereon except as necessary to accomplish the purposes of this Agreement.

- 8.2. Water Conservation Ordinances. The Town shall pass ordinances that strictly limit any water consumptive uses of Town-owned HIA Lands, and shall use these acres for conservation purposes or for water resource enhancement projects.
- 8.3. HIA Water Use Restrictions. The Town shall ensure that water imported from HIA Lands will be applied solely to developments that utilize low water use landscaping and that rely on alternative water supplies, such as rain harvesting, direct use of effluent, or gray water, for any exterior water uses.
- 8.4. Chino Grande Conservation Easements. Chino Grande shall engage in good faith negotiations with an established non-profit land conservation organization to enter into a perpetual conservation easement that shall preclude any development of not less than 20% of the total acres owned in fee title by Chino Grande on the CV Ranch (in addition to the CV HIA Lands already subject to this Agreement). Chino Grande shall conclude such negotiations within two years after the Effective Date and shall refrain from any development of at least the number of acres specified in this Section 8.4 until the conclusion of negotiations. If, after making good faith efforts to negotiate a conservation easement consistent with this Section 8.4, Chino Grande is unable to consummate such a conservation easement, the Town and Chino Grande shall meet to determine alternative ways of perpetually preserving at least the number of acres specified in this Section 8.4.
- 8.5. Monitoring and Mitigation. The Town and Chino Grande shall work cooperatively to develop and implement a continuing groundwater monitoring and mitigation program to address protection of Upper Verde River base flows and the potential effects, if any, of groundwater pumping pursuant to this Agreement. Mitigation measures may include surface water and/or effluent recharge projects on CV HIA Lands, Town HIA Lands, or at other locations determined by the Parties. The terms and conditions of the program contemplated by this Section 8.5 shall be the subject of a separate agreement to be negotiated in good faith by the Parties.

9. Town Ownership, Control, and Use of Effluent.

9.1. Effluent Defined. For purposes of this Section 9, the term “Effluent” means sewage or wastewater generated within the geographic area served by the Town’s sewer system, including by any persons or entities receiving HIA Water pursuant to this Agreement, which has been treated to acceptable federal, state, and local standards by any treatment facility used by the Town.

9.2. Town’s Ownership and Control of Effluent. The Town shall own and control all Effluent (as defined in Section 9.1 above) and shall be free to use such Effluent for any lawful purpose, including, but not limited to, sale, direct reuse, underground storage and recovery, and mitigation of any impacts caused by groundwater pumping.

10. Force Majeure Event. Neither the Town nor Chino Grande (nor the WTS Company to the extent it is prevented from performing its obligations as specified in this Agreement), shall be liable to the other for failure, Default, or delay in performing any obligation hereunder, other than for the payment of money obligations specified herein, in case such failure, Default, or delay is caused by strikes, slowdowns, or lockouts; floods, fire, casualties, earthquake, or other act of God; epidemics or quarantine restriction; freight embargoes or lack of transportation; unavoidable accident; war, insurrection, riot, or acts of a public enemy; interference by civil authorities; passage of state or federal laws, rules or regulations; acts, failures to act, decisions, or orders or regulations of any governmental or military body or agency, office, or commission; the failure of a governmental agency or a private entity to issue a permit/approval; orders of a court of competent jurisdiction, including, but not limited to, injunctions; or the inability (when the Party that is unable to perform is substantially without fault) of any contractor, subcontractor, or supplier to perform acts, which create conditions causing a material delay in construction of the Water Transportation System or the withdrawal of water from the Town HIA Lands or CV HIA Lands; or any other cause, whether or not of similar nature, not within the control of the Party affected and which, by the exercise of due diligence, such Party is unable to prevent (“Force Majeure Event”). Any actions taken by the Town shall not be deemed to be a Force Majeure Event upon which the Town may rely to excuse,

cease or terminate its performance under this Agreement. Additionally, in the event a Force Majeure Event occurs that under another portion of this Agreement gives a Party the right or option to terminate this Agreement, the right or option to terminate this Agreement shall supersede the terms of this Section 10. A Party's failure, Default, or delay in performance shall be excused only for so long as the Force Majeure Event continues. Should a Force Majeure Event occur, the Party claiming the Force Majeure Event shall, within thirty days of learning of that event, notify the other Party of the same; and the Parties shall proceed with diligence to do what is reasonable and necessary with respect to the Force Majeure Event so that the Parties may perform their respective obligations under this Agreement. If, after two years of good faith and diligent efforts by the Parties from the commencement of the Force Majeure Event, the Parties are unable to eliminate, cure, or overcome the Force Majeure Event and to resume performance, either Party may terminate this Agreement as to future performance hereunder. Any Confirmed CV HIA Lands already conveyed to the Town in fee title pursuant to Section 4.5.2 above shall remain the Town's property and shall be unaffected by the occurrence of a Force Majeure Event or termination of this Agreement. If this Agreement is terminated pursuant to this Section 10, the Escrow Agent shall distribute to the Disbursement Agent all undelivered CV HIA Water Payments, if any, then being held in the escrow account, convey to the Town a number of acres of Confirmed CV HIA Lands corresponding to such undelivered CV HIA Water Payments, and deliver to the Town the applicable Rent reimbursement. For example, if, upon termination of this Agreement pursuant to this Section 10, Commitment Payments for three acre-feet of CV HIA Water remain in the escrow account, the Escrow Agent shall distribute these funds to the Disbursement Agent (less the applicable Rent), convey to the Town one acre of Confirmed HIA Lands, and deliver to the Town \$10 as reimbursement for the applicable Rent.

11. Dispute Resolution.

11.1. Default Defined. For purposes of this Agreement, a "Default" occurs when a Party to this Agreement commits a material breach of its terms, and where a remedy for such breach is not otherwise provided within this Agreement. The term "Default" includes, but is not limited to: (i) the appointment of a receiver to take possession of all or substantially all of the assets of a Party; (ii) a general assignment by a Party for the benefit of creditors; (iii) a Party is

involved in financial difficulties as evidenced by: (a) admitting in writing the inability to pay its debts generally as they come due, or (b) filing or approving a petition in bankruptcy, for reorganization, or for the adoption of an arrangement under the Bankruptcy Act or answering or responding to any other pleading filed by or on behalf of the Party admitting the material allegations thereof or consenting to or acquiescing in the relief provided for under such Act.

- 11.2. Notice of Default; Right to Cure. Any claim that a Party is in Default or breach of this Agreement shall be in writing and delivered to the address provided in Section 14.3 below. No Default shall become effective until 30 days after the date of mailing, during which time the Party claimed to be in Default shall have an opportunity to cure or resolve the alleged Default. If the Default cannot reasonably be cured within the 30-day period provided above, and if the Party alleged to be in Default has diligently attempted to cure the Default and continues to diligently attempt to cure the Default, then the cure period provided for in this Section 11.2 shall extend up to, but in no case longer than, 60 days.
- 11.3. Judicial Recourse. Upon the expiration of the period for notice of Default and right to cure, the non-defaulting Party may terminate this Agreement, and be relieved of any further obligations to the defaulting Party, but the termination of this Agreement shall not terminate any payment obligations or other obligations relating to past performance. If an event of Default is not resolved within the applicable time period, either Party may submit the dispute to a court of competent jurisdiction in accordance with Section 11.4 below and may seek any remedy available at law or in equity; provided, however, upon mutual agreement, the Parties may submit the dispute to mediation or binding arbitration in lieu of litigation in a court of law. Notwithstanding the foregoing provision of this Section 11.3, if an event of Default has occurred that under another portion of this Agreement gives a Party the right or option to terminate this Agreement, the right or option to terminate this Agreement shall supersede the right of the Parties to submit such matter to litigation, mediation or binding arbitration. Provided, however, that in the event the Water Transportation System has been completed, the terms and provisions of Section 5.7 shall survive termination of this Agreement and shall extend to

marketing efforts for CV HIA Water beyond Section 5.4.

11.4. Jurisdiction and Venue. Any action brought to interpret, enforce, or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona, County of Maricopa or, if the Superior Court lacks or declines jurisdiction, in the United States District Court for the District of Arizona. All Parties irrevocably consent to this jurisdiction and venue and agree not to transfer or remove any action commenced in accordance with this Section 11.

12. Representations and Warranties.

12.1. Chino Grande. Chino Grande represents and warrants to the Town and covenants that:

12.1.1. Existence and Powers. Chino Grande is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Missouri, is qualified to do business in the State of Arizona, and is duly qualified to do business wherever necessary to carry on the business and operations contemplated by this Agreement.

12.1.2. Authorization. Chino Grande has the full power, authority, and legal right to enter into and perform its obligations set forth in this Agreement and all action necessary to authorize the execution and delivery of this Agreement, and the performance by Chino Grande of its obligations hereunder has been duly taken.

12.1.3. Binding Obligation. This Agreement has been duly entered into and delivered and constitutes a legal, valid, and binding obligation of Chino Grande, fully enforceable in accordance with its terms.

12.1.4. Title and Use of Property. Subject only to those exceptions described in the Title Commitment, Chino Grande holds fee simple title to the Leased CV HIA Lands as against all others, and no other party holds any interest whatsoever created by or through Chino Grande, including, but not limited to, encroachments, easements, licenses, leases, royalties or otherwise

in the Leased CV HIA Lands.

12.1.5. Hazardous Wastes. To the best of Chino Grande's knowledge, (i) the Leased CV HIA Lands have not been and are not now being used for the generation, transportation, treatment, storage, or disposal of any hazardous or toxic wastes or substances (collectively, "Hazardous Wastes") that are subject to regulation under any federal, state, or local laws or regulations ("Hazardous Waste Laws"); and (ii) there have been no past or current releases or substantial threats of a release of any Hazardous Wastes from or onto the Leased CV HIA Lands that are or may be subject to regulation under the Hazardous Waste Laws.

12.1.6. Location of CV HIA Lands. Leased CV HIA Lands are strictly located within the boundaries of the CV Ranch and do not include any lands located within the boundaries of the CF Ranch.

12.1.7. Assessments. To the best of Chino Grande's knowledge, no public improvements are under development that will or could result in any charges being assessed against the Leased CV HIA Lands and that will or could result in a lien or encumbrance upon the Leased CV HIA Lands or its owners.

12.1.8. Condemnation. To the best of Chino Grande's knowledge, there is no pending or contemplated condemnation or taking by inverse condemnation of all or any portion of the Leased CV HIA Lands by any governmental authorities.

12.1.9. No Conflicts. To the best of Chino Grande's knowledge, the execution and delivery of this Agreement and the consummation by Chino Grande of the transactions contemplated herein do not (i) conflict with or violate any of the terms of the articles of incorporation or by-laws of Chino Grande or an affiliate; (ii) conflict with, or result in or constitute a default under or breach or violation of or grounds for termination of, any permits or other governmental approvals to which Chino Grande or an affiliate is a party or by which Chino Grande or an affiliate may be bound; or (iii) in any way violate any agreements to which Chino Grande is a party.

12.1.10. Shared Expense. There are no shared expense agreements, repayment agreements, or development payback agreements that affect all or any portion of the Leased CV HIA Lands and that could require any owner of the Leased CV HIA Lands to pay any money in full or partial satisfaction of those agreements.

12.1.11. Adverse Possession. To the best of Chino Grande's knowledge, there are no parties in adverse possession of the Leased CV HIA Lands, and no party uses or is in possession of the Leased CV HIA Lands other than Chino Grande and its lessees under the grazing and farming leases.

12.1.12. No Default. This Agreement will not constitute a default under or result in the creation of any, lien, charge, encumbrance, or security interest upon any Leased CV HIA Lands or upon the Water Transportation System.

12.1.13. No Adverse Actions. Other than any litigation disclosed in writing by Chino Grande to the Town prior to the Effective Date (the "Disclosed Litigation"), and to the best of Chino Grande's knowledge, there are no citations, summons, complaints, penalties, actions, suits, investigations, or other proceedings, at law or in equity, before or by any court or governmental body, pending, or to the best of Chino Grande's knowledge, threatened against Chino Grande, wherein an unfavorable decision, ruling, or finding would materially adversely affect the performance by Chino Grande of its obligations hereunder, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other agreement entered into by Chino Grande in connection with the transaction contemplated hereunder.

12.1.14. Financial Condition. There has been no material adverse change in Chino Grande's financial condition that would impair Chino Grande's ability to perform its obligations under this Agreement, and neither Chino Grande nor any creditors of Chino Grande have filed any type of proceeding under the United States Bankruptcy Code.

12.1.15. Contractors. The WTS Company shall be obligated to maintain direction and control of all contractors and shall promptly pay all amounts

owing and due to all contractors retained, engaged, employed, or directed by the WTS Company to provide materials or services necessary to fulfill the WTS Company's obligations contemplated under this Agreement.

12.1.16. Veracity of Representations and Warranties. No statement, representation, or warranty by Chino Grande contains any untrue statement of material fact, or, to the best of Chino Grande's knowledge, omits to state any material fact, necessary to make such statements, representations, and warranties not misleading.

12.2. The Town. The Town represents and warrants to Chino Grande and covenants that:

12.2.1. Existence and Powers. The Town is a municipal corporation validly existing under the laws of the State of Arizona, with full legal right, power, and authority to enter into and to perform its obligations pursuant to the terms and conditions of this Agreement.

12.2.2. Authorization and Binding Obligation. This Agreement has been duly authorized, executed, and delivered by all necessary action of the Town and constitutes a legal, valid, and binding obligation of the Town, enforceable against the Town in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, or other similar laws affecting creditors' rights from time to time in effect.

12.2.3. No Conflicts. Neither the execution nor delivery by the Town of this Agreement, nor the performance by the Town of its obligations in connection with the transactions contemplated herein or the fulfillment by the Town of the terms or conditions hereof (i) conflicts with, violates, or results in a material breach of any constitution, law, charter, or bylaws applicable to the Town; or (ii) conflicts with, violates, or results in the material breach of any term or condition of any order, judgment, or decree, or any contract, agreement, or instrument to which the Town is a party or by which the Town or any of its respective properties or assets are bound.

12.2.4. No Adverse Actions. To the best of the Town's knowledge, there

are no judgments, decrees, or orders of any court or governmental body against the Town that could be expected to materially and adversely affect the Town's ability to perform its obligations hereunder.

12.2.5. Location of CV HIA Lands. Town acknowledges that the Lease does not include any lands, whether historically irrigated or not, located within the boundaries of the CF Ranch. The Town acknowledges that Chino Grande has, prior to the Effective Date, identified in writing for the Town the pendency of the Disclosed Litigation.

12.2.6. Veracity of Representations and Warranties. No statement, representation, or warranty by the Town contains any untrue statement of material fact, or, to the best of the Town's knowledge, omits to state any material fact, necessary to make such statements, representations, and warranties not misleading.

12.2.7. Use of Water Transportation System. The Water Transportation System shall at all times be available for use to transport HIA Water, and no other uses of the Water Transportation System may displace any HIA Water otherwise available for transportation pursuant to this Agreement. Provided that capacity is available in the Water Transportation System for other sources of water that may lawfully be transported in the Water Transportation System, the Town may transport such water, but shall be solely responsible for all costs associated with such transportation.

12.3. Survival of Representations and Warranties. The representations and warranties of Chino Grande and the representations and warranties of the Town contained in this Agreement shall be true and correct as of the Effective Date and shall survive for a period of 18 months following the last Closing, which shall be the Closing on the conveyance of that final parcel of real estate that exhausts Chino Grande's ownership of Confirmed HIA Lands.

13. Memorandum of Agreement. Following the Effective Date, and the preparation of a legal description of the Leased CV HIA Lands, the Parties shall sign and the Town shall have the right to record the Memorandum of Water Resources Agreement and Lease, including a disclosure that the Memorandum shall be automatically conformed

upon a full or partial termination of this Agreement, a form of which is attached hereto as **Exhibit “J.”**

14. General Provisions.

14.1. Incorporation of Recitals. The Recitals set forth above are incorporated in this Agreement by this reference as if fully set forth and are acknowledged and agreed to by the Parties.

14.2. Conflict of Interest. Notice is hereby given of the provisions of A.R.S. § 38-511. By this reference, the provisions of that statute are incorporated in this Agreement to the extent of their applicability to contracts of the nature of this Agreement under the laws of the State of Arizona.

14.3. Notice. Except as otherwise required by law, any notice required or permitted under this Agreement must be in writing and must be given by either: (i) personal delivery; (ii) United States certified mail, return receipt requested, with all postage prepaid and properly addressed; or (iii) any reputable, private overnight delivery service with delivery charges prepaid and proof of receipt. No notice of any kind shall be by telecopy, facsimile, or e-mail. Notice sent by any of the foregoing methods must be addressed or sent to the Party to whom notice is to be given, as the case may be, at the addresses set forth below (or such other addresses as the Parties may advise in writing):

The Town:

Town Manager
Town of Chino Valley
1020 West Palomino Road
P.O. Box 406
Chino Valley, Arizona 86323

with a copy to:

Ryley Carlock & Applewhite
Attn: L. William Staudenmaier
One North Central, Suite 1200
Phoenix, Arizona 85004-4417

Chino Grande: Chino Grande, LLC
13397 Lakefront Drive, suite 240
Earth City, Missouri 63045
Attn: Rodney H. Thomas and David Green

with a copy to: Lewis and Roca, LLP
Attn: Michael F. McNulty, Esq.
One S. Church Ave, Suite 700
Tucson, Arizona 85701

Notice provided by the methods described above will be deemed to be received: (i) on the business day of delivery, if personally delivered; (ii) on the date that is three days after deposit in the United States mail, if given by certified mail; or (iii) on the next regular Business Day after deposit with an express delivery service for overnight, “same day,” or “next day” delivery service. No notice will be effective unless provided by one of the methods described above.

14.4. Entire Agreement. This Agreement (including all exhibits) constitutes the entire understanding among the Parties regarding the subject matter of this Agreement, supersedes any and all previous understandings among the Parties regarding the subject matter of this Agreement, and binds and inures to the benefit of the Parties, their successors, and assigns. Neither Party has entered into this Agreement in reliance upon any oral or written representation or information provided by the other Party.

14.5. Modification. This Agreement shall not be modified or amended except by written instrument executed by both Parties and adopted in the manner by which this Agreement was adopted.

14.6. No Waiver. No waiver of any violation of this Agreement shall be implied from any failure by a Party to take any action with respect thereto, nor shall any such failure constitute a waiver of the same or any other provision hereof with respect to any future violation.

14.7. No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties, including any CV HIA Water Beneficiary; provided however,

that notwithstanding anything to the contrary contained in this Agreement, this Agreement shall not become effective until Chino Grande's mortgagee (the "Mortgagee") shall have consented in writing to this Agreement, and until such consent is provided, the Effective Date of this Agreement shall be delayed to the date thereof; and provided further that (i) should the Mortgagee disapprove this Agreement in writing, or (ii) should the Mortgagee have failed to approve this Agreement in writing on or before December 31, 2007, then in either event this Agreement shall be of no force or effect unless Chino Grande in writing waives such requirement.

14.8. No Joint Venture or Partnership. The Parties acknowledge that in entering into this Agreement, they are acting as independent entities and not as agents of the other in any respect and hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing in this Agreement shall be construed as making them joint venturers or partners.

14.9. Severability. If any part of this Agreement proves to be unenforceable for any reason, the Parties shall seek to resolve all issues raised in a manner consistent with the purpose of this Agreement. The remaining provisions of this Agreement shall continue in full force and effect and shall be binding on the Parties so long as the primary purposes for entering into this Agreement are not defeated.

14.10. Successors and Assigns. All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the Town and Chino Grande. Other than as is provided in Section 2.1 of this Agreement, neither Party may assign its rights or obligations under this Agreement to any other entity or person without the express written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed, provided that Chino Grande shall not be required to obtain the Town's consent in the event of assignment to an affiliated company of Chino Grande, which shares common ownership or control of not less than fifty percent of the members of Chino Grande. In the event of an assignment to an Affiliate, Chino Grande shall provide written notice of the same to the Town pursuant to Section 14.3 above.

14.11. Headings. Section headings used in this Agreement are for convenience and reference only and do not define, limit, or describe the scope or intent of any provision of this Agreement.

14.12. Applicable Law. The terms, conditions, and provisions of this Agreement shall be governed by and construed in accordance with the law of the State of Arizona.

14.13. Attorneys' Fees. If any claim arising out of this Agreement is brought by a Party against the other Party in a court of law, including any action for declaratory or injunctive relief, the prevailing Party shall be entitled to reasonable attorneys' fees and costs and expenses of litigation and investigation, and any judgment or decree rendered in any such action or proceeding shall include an award of reasonable attorneys' fees, costs, and expenses.

14.14. Remedies Cumulative. In the event of a Default under this Agreement which is not cured within the applicable cure period, the Parties shall be entitled to exercise any remedy available at law or in equity. Subject to the limitations set forth in this Agreement, the rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies that a Party would otherwise have at law or in equity.

14.15. No Party the Drafter. This Agreement is the product of negotiation among the Parties. No Party is deemed the drafter of this Agreement. Consistent therewith, the rule of strict construction shall not be imposed in interpreting this Agreement, but rather this Agreement shall be interpreted in a manner that best gives effect to the intentions of the Parties.

14.16. Time is of the Essence. Time is of the essence concerning every provision of this Agreement.

14.17. Further Assurances. If further instruments, assurances, or other things are reasonably necessary or desirable to carry out the terms of this Agreement, either Party shall execute and deliver all instruments and assurances and do all things reasonably necessary or desirable to carry out the terms of this Agreement.

14.18. Authorizations. The signatories to this Agreement represent that they have been appropriately authorized to enter into this Agreement on behalf of the Party for which they sign, and that no further action or approvals are necessary before execution of this Agreement.

14.19. Counterparts. This Agreement may be signed in more than one counterpart,

and each such counterpart shall be deemed to be an original legally enforceable document, and all taken together shall be deemed one and the same document.

14.20. Failure of Payments; Termination. Notwithstanding any other provision of this Agreement, if at any time between December 31, 2007 and the date on which fee title to all CV HIA Lands has been transferred to the Town, the total amount of funds paid by the Escrow Agent to the Disbursement Agent in any two consecutive Contract Years is less than \$10 million, whether by reason of a Force Majeure Event or any other reason or no reason whatsoever, Chino Grande shall have the right to terminate this Agreement by written notice to the Town; provided, however, that if the Town has exceeded its Annual Commitment in any Contract Year as set forth in Section 5.1 above, the amount of funds paid by the Escrow Agent to the Disbursement Agent in excess of the amount required to satisfy the Annual Commitment (*i.e.*, the amount of funds in excess of 280 acre-feet multiplied by the then-current CV HIA Water Price), shall be credited toward the Town's satisfaction of the \$10 million minimum specified in this Section 14.20 during the subsequent two Contract Years. If this Agreement is terminated pursuant to this Section 14.20, the Escrow Agent shall distribute to the Disbursement Agent all undelivered CV HIA Water Payments, if any, then being held in the Escrow Account, and convey to the Town a number of acres of Confirmed CV HIA Lands corresponding to such undelivered CV HIA Water Payments.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first written above.

TOWN OF CHINO VALLEY, a municipal corporation of
the State of Arizona

By: _____

Its: _____

Approved as to Form:

Town Water Attorney

CHINO GRANDE, LLC, a Missouri limited liability
company

By: _____

Its: _____

Exhibit "A-1"
Map of the CV Ranch

Exhibit “A-2”

Map of HIA on the CV Ranch, showing both Confirmed HIA Lands and Confirmable CV
HIA Lands

Exhibit “A-3”

Map of Confirmed Town HIA Lands

Exhibit “B”

Map of the Town’s HIA Wells

Exhibit “C”

Well Modification Specifications

Exhibit “D”
ADWR HIA Report

Exhibit “E-1”

Legal Description of Confirmed CV HIA Lands

[Legal description to be provided upon completion of survey.]

Exhibit “E-2”

Legal Description of Confirmable CV HIA Lands

[Legal description to be provided upon completion of survey.]

Exhibit “F”

Legal Description of Confirmable CV HIA Lands confirmed subsequent to Effective Date
pursuant to A.R.S. § 45-555

[Legal descriptions to be provided as lands are confirmed.]

Exhibit "G"

Sample Calculation Showing First and Second CV HIA Water Price Adjustments

1st CV HIA WATER PRICE ADJUSTMENT

Current Index	1.03
Previous Index	1.00
Previous CV HIA Water Price	\$45,000/acre-foot

Example Calculation

$$\left[\frac{(1.03 - 1.00)}{1.00} + 1 \right] \times \$45,000 = \$46,350/\text{acre-foot}$$

2nd CV HIA WATER PRICE ADJUSTMENT

Current Index	1.05
Previous Index	1.00
Previous CV HIA Water Price	\$46,350/acre-foot

Example Calculation

$$\left[\frac{(1.05 - 1.03)}{1.03} + 1 \right] \times \$46,350 = \$47,250/\text{acre-foot}$$

Exhibit “H”
[FORM OF SPECIAL WARRANTY DEED]
TO BE PROVIDED

Exhibit ‘T’

Memorandum of Water Resources Agreement and Lease