



**Agenda**  
**Work Study and Possible Executive Session**  
**Queen Creek Town Council**  
Queen Creek Town Hall, 22350 S. Ellsworth Road  
Council Chambers  
October 17, 2012  
5:30pm

**1. Call to Order**

**2. Roll Call** (one or more members of the Council may participate by telephone)

**3. Motion to adjourn to Executive Session (to be held in the Saguaro Conference Room of the Municipal Services Building) for the following purposes:**

A. Discussion and consultation with the Town Attorney for legal advice with the Town's Attorney and representatives regarding the sale or lease of 20-acre parcel in Town Center. A.R.S. 38-431.03(A)(3), (4) and (7).

B. Discussion and consultation with the Town Attorney for legal advice and to consider the Town's position and advise its attorney regarding pending or contemplated litigation: Queen Creek v. Astrue-Case 2:11-cv-0042; Dominquez v. Town of Queen Creek (Lloyd); Ackert v. State of Arizona, Pinal County, Maricopa County, City of Apache Junction, San Tan Valley and Town of Queen Creek (Notice of Claim). A.R.S. 38-431.03(A)(3).

C. Discussion and consideration of assignments of Town Manager (A.R.S. §38-431.03(A)(1)).

**ITEMS FOR DISCUSSION** These items are for Council discussion only and no action will be taken. In general, no public comment will be taken.

**4.** Presentation on the SB1598 compliance project – "Time Frames".

**5.** Presentation by Barry Broome of Greater Phoenix Economic Council (GPEC).

**6. Adjournment**



**Agenda**  
**Regular and Possible Executive Session**  
**Queen Creek Town Council**  
Queen Creek Town Hall, 22350 S. Ellsworth Road  
Council Chambers  
October 17, 2012  
7:00 p.m.

**1. Call to Order**

**2. Roll Call** (one or more members of the Council may participate by telephone)

**3. Pledge of Allegiance:**

**4. Invocation:** Pastor Aaron Pennington – Central Christian Church – Queen Creek

**5. Ceremonial Matters:** Presentations, Proclamations, Awards, Guest Introductions and Announcements.

- Proclamation – Arizona Cities & Towns Week October 22-26, 2012
- Presentation of ICMA (International City/County Management Association) Award for Performance Measurement

**6. Committee Reports**

A. Council summary reports on meetings and/or conferences attended. This may include but is not limited to Phoenix-Mesa Gateway Airport; MAG; East Valley Partnership; CAAG. The Council will not propose, discuss, deliberate or take legal action on any matter in the summary unless the specific matter is properly noticed for legal action.

B. Partner agencies quarterly or periodic updates to Council. This may include but is not limited to Queen Creek Chamber of Commerce; Queen Creek Performing Arts Center; Boys & Girls Club of East Valley; and Maricopa or Pinal County Board of Supervisors or other governmental agencies. The Council will not propose, discuss, deliberate or take legal action on any matter in the summary unless the specific matter is properly noticed for legal action.

- Queen Creek Chamber of Commerce – 1<sup>st</sup> Quarter Report
- Queen Creek Performing Arts Center – 1<sup>st</sup> Quarter Report

C. Town Center Committee – October 10, 2012

D. Transportation Advisory Committee – October 11, 2012

## **Agenda for the Regular and Possible Executive Session**

### **Queen Creek Town Council**

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**7. Public Comment:** Members of the public may address the Town Council on items not on the printed agenda and during Public Hearings. Please complete a “Request to Speak Card”, located on the table at the rear of the Council Chambers and turn it in to the Town Clerk prior to the beginning of the meeting. There is a time limit of three minutes for comments.

**8. Consent Calendar:** Matters listed under the Consent Calendar are considered to be routine and will be enacted by one motion and one vote. Public Hearing items are designated with an asterisk (\*). Prior to consideration of the Consent Agenda, the Mayor will ask whether any member of the public wishes to remove a Public Hearing item for separate consideration. Members of the Council and or staff may remove any item for separate consideration.

A. Consideration and possible approval of the appointment of Dennis Brierton and Perry Rea to the Economic Development Commission. **TAB A**

B. Consideration and possible approval of **Resolution 919-12** amending the Standard Form By-laws for Town Committees, Boards, and/or Commissions; Section II(B) Appointment of Town Council Members and Committee Chair; and Section II(D) minimum and maximum number of committee members. **TAB B**

C. Consideration and possible approval of an amendment to the service agreement with Orange Screen Productions, LLC (Contract 2010-056) in an amount not to exceed \$9,600 for the filming and broadcasting services of the Town Council Work Study Sessions. **TAB C**

**PUBLIC HEARINGS:** If you wish to speak to the Council on an item listed as a Public Hearing, please complete a Request to Speak Card and turn it in to the Town Clerk. Speakers will be called upon in the order in which their cards are received. Speakers are limited to three (3) minutes each.

**9.** Public Hearing and possible action on **RZ12-054/SD12-055/DR12-069**, “**The Preserve at Hastings Farms**” – **Ordinance 521-12** a request submitted by Greg Davis of iPlan, for rezoning from R1-43, R1-18 and R1-7 PAD to R1-7 PAD and R1-9 PAD; a preliminary plat for 344 lots on 147 acres in addition to a request for Design Review approval of seven (7) floor plans with three (3) elevations each to be constructed on Parcel D. The property is located on the north side of Cloud Road at the Crismon Road alignment. **TAB D**

**FINAL ACTION:** If you wish to speak to the Council on an item listed under Final Action, please complete a Request to Speak Card and turn it in to the Town Clerk. Speakers will be called upon in the order in which their cards are received. Speakers are limited to three (3) minutes each.

**10.** Consideration and possible approval of **Ordinance 520-12** authorizing the exchange of 127 acres of Town-owned property located at Queen Creek Road east of Signal Butte Road for a 127-acre parcel of real property located north of the northeast

**Agenda for the Regular and Possible Executive Session**

**Queen Creek Town Council**

**October 17, 2012**

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corner of Queen Creek Road and Merrill Road, owned by the Barney Family Sports Complex, LLLP, for the purpose of a beneficial location for a possible future park site.

***TAB E***

**ITEMS FOR DISCUSSION:** These items are for Council discussion only and no action will be taken. In general, no public comment will be taken.

None.

**11. Motion to adjourn to Executive Session:** The Council may reconvene the Executive Session for any of the items listed on the Executive Session Agenda.

**12. Adjournment**





Requesting Department:  
Economic Development

TAB A

**TO: HONORABLE MAYOR AND TOWN COUNCIL**

**THROUGH: JOHN KROSS, AICP  
TOWN MANAGER**

**FROM: DOREEN COTT  
ECONOMIC DEVELOPMENT DIRECTOR**

**RE: CONSIDERATION AND POSSIBLE APPROVAL OF THE  
APPOINTMENT OF DENNIS BRIERTON AND PERRY REA TO  
THE ECONOMIC DEVELOPMENT COMMISSION.**

**DATE: OCTOBER 17, 2012**

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**Recommendation:**  
It is the Mayor's recommendation to appoint Dennis Brierton and Perry Rea to the Economic Development Commission.

**Proposed Motion:**  
Move to appoint Dennis Brierton and Perry Rea to a two year term beginning on October 17, 2012 to the Economic Development Commission.

**Discussion:**  
According to the adopted by-laws of the Economic Development Commission, Article IV, Section 1: All members of the Commission shall be residents of the State of Arizona. Article IV, Section 4: Term of Office states: *All voting Commission members shall be appointed to two (2) year terms. Commission members shall serve until their successors are duly appointed. Commission members shall serve staggered terms, where no more than seven (7) voting members' terms expire in any one (1) year.*

With the recent resignation of two Commission members in addition to a resignation that occurred last year it is time to refill seats on the Commission to ensure the membership represents a broad cross section of the community.

Staff has received Notice of Interest forms from two individuals – Dennis Brierton and Perry Rea. Both individuals are business owners in Queen Creek and will provide a unique perspective as the Commission and staff work on the items outlined in the FY12-13 Work Plan. The next Economic Development

Commission meeting is scheduled for October 24, 2012. New members will be briefed on economic development activities and their role on the Commission prior to the October meeting.

**Fiscal Impact:**

There is no fiscal impact associated with making appointments to the Economic Development Commission.

**Alternatives:**

The Town Council could choose not to appoint recommended individuals and request that staff present alternative appointments at the next Town Council meeting.

**Attachments:**

- Notice of Interest forms for the recommended appointments.



### Town of Queen Creek Notice of Interest

The Town of Queen Creek depends on its citizens to help advance the community toward its goals. Residents can participate in local decision-making by serving on volunteer boards, commissions, committees and task forces. In most cases, volunteer members act in an advisory capacity making recommendations to the Town Council.

Appointments are made by approval of the Town Council. If you would like to be considered for an appointment, complete this form, attach a resume or letter about yourself and return all documents to:

Town of Queen Creek  
Town Clerk's Office  
22350 S. Ellsworth Road  
Queen Creek, AZ 85242  
Fax: 480-358-3189

Please type or print

Application Date: 09-23-2012

Name: DENNIS MARTIN BRIERTON  
First Middle Last

Home Address: 21399 E. PEGASUS PRWY

Mailing Address (if different from home address): SAME

Occupation: BUSINESS OWNER MANUFACTURING

Home Telephone: 480-380-5385 Work Telephone: 480-218-4515

Best Time to Call: 0900-1600 HRS a.m. or p.m.

Home Fax: 480-358-4765 Work Fax: 480-218-4573

E-Mail Address: D BRIERTON @ KINETEK.COM LOWER CASE

How long have you lived in Queen Creek? 7 YEARS

Are you a registered voter?  Yes  No

Do you live within the Town's incorporated limits?  Yes  No

Have you participated in the Queen Creek Citizen Leadership Institute?  Yes  No

If yes, did you graduate?  Yes  No

Which boards, commissions, committees or task forces have you served on in the past, in Queen Creek or elsewhere?

PRES. PEGASUS HOA & FLIGHT ASSOCIATION  
DIRECTOR PRESIDENT

I am interested in serving on: (Please rank the committees you are interested in, with 1 being your first choice.)

- |   |  |
|---|--|
| <input type="checkbox"/> Arts and Culture Committee                 | <input type="checkbox"/> Planning and Zoning Commission    |
| <input type="checkbox"/> Board of Adjustment                        | <input type="checkbox"/> Recreation Advisory Board         |
| <input type="checkbox"/> Building Code Board of Appeals             | <input type="checkbox"/> Senior Advisory Committee         |
| <input checked="" type="checkbox"/> Economic Development Commission | <input type="checkbox"/> Transportation Advisory Committee |
| <input type="checkbox"/> Parks, Trails and Open Space Committee     | <input type="checkbox"/> Other _____                       |

\*Note: Some citizen committees might be full at this time; indicated interest does not guarantee an appointment.

Please describe why you would like to serve on this board, committee, commission, etc.

AS A BUSINESS OWNER FOR 20 YEARS I HAVE EXPERIENCED THE NEEDS FOR SMALL BUSINESSES TO SURVIVE & PROSPER

Please describe special knowledge or expertise you have that would benefit the Town.

CONTRACTOR - BUILDER - DESIGNER - MFG  
HOLD SEVERAL PATENTS - PILOT HAVE COMMON SENSE NEEDED TO MAKE GOOD DECISIONS

Please list community, civic, professional, social, cultural or athletic organizations you have been affiliated with and in what capacity.

PEGASUS FLIGHT & NOA ASSOCIATION,  
BUSINESS OWNER 20 YRS + MFG & CONSTRUCTION  
30 YRS IN TRANSPORTATION MAINTENANCE ALL MAINTENANCE

Are you available for evening meetings?  Yes  No

POSITIONS INCLUDING DIRECTOR

Are you available for morning meetings?  Yes  No

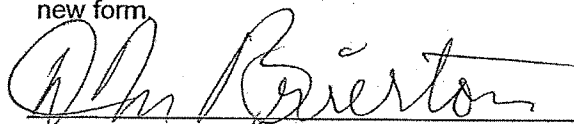
Are you available for lunch meetings?  Yes  No

Are there days of the week you are NOT available for meetings? (Check all that apply)

Monday  Tuesday  Wednesday  Thursday  Friday

I hereby acknowledge that all information provided on this application is subject to disclosure pursuant to the Arizona Public Records Law. I understand that members of boards, commissions, committees and task forces are subject to disclosure of conflicts of interest. I certify that the information contained herein is true and accurate to the best of my knowledge.

Note: Notice of Interest forms will be kept on file for 12 months. After that, they will expire and applicant's will need to submit a new form.



Applicant's Signature

FOR OFFICE USE ONLY	
Committee/Commission	_____
New Appointment <input type="checkbox"/>	Re-Appointment <input type="checkbox"/>
Date Appointed/Re-Appointed	_____
Term Expiration	_____
Date of Resignation (if applicable)	_____



Town of Queen Creek
Notice of Interest

The Town of Queen Creek depends on its citizens to help advance the community toward its goals. Residents can participate in local decision-making by serving on volunteer boards, commissions, committees and task forces. In most cases, volunteer members act in an advisory capacity making recommendations to the Town Council.

Appointments are made by approval of the Town Council. If you would like to be considered for an appointment, complete this form, attach a resume or letter about yourself and return all documents to:

Town of Queen Creek
Town Clerk's Office
22350 S. Ellsworth Road
Queen Creek, AZ 85142
Fax: 480-358-3001

Please type or print

Application Date: 9-19-12

Name: PERRY JOHN REA
First Middle Last

Home Address: ~~1015 E GREEN TREE DR~~ 1015 E GREENTREE DR TEMPE AZ 85784

Mailing Address (if different from home address): 25062 S MERIDIAN RD
QUEEN CREEK AZ 85142

Occupation: OWNER QUEEN CREEK OLIVE MILL

Home Telephone: 602 418 8029 Work Telephone: 480 888 9290

Best Time to Call: MORNING a.m. or p.m.

Home Fax: Work Fax:

E-Mail Address: prea@queencreekolive.com

How long have you lived in Queen Creek? n/a

Are you a registered voter? [X] Yes [ ] No

Do you live within the Town's incorporated limits? [ ] Yes [X] No

Have you participated in the Queen Creek Citizen Leadership Institute? [ ] Yes [X] No

If yes, did you graduate? [ ] Yes [X] No

Which boards, commissions, committees or task forces have you served on in the past, in Queen Creek or elsewhere?

Blank lines for providing details of past service.

I am interested in serving on: (Please rank the committees you are interested in, with 1 being your first choice.)

- |   |  |
|---|--|
| <input type="checkbox"/> Board of Adjustment                        | <input type="checkbox"/> Town Center Committee             |
| <input checked="" type="checkbox"/> Economic Development Commission | <input type="checkbox"/> Transportation Advisory Committee |
| <input type="checkbox"/> Parks and Recreation Advisory Board        | <input type="checkbox"/> Other _____                       |
| <input type="checkbox"/> Planning and Zoning Commission             |  |

\*Note: Some citizen committees might be full at this time; indicated interest does not guarantee an appointment.

Please describe why you would like to serve on this board, committee, commission, etc.

AS AN OWNER OF THE QUEEN CREEK OLIVE MILL I FEEL  
I CAN ADD INSIGHT TO THE DIRECTION THAT THE  
TOWN IS HEADED IN TERMS OF AN AGRICULTURAL DISTRICT

Please describe special knowledge or expertise you have that would benefit the Town.

OWNER, FARMER, OPERATOR, PROCESSOR FOR 9  
YEARS OF THE QUEEN CREEK OLIVE MILL

Please list community, civic, professional, social, cultural or athletic organizations you have been affiliated with and in what capacity.

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Are you available for evening meetings?  Yes  No

Are you available for morning meetings?  Yes  No

Are you available for lunch meetings?  Yes  No

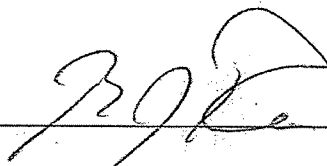
Are there days of the week you are NOT available for meetings? (Check all that apply)

Monday  Tuesday  Wednesday  Thursday  Friday

I hereby acknowledge that all information provided on this application is subject to disclosure pursuant to the Arizona Public Records Law. I understand that members of boards, commissions, committees and task forces are subject to disclosure of conflicts of interest. I certify that the information contained herein is true and accurate to the best of my knowledge.

Note: Notice of Interest forms will be kept on file for 12 months. After that, they will expire and applicant's will need to submit a new form.

Applicant's Signature



FOR OFFICE USE ONLY

Committee/Commission \_\_\_\_\_  
New Appointment  Re-Appointment   
Date Appointed/Re-Appointed \_\_\_\_\_  
Term Expiration \_\_\_\_\_  
Date of Resignation (if applicable) \_\_\_\_\_

Requesting Department:  
Town Manager



TAB B

**TO: HONORABLE MAYOR AND TOWN COUNCIL**

**THROUGH: JOHN KROSS, AICP  
TOWN MANAGER**

**FROM: TRACY CORMAN  
SENIOR MANAGEMENT ASSISTANT**

**RE: CONSIDERATION AND POSSIBLE APPROVAL OF RESOLUTION  
919-12 AMENDING THE STANDARD FORM BYLAWS FOR TOWN  
COMMITTEES, BOARDS AND/OR COMMISSIONS; SECTION II (B)  
APPOINTMENT OF TOWN COUNCIL MEMBERS AND COMMITTEE  
CHAIR; AND SECTION II (D) MINIMUM AND MAXIMUM NUMBER OF  
COMMITTEE MEMBERS**

**DATE: OCTOBER 17, 2012**

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**Staff Recommendation:**

Staff recommends approval of Resolution 919-12 amending the Standard Form By-laws for Town Committees, Boards, and/or Commissions; Section II (b) appointment of Town Council Members and Committee Chair; and Section II (d) minimum and maximum number of committee members.

**Relevant Council Goal(s):**

N/A

**Proposed Motion:**

Move to approve Resolution 919-12 amending the Standard Form By-laws for Town Committees, Boards, and/or Commissions; Section II (b) appointment of Town Council Members and Committee Chair; and Section II (d) minimum and maximum number of committee members.

**Discussion:**

This item has been placed on the agenda at the Council's request. The Bylaws document, with the proposed changes identified, is attached to Resolution 919-12 as Exhibit "A". Following is a brief summary of the proposed changes.

**Section II: Membership, roster, Council Liaison, Residency Requirement and terms of office**

Currently section (b) reads:

- b) The Town Council may appoint up to two members from the Town Council to serve as voting members of the eleven member committee. The Town Council may*

*directly designate the chair or vice chair to be a member from the Town Council. If Town Council does not designate a Council Member to serve as a chair or vice chair, then the committee shall select a chair and vice chair from the existing voting members on the committee.*

The proposed amendment would change the appointed Council Members to non-voting liaison members. As non-voting liaison members, Council Members would no longer be appointed by the Town Council as the committee chair or vice chair. The amendment would continue to allow the committee to select a chair and vice chair from the existing voting members of the committee. Because of their non-voting liaison membership status, Council Members would also not be counted towards achieving a quorum.

Currently section (d) reads:

*d) Every Town committee shall have a minimum of seven (7) members and up to a maximum of eleven (11) members.*

In the proposed amendment, as non-voting liaison members, Council Members on committees would not be counted towards the minimum or maximum committee membership.

**Fiscal Impact:**

The approval of this amendment would not require additional spending authority.

**Alternatives:**

1. The Mayor and Council may decide not to approve the attached Resolution 919-12, and continue with current practices.
2. The Mayor and Council may decide to direct staff to make changes to the proposed amendment, and approve Resolution 919-12 with those changes.

**Attachments:**

- Resolution 919-12
- Attachment "A" Amendment to Standard Form Bylaws for Designated Town Committees



**RESOLUTION 919-12**

**A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, AMENDING THE STANDARD FORM BYLAWS FOR TOWN COMMITTEES, BOARDS AND/OR COMMISSIONS AS APPLICABLE.**

**WHEREAS**, the Town of Queen Creek desires to maximize public involvement of its residents and area community to the greatest extent possible;

**WHEREAS**, the amendments to the procedures for Town Committees, Boards and/or Commissions are necessary for the implementation of broad-based public policy goals of the community as a whole;

**WHEREAS**, the Town of Queen Creek intends to remain a progressive, citizen driven community of quality and that promoting this value requires establishing the appropriate procedural guidance for citizen and community involvement at all levels of government; and,

**NOW, THEREFORE, BE IT RESOLVED** BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, AS FOLLOWS:

Section 1: That the Queen Creek Town Council hereby adopts these amendments to the Standard Form Bylaws attached hereto as Exhibit "A" and incorporated herein by reference.

Section 2: That the Town Manager is hereby authorized to distribute and begin the implementation of the amendments to the bylaws to all Town Committees from this point forward.

**PASSED AND ADOPTED** by the Mayor and Common Council of the Town of Queen Creek, Arizona, this 17<sup>th</sup> day of October, 2012.

FOR THE TOWN OF QUEEN CREEK:

ATTEST TO:

\_\_\_\_\_  
Gail Barney, Mayor

\_\_\_\_\_  
Jennifer F. Robinson, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:

\_\_\_\_\_  
John Kross, Town Manager

\_\_\_\_\_  
Town Attorney

## EXHIBIT "A"

### Amendment to Standard Form Bylaws for Designated Town Committees Revised 10/17/2012

#### Section I: Purpose and Applicability

The purpose for establishing bylaws for citizen advisory committees is to maximize public involvement in the public policy-making process at all levels possible. The Queen Creek Town Council desires to include as many people as possible on Town committees and has adopted annual goals establishing citizen involvement and general public outreach as a priority for Queen Creek.

These bylaws for governance of Town Committees are applicable to the following Town Committees and all future committees so designated by the Town Council: AIR Group, Community Policing Advisory Committee, Development Fee Working, Group, Finance Review Task Force, Fire/EMS Service Committee, Housing Rehab Committee, Library Advisory Committee, Parks and Recreation Advisory Committee, Police Services Task Force, Redevelopment Advisory Steering Committee, San Tan Foothills Specific Area Plan TAC, SRP Task Force, Transportation Advisory Committee.

#### Section II: Membership, roster, Council Liaison, Residency Requirement and terms of office

- a) Member terms are staggered such that the entire committee would not need to be appointed or reappointed at the same time. At the time members are first appointed to any committee, six members of an eleven-member committee shall be appointed for one-year terms. Successive appointments shall be for two-year terms. (in the event that a committee, at the time it is first appointed, has fewer than eleven members, members shall be divided evenly between one-year and two-year terms to the greatest extent possible).
- b) The Town Council may appoint up to two members from the Town Council to serve as ~~voting~~ NON-VOTING LIAISON members of the eleven member committee. ~~The Town Council may directly designate the chair or vice chair to be a member from the Town Council. If Town Council does not designate a Council Member to serve as a chair or vice chair, then~~ The committee shall select a chair and vice chair from the existing voting members on the committee.
- c) All Committee members serve at the pleasure of the Town Council and may be removed without cause at any time by a majority vote of the Council. Any committee created or appointed by the Town Council may, by appropriate rules and regulations, provide additional grounds for the removal of members, but in any event, the Town Council shall have the complete authority to remove members from the committee.
- D) Every Town committee shall have a minimum of seven (7) members and up to a maximum of eleven (11) members. COUNCIL MEMBERS SERVING AS NON-VOTING LIAISON MEMBERS SHALL NOT BE COUNTED TOWARDS THE MINIMUM OR MAXIMUM COMMITTEE MEMBERSHIP.

- e) Of the Eleven (11) members on each committee, at least nine (9) shall be residents of the Town of Queen Creek. A maximum of two (2) non-residents may be appointed to committees of less than eleven (11) members.
- f) Although multiple Committee membership is discouraged, the Town Council may appoint the same member to one or more committees as they deem appropriate to serve the needs of the town.
- g) Employment with the town disqualifies a citizen from sitting on a committee.

### **Section III. Staff Assistance.**

The Town Manager shall have the responsibility to appoint the necessary staff to serve in a support role to the advisory committee. The staff role is advisory and shall not have voting privileges.

Staff assigned to a committee shall be referred to as support staff. The staff person taking the lead role in supporting the committee shall be the committee manager.

### **Section IV. Meeting Quorum, Voting Procedures and Privileges**

- a) The committee shall not conduct any business without the presence of a quorum consisting of a simple majority of the total number of voting members appointed by the Town Council. For example, if there is an eleven member committee, at least six must be present in order to conduct a meeting.
- b) Only town resident members shall have voting privileges for each action item on each agenda; may make a motion on any posted agenda item; and may second the motion for discussion and full committee voting.

### **Section V: Powers and Duties.**

Town Committees shall have the following powers and duties:

- a) At the start of each new fiscal year, every Town Committee shall receive annual approval of its 12-month work program by the Town Council.
- b) Keep and submit meeting summaries or minutes to the Council for information following an official meeting of the committee.
- c) Advise the Council on matters pertaining to the designated committees and work program approved by the Town Council.
- d) Advise the Council on the status of its annual work program and achievement of various initiatives set forth by the Council for implementation.
- e) Advise the Council on matters of public policy affecting the community at-large as it relates to the function and mission of the designated committee and its work program.

- f) Advise the Town Manager on issues pertaining to operations and administration of the town organization.

## **Section VI. Committees – General Qualifications of Members.**

Attendance Required. Any member of a committee created and appointed by the Town Council may be replaced by the Council if s/he:

- a) Is absent for twenty-five (25) percent or more of the regular meetings within any consecutive 12-month period. The Town Council shall consider removal of the individual from the committee at the next available council meeting. Replacement of an individual who has been removed from a committee shall be considered as soon as reasonably possible.

## **Section VII. MEMBER APPOINTMENT PROCESS**

Any citizen interested in joining a town committee must complete a notice of interest form and submit it to the town clerk's office.

- a) Citizens completing the interest form must rank order (prioritize) their preference for a specific committee (only active committees shall be listed with an option to check 'other' as well)
- b) Upon receipt of a notice of interest form, the Town Clerk's office shall generate a letter notice of acknowledgement.
- c) The Town Clerk's office shall keep, maintain, and update all master lists. Master lists include: 1. Committee members; and 2. Interested residents. Notice of interest forms shall be kept on file at the clerk's office for a period of twelve (12) months. At the end of twelve (12) months notice of interest forms will expire. Once a notice of interest form has expired, it will be removed from the master list and shredded. At this time, in order to remain in consideration for active committees, applicants must fill out an updated notice of interest form and submit it to the town clerk's office.

When there is a vacancy on a town committee, the following appointment process will be followed to fill that vacancy:

- a) The committee manager shall notify their department director of any committee vacancies immediately. The department director shall in turn notify the Town Manager and Town Clerk of the vacancies, and request Notice of Interest Forms from the Town Clerk.
- b) Upon notice of the vacancy, the Town Clerk shall forward Notice of Interest Forms to the committee manager. If no Notice of Interest Forms are on file, advertisements for committee vacancies shall be posted on sites that include, but not limited to the town web site, *About Town Newsletter*, the weekly update, Channel 11 and additionally, news releases shall be issued. Depending on the time needed to fill a committee

- c) vacancy, alternatives to this list may be considered by the department director. Advertising will be done until the vacancy is filled. Please note: other forms of advertisement may be used to adequately reach the intended audience.
- d) The committee manager shall review notice of interest forms to determine whether the residency requirement has been met for that committee. The committee manager shall forward eligible Notice of Interest Forms to the Mayor, or designee and committee chair for review.
- e) The Mayor or designee shall make contact with applicants to discuss the committee meeting schedule and commitments in order to determine their interest and availability.
- f) Interviews shall be conducted by the Mayor or if delegated by the Mayor, the committee chair (please note: the department director shall be used as the backup, if necessary). The purpose of the interview will be to determine the applicant's background, the individual's availability to serve, and their knowledge and areas of interest in relation to the committee's work program.
- g) The department director and committee chair shall decide which applicant(s) to recommend to the Mayor for membership. The department director shall meet with the Mayor to discuss the recommendation, if the Mayor approves, the committee chair shall contact the applicant(s) to confirm their acceptance of the recommendation. Upon confirmation, the committee chair shall notify the committee manager of the recommendation.
- h) The committee manager shall submit the recommendation as an item for an upcoming council agenda through their department director. The agenda language should be formatted as follows: "consideration and possible approval of the appointment of \_\_\_\_\_ to the \_\_\_\_\_ committee."
- i) The committee manager shall develop and submit a staff report through their department director requesting the official committee appointment. Included with the staff report will be a copy of all the Notice of Interest Forms received.
- j) If the mayor and council approve the recommended appointment, the department director shall prepare a congratulatory letter of appointment with the mayor's signature to the new committee member within one week of the official appointment. The department director shall also send notices to those applicants who were interviewed but not appointed.
- k) If the recommended applicant is not appointed by mayor and council, the mayor, or if delegated by the mayor the committee chair, must make a new recommendation based on the remaining notice of interest forms. If there are no remaining notice of interest forms, the committee vacancy shall be advertised as specified in (b) above.
- l) Upon the appointment of a new committee member, the committee manager shall conduct an orientation. The orientation may vary depending on the committee's work plan, but must include at a minimum the following:

- a. An overview of the role and authority of committees in the council-manager form of government.
  - b. An introduction to the purpose and mission of the committee, including a summary of the committee's bylaws, work plan and actions over the last six (6) months.
  - c. Hard copies of the Committee Bylaws, Work Plan, and any additional support materials including budgets and approved plans and maps.
  - d. A written schedule of meetings and other commitments.
  - e. Contact information for the committee manager and support staff.
- m) When the orientation has been completed, the committee manager shall notify their department director and provide the date of the first meeting the new member will be attending.

### **Section VIII. INACTIVE COMMITTEES**

Town committees which have not met for more than twelve (12) consecutive months are automatically disbanded. A need to re-establish a committee after a twelve (12) month idle period shall require appointment of citizens to the committee through the appointment process detailed in section vii.



Requesting Department:  
Economic Development

TAB C

**TO: HONORABLE MAYOR AND TOWN COUNCIL**

**THROUGH: JOHN KROSS, TOWN MANAGER**

**FROM: DOREEN COTT, ECONOMIC DEVELOPMENT DIRECTOR**  
**MARNIE SCHUBERT, PUBLIC INFORMATION OFFICER**

**RE: CONSIDERATION AND POSSIBLE APPROVAL OF A CONTRACT AMENDMENT WITH ORANGE SCREEN PRODUCTIONS (CONTRACT #2010-056) IN AN AMOUNT NOT TO EXCEED \$9,600 FOR THE FILMING AND BROADCASTING SERVICES OF THE TOWN COUNCIL WORK STUDY SESSIONS.**

**DATE: OCTOBER 17, 2012**

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**Staff Recommendation:**

Staff recommends an amendment to the existing contract with OrangeScreen Productions in an amount not to exceed \$9,600 for additional filming and broadcasting services at Town Council Work Study Sessions.

**Relevant Council Goal(s):**

KRA 2, Goal 2: Enhance opportunities for resident participation in Town decision-making and keep residents educated and informed through community events and outreach programs.

**Proposed Motion:**

Move to approve an amendment to the contract with OrangeScreen Productions in an amount not to exceed \$9,600 to provide additional filming and broadcasting services at Town Council Work Study Sessions.

**Discussion:**

The Town Council approved a contract with OrangeScreen Productions in 2008 to broadcast Town Council meetings in response to the Town Council goal as stated in the Corporate Strategic Plan. Additional services proposed would include the filming of Work Study Session.

Benefits of Broadcasting:

Broadcasting video of Town Council meetings on the Town's website enhances the opportunity for citizen participation in Town decision-making and keeps citizens educated and informed through community events and outreach programs.

Other benefits include:

- **Increased transparency of government.** Broadcasting of the Town Council meetings makes it more convenient for the public to learn about the decisions made by their elected officials.
- **Expanded access to local government.** For a variety of reasons, some residents cannot attend the Work Study Sessions or Town Council Meetings in person, yet they still want to understand local issues and the reasons that decisions are made. The broadcast of Town Council meetings allows these residents an opportunity to learn about issues and prompt them to communicate their opinions to elected officials on policies that affect them.

**Fiscal Impact:**

If approved funds are available in the Communications & Marketing General Services budget line.

**Alternatives:**

- Town Council could choose not to increase services with OrangeScreen Productions and continue the current method of operation that involves filming and broadcasting services the Town Council Meetings only.

**Attachments:**

Contract with OrangeScreen Productions.



## FIRST AMENDMENT TO SERVICE AGREEMENT

THIS FIRST AMENDMENT TO SERVICE AGREEMENT (Contract 2010-056) is made and entered into effective as of the \_\_\_ day of \_\_\_\_, 2012 (the "Effective Date"), by and between the Town of Queen Creek, Arizona, an Arizona municipal corporation ("Town"), and OrangeScreen Productions, LLC, an Arizona limited liability company ("Vendor"). Town and Vendor are sometimes referred to in this First Amendment collectively as the "Parties" and each individually as a "Party."

### RECITALS:

A. The Parties entered into an Agreement for video and audio production services dated August 30, 2010, (the "Original Agreement"). All capitalized terms used without definition in this Amendment shall have the definitions ascribed to them in the Original Agreement, as modified by this First Amendment.

B. The Parties now desire to amend the Original Agreement upon the terms and conditions contained in this First Amendment.

### AGREEMENTS:

NOW, THEREFORE, for and in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby amend the Original Agreement as follows:

1. Exhibit B. Scope of Services, item 1 is amended by modifying the following sentence as indicated below with deletions as strikeout text and new text in bold italics:  
  
In connection with Town Council of Queen Creek meetings (each, a "Meeting"):
2. Exhibit C. Payment Schedule/Terms is amended by adding additional services as indicated below with deletions as strikeout text and new text in bold italics:

#### *Services at Work Study Meetings.*

*With a minimum of 2 qualified technicians                      \$400.00/meeting*

3. Exhibit A. Insurance is amended by adding the following section to the Exhibit A as indicated below with deletions as strikeout text and the new text in bold italics:

***Additional Insurance Requirements: The Vendor is primarily responsible for the risk management of its Services under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements herein at any time during the Contract subject to at least 30 days written notice. The Vendor shall require any and all subvendors to maintain***

*insurance as required herein naming Town and Vendor as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance. The Vendor's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Vendor shall not be limited to the liability assumed under the Indemnification provision of this Contract. To the extent permitted by law, Vendor waives all rights of subrogation or similar rights against Town, its representatives, agents, and employees.*

4. Reaffirmation of Original Agreement. Except as amended by this \_\_\_ Amendment, the Original Agreement shall remain in full force and effect. In the event of any conflict between this First Amendment and the Original Agreement, the terms of this First Amendment shall prevail.

5. Counterparts. This First Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Amendment may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed agreement containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Amendment effective as of the Effective Date set forth above.

**Town of Queen Creek, an Arizona Municipal Corporation**

**Approval of Town Council,**

**By: \_\_\_\_\_**  
**Gail Barney, Mayor**

**Approval of Contract Administrator,**

**By: \_\_\_\_\_**  
**John Kross, Town Manager**

**ATTEST:**

\_\_\_\_\_  
**Jennifer Robinson, Town Clerk**

**REVIEWED AS TO FORM BY:**

\_\_\_\_\_  
**Attorney for the Town**

\_\_\_\_\_, an Arizona Corporation.

Date: \_\_\_\_\_

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

**EXHIBIT A**  
**INSURANCE**

1. **Insurance Certificate:** The Town requires a complete and valid certificate of insurance prior to the award of any contract. Vendor shall submit a copy of the insurance certificate for coverage with minimum amounts stated below. The coverage shall be maintained in full force and effect during the term of the Contract and shall not serve to limit any liabilities or any other vendor obligations. Insurance evidenced by the certificate shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the Town, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer.

2. **Deductible:** The amount of any deductible shall be stated on the face of the certificate. The Contract Administrator may require Vendor to furnish a financial statement establishing the ability of Vendor to fund the deductible. If in the sole judgment of the Contract Administrator the financial statement does not establish Vendor's ability to fund the deductible, and no other provisions acceptable to the Contract Administrator are made to assure funding of the deductible, the Contract Administrator may, in his/her sole discretion, terminate this Contract and the Town will have no further obligation to Vendor.

3. **General Liability:** Vendor shall secure and maintain, at his or her own expense, until completion of the contract, general liability as shall protect Vendor and the Town from claims for bodily injury, personal injury, and property damage which may arise because of the Goods provided under this contract. Vendor shall provide general liability and excess general liability coverage in the following amounts, at a minimum:

- i. **Projects less than \$1,000,000:** Vendor shall have total limits of insurance to include primary and excess coverage in an amount not less than \$2,000,000. For example, coverage may include \$1,000,000 primary and \$1,000,000 excess, \$2,000,000 primary, or other equivalent combinations.
- ii. **Projects greater than \$1,000,000:** Vendor shall provide total limits of insurance to include primary and excess coverage in an amount of not less than \$5,000,000. For example, coverage may include \$1,000,000 primary and \$4,000,000 excess, \$2,000,000 primary and \$3,000,000 excess, or other equivalent combinations.

4. **Automobile Liability:** Vendor shall secure, and maintain at his or her own expense, until the completion of the Contract, coverage for any auto, including non-owned and hired autos, with a combined single limit of \$1,000,000 per occurrence. The Town shall be named as an Additional Insured.

5. **Worker's Compensation Insurance:** Before beginning work, Vendor shall furnish to the Town satisfactory proof that he or she has, for the period covered

under the Contract, full Worker's Compensation coverage for all persons whom Vendor may employ directly, or indirectly, and shall hold the Town free and harmless for all personal injuries of all persons whom Vendor may employ directly or indirectly.

6. **Additional Insured:** Vendor shall name the Town of Queen Creek as an "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance.

7. **Rating of Insurance Company(ies):** Any and all insurance company(ies) supplying coverage to Vendor must have no less than an "A" rating in accordance with the A.M. Best rating guide.

8. **Waiver:** The Town Manager, in consultation with the Risk Manager and/or Town Attorney, reserves the right to waive, reduce, or increase insurance requirements should it be in the best interest of the Town.

9. **Additional Insurance Requirements:** The Vendor is primarily responsible for the risk management of its Services under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements herein at any time during the Contract subject to at least 30 days written notice. The Vendor shall require any and all subvendors to maintain insurance as required herein naming Town and Vendor as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance. The Vendor's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Vendor shall not be limited to the liability assumed under the Indemnification provision of this Contract. To the extent permitted by law, Vendor waives all rights of subrogation or similar rights against Town, its representatives, agents, and employees.

**EXHIBIT B**

**AMENDED SCOPE OF SERVICES**

The Services shall include:

1. In connection with Town of Queen Creek meetings (each, a "Meeting"):
  - A. Video and audio production services and related services, and operation of all equipment necessary thereto in connection with each Meeting in a professional style;
  - B. The presence of at least 2 qualified technicians at each Meeting;
  - C. Master Media file to be delivered no later than 24 hours after each Meeting, in a professional style and quality;
  - D. Design and maintenance of all on-Air graphics.

The services set forth in the foregoing sections A through D may be referred to herein as the "Production Services".

2. Upon request, Vendor shall perform the Services for additional programs at the rates set forth in Exhibit C.
3. Upon request, Vendor shall provide to the Town DVD copies of any of the tapes of any Meetings at the rates set for in Exhibit C.
4. Upon request by the Town, Vendor shall provide a third qualified technician at any Meeting or additional program. If a third qualified technician is reasonably required at any Meeting or additional program, Vendor may add such third technician upon the prior written consent of Town.

**EXHIBIT C**

**AMENDED PAYMENT SCHEDULE/TERMS**

Subject to the Town's right to approve or reject the performance by Vendor of any services as set forth herein, the amounts paid to consultant by the Town for the Services and any other services performed hereunder are as follows:

Services at Council Meetings:

With a minimum of 2 qualified technicians	\$900.00/meeting
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With a minimum of 3 qualified technicians provided the addition of the third technician has been approved in advance by the Town in accordance with Exhibit A, item 1(B).	\$1,350.00/meeting
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Services at Work Study Meetings:

With a minimum of 2 qualified technicians	\$400.00/meeting
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Services for additional programs:

With a minimum of 2 qualified technicians	\$1,400/program
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DVD Copies:	\$5.00 each
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Additional Services:	As agreed by the Parties
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Requesting Department:  
Development Services

**TAB D**

**TO: HONORABLE MAYOR AND TOWN COUNCIL**

**THROUGH: JOHN KROSS, AICP  
TOWN MANAGER**

**FROM: WAYNE BALMER, AICP  
PLANNING MANAGER**

**DAVE WILLIAMS  
SENIOR PLANNER**

**RE: PUBLIC HEARING AND POSSIBLE ACTION ON ZONING CASE  
RZ12-054/SD12-055/DR12-069 (ORDINANCE 521-12), "THE  
PRESERVE AT HASTINGS FARM"**, submitted by Greg Davis of iPlan,  
for a request for rezoning from R1-43, R1-17 and R1-7 PAD to R1-7  
PAD and R1-9PAD, a preliminary plat for 344 lots on 147 acres in  
addition to a request for Design Review approval of 7 floor plans with 3  
elevations each to be constructed on Parcel D. The property is located  
on the north side of Cloud Road at the Crismon Alignment.

**DATE: OCTOBER 17, 2012**

### **PLANNING & ZONING COMMISSION RECOMMENDATION**

The Planning Commission recommended this case for approval on the consent agenda at their meeting on 9/12/2012. Minutes from the work study and regular session are attached.

The Planning Commission recommended approval of RZ12-054, SD12-055 AND DR12-069, subject to the Conditions of Approval outlined in this report.

### **STAFF RECOMMENDATION**

Staff concurs with the Planning Commission's recommendation.



## RELEVANT COUNCIL GOALS

General Plan Growth Areas Element, Goal 5, Policy 5b: Encourage the use of available infrastructure capacity to accommodate new development consistent with the land use goals and provisions of the General Plan.

## PROPOSED MOTION

Move to approve Ordinance 521-12 for a Rezoning (RZ Case No 12-054), a preliminary plat for 344 lots (SD12-055) and DR12-069 “Maracay Homes at Hastings Farms on Parcel D.”

## SUMMARY

The proposal consists of a request by Greg Davis of iPlan Consulting for rezoning from R1-43, R1-18 and R1-7 PAD to R1-7 PAD and R1-9 PAD, a preliminary plat for 344 lots on 147 acres in addition to a request for Design Review approval of 7 floor plans with 3 elevations each to be constructed on Parcel D. The property is located on the north side of Cloud Road at the Crismon Alignment.

## HISTORY

September 12, 2012	Planning Commission recommended approval of RZ12-054, SD12-055 and DR12-069.
August 17, 2005	Town Council approved RZ04-04 and S06-04 Hastings Farms PAD.

## DISCUSSION

The applicant is requesting to rezone 147 acres from R1-43, R1-18 and R1-7 PAD to R1-7 and R1-9 PAD in addition to requesting approval for a preliminary plat for 344 lots and design review approval for 7 floor plans with 3 elevations each to be constructed on Parcel D.

The proposed density for the subdivision is 2.45 DU/AC, which is consistent with the General Plan Land Use Map for Hastings Farm which established Medium Density Residential within the range of 0-3 DU/AC. The overall density for Hastings Farms will remain under 3 DU/AC with this change.

Open space required for this project is 20%, with the applicant providing 27.1% open space.

The applicant is proposing a decrease from the R1-7 standard for the width of the lots from 70' to 60', and an increase in the lot depth from the standard 100' to 130' which provides for a minimum lot size of 7,800 square feet. They are also proposing to

maintain the standard 20' front yard setback to a front facing garage, however are proposing a reduced setback to 15' to the covered porch, living area and/or a side entry garage. The applicant is proposing a modification to the rear setback to 25' to livable space, and 20' to a covered rear patio. Of the proposed lots, 41.5% are 60' wide with the remainder being between 70 and 90 feet in width. Staff is supportive of these changes.

The applicant is proposing an increase for the lot depth in the R1-9 district from the standard 100' to 140' while maintaining the standard 90' width, which provides for a minimum lot size of 12,600 square feet. They are also proposing to maintain the standard 20' front yard setback to a front facing garage, however are proposing a reduced 15' setback to the covered porch, living area and/or a side entry garage. The applicant is proposing deviation to the rear setback to 25' to livable space, and 20' to a covered rear patio. Staff is supportive of these changes.

The applicant is also proposing a lot coverage increase to 50% (45% standard plus 5% for a qualifying front porch), however, none of the plans submitted require this increase to fit on the lots. Staff does not support this change.

The applicant is also requesting approval of a landscape plan for the subdivision. The plant palette, wall plan and amenities package meet the standards set forth in the Zoning Ordinance. The amenity package is designed to appeal to all ages and the wall plan is a combination of themed perimeter fencing, solid 6' walls and view fencing which is consistent with the walls already approved in Hastings Farm. A multiuse equestrian trail from Cloud Road to the Queen Creek Wash is proposed along the Crismon Alignment to address concerns from equestrian users in the county island to the south.

The applicant is also seeking reduction in the landscaping from 30' along the collector streets to 10' in the areas of traffic circles. Staff supports this change to encourage traffic calming.

## **Design Review**

The applicant is proposing 7 floor plans with 3 elevations each for Parcel D, which is proposed to be zoned R1-7 PAD, however with minimum lot widths of 70'. The architectural styles are Spanish Colonial, Santa Barbara and Tuscan and range in size from 2,297 to 4,154 square feet.

All of the models meet the 40% garage face standard as outlined in the Zoning Ordinance in addition to the 5' garage offset from livable space. Garage extensions that cannot maintain the 5' offset between the garage face and the livable area shall not be supported.

The floor plans are similar to those previously approved for this developer in the Lucia subdivision. Maracay intends to submit additional floor plans at a later date to provide even more options for the Hastings Subdivision.

On the 60' wide lots, the developer (or successors) may need to approach the Town in order to provide address Design Review concerns for the garage face percentage, if they are unable to design home products that can meet the Town's development standards. In addition to modification of their homes, another option could be to remove lots to increase the width of the individual lots to a minimum dimension of 65'.

**\*\*Note\*\*** Due to a conflict with the marketing between William Lyon Homes and the Developer, the name of this project has been changed from "The Estates at Hastings Farms" to "The Preserve at Hastings Farms".

<b>Project Information</b>	
Project Name	The Preserve at Hastings Farm
Site Location	Cloud Road and Crismon Road
Current Zoning	R1-43, R1-18 and R1-7 PAD
Proposed Zoning	R1-7 and R1-9 PAD
General Plan Designation	Medium Density Residential (MDR 0-3DU/AC)
Surrounding Zoning Designations:	
North	R1-7, The Villages
South	County Island, R1-43
East	County Island, R1-43
West	Hastings Farm, R1-7 and R1-12
Gross Acreage	147 Acres
Total Lots/Units	344 lots proposed
Proposed Density	2.45 DU/AC
Open Space Required /Provided	20% / 27.1%
Minimum Lot Width / Depth	60' / 130' – R1-7
Minimum Lot Area	7,800 square feet
Minimum Lot Width / Depth	90' / 140' – R1-9
Minimum Lot Area	12,600 square feet
Front Yard Setback	R1-7 and R1-9, 20' Livable, 15' Side Entry Garage / porch
Rear Yard Setback	25' / 20' to covered porch
Side Yard Setback	5' minimum, 15 feet total per lot
Lot Coverage	40% (45% with qualifying front porch) Staff does not support this request.
Garage Face Percentage	40%

### Lot Breakdown Percentages

Parcel	Net Acreage	R1-7 60' X 130' 7,800 SF	R1-7 70' x 130' 9,100 SF	R1-7 70' x 140' 9,800 SF	R1-7 73' x 140' 10,220 SF	R1-9 90'x 140' 12,600 SF	Total lots	DU/AC	Open space provided (20% req)
D	40.06 AC	X	X	X	89	X	89	2.22	27.5%
F	45.26 AC	110	7	X	X	9	126	2.78	28.0%
G	54.88 AC	33	16	55	X	25	129	2.35	26%
Site Total	140.20 AC	143	23	55	89	34	344	2.45	27.1%
Percentages		41.5%	6.7%	16.0%	25.9%	9.9%			

### Proposed Elevations

Plan #	Square Footage	Stories	Garage Face Percentage
5511	2,278	1	N/A(Side Entry)
5521	2,491	1	38.5%
5531	2,702	1	38.4%
5541	2,984	1	39.3%
5552	3,633	2	39.1%
5562	3,895	2	36.8%
5572	4,142	2	N/A (Side Entry)

### ANALYSIS

**General Plan Review:** The project is located in the Medium Density Residential designation on the General Plan Land Use Map. This project is consistent with the goals and policies set forth in the General Plan

**Zoning Review:** The zoning designation of the property is R1-43, R1-18 and R1-7 PAD. The applicant is seeking to rezone the property to R1-7 and R1-9 PAD, which is consistent with Zoning Ordinance.

**Engineering Review:** Engineering has reviewed the proposed subdivision and has provided Conditions of Approval outlined below.

**Preliminary Plat Review:** The Preliminary Plat proposes 344 lots on 147 acres. The proposed Preliminary Plat meets Town standards.

**Building Elevation Review:** The applicant is proposing 7 floor plans with 3 elevations each. The elevations represent the Spanish Colonial, Santa Barbara and Tuscan styles of architecture and range in size from 2,297 to 4,154 square feet. The elevations meet the standards set forth in the Residential Design Guidelines, with the exceptions of those indicated under the Conditions of Approval.

**Landscape / Open Space / Fence Plan Review:** Staff has reviewed the landscape plans and they appear to meet the standards set forth in the Zoning Ordinance.

### **PUBLIC COMMENTS**

Staff has advertised the public hearing in the Arizona Republic – Gilbert Edition, posted 3 large public hearing signs on the property in conspicuous locations and mailed out property owner letters to all owners within 1200' of this proposal.

Staff met with 2 residents to the south of the project who expressed concern over connectivity for the equestrian users and the Queen Creek Wash. As a result, a stipulation has been added to address that concern. The applicant is in agreement with that change.

### **CONDITIONS OF APPROVAL**

1. The Rezoning approved in case number RZ12-054 is effective upon signature by the property owner of the Prop 207 waiver and filing of the waiver with the Town of Queen Creek Planning Division. Failure to sign and return the waiver to the Planning Division within five (5) working days of the date of approval shall render this conditional approval null and void.
2. The Subdivision shall be developed in accordance with the exhibits attached to this case.
3. Unless modified by this new Ordinance, Ordinance 321-05 shall remain in effect.
4. The underlying zoning for the project shall conform to the provided Zoning Exhibit.
5. Street naming shall comply with Town standards and street names may be changed prior to final plat approval.
6. Lot Coverage shall remain 40% (45% with a qualifying front porch) as outlined in the Zoning Ordinance.
7. Landscape buffer around traffic circles may be reduced to 10'.

8. Garage extensions that reduce the distance from the garage face to the livable area to be less than 5' shall not be approved.
9. Zoning for the subdivision shall be R1-7 PAD and R1-9 PAD as shown in the Zoning Exhibit, except for open space tracts (including those dedicated to the Town of Queen Creek) which shall be designated as R/C (Recreation / Conservation). Building setbacks and deviations are to be as follows:

Minimum Lot Width / Depth	60' / 130' – R1-7
Minimum Lot Area R1-7	7,800 square feet
Minimum Lot Width / Depth	90' / 140' – R1-9
Minimum Lot Area R1-9	12,600 square feet
Front Yard Setback	R1-7 and R1-9, 20' Livable, 15' Side Entry Garage / porch
Rear Yard Setback	25' / 20' to covered porch
Side Yard Setback	5' minimum, 15 feet per lot.
Lot Coverage	40% (45% with qualifying front porch) Staff does not support the applicants deviations.
Garage Face Percentage	40%

10. Floor area ratio, maximum lot width and maximum lot depth requirements to be deleted.
11. Full ½ street improvements per the Town's Detail No. R-103 shall be required to be designed and constructed for Cloud Road for all portions of the Right-of-Way adjacent to the property frontage. Road improvements shall be completed per the approved phasing plan and shall include pavement for one eastbound lane, one westbound lane, and one center lane. Road improvements shall match the approved and constructed Hastings Farms Cloud Road improvements to the west. Improvements shall also include all appropriate roadway tapers as required by the Town's Traffic Department.
12. For offsite and onsite public improvements the Town requires cash, irrevocable letter of credit (IRLOC), or a bond to cover the costs for construction assurance. The IRLOC and bond are required to be approved by the Town Attorney. The assurance amount will be determined by a Town approved engineer's estimate during the Final Plat review. Construction assurance shall be deposited with the Town prior to recording of the Final Plat.
13. The Town will collect a cash-in-lieu payment(s) for the Queen Creek trail and landscaping improvement costs within Tracts D2, F2, & G2. Design of the Queen Creek Wash Trail improvements shall utilize current Town standards at the time of the design. The cash in-lieu payment(s) amount shall be determined by a Town approved engineer's estimate and shall be deposited with the Town prior to recording of the associated Final Plat.

14. An updated Traffic Impact Analysis (TIA) shall be submitted to the Town for review during the Final Plat review process. The TIA shall evaluate the intersection of Cloud Road and Crismon Road to determine if a traffic signal is or will be warranted. If the TIA determines that a traffic signal is warranted, the developer shall provide a 50% (\$150,000) traffic signal cost share (cash-in-lieu) payment to the Town prior to recording of the Final Plat that includes the construction of the intersection of Cloud Road and Crismon Road.
15. The developer shall provide a (\$150,000) cost share (cash-in-lieu) for the traffic signal at the intersection of Cloud Road and Crismon Road. The cash in-lieu payment shall be deposited with the Town prior to recording of the Parcel F Final Plat.
16. All construction documents submitted to the Town for review during the construction plan review phase shall be in accordance with Town Ordinances, Town checklists and Town design standards & guidelines. Construction documents shall also be in accordance with MAG specifications and details.
17. All standard plans shall provide a front yard landscape package.
18. Shutters shall be constructed using a faux-wood material such as nesco or similar type product.
19. The developer shall provide an 8' (eight) high block wall for the Hastings Well site.
  - i) The Town of Queen Creek Water Division shall reimburse the developer an amount equal to the going rate of a typical 4" x 8" x 16" by 6'8" high standard fence block wall for the east and south portions of the wall.
  - ii) The Town of Queen Creek agrees to modify existing site plans to move block wall to the future PUE line on the east and south perimeters to allow for additional landscape area to enable the developer to "hide" or blend the well site so as to not stand out/ be as visible.
20. Developer is to include the undergrounding of SRP electrical for the well site at the time it is working with SRP to underground the electrical power lines along Cloud Road. A desired location in the PUE for the well site transformer will be included on plans drawn up through Sunrise Engineering.
21. Developer to provide 20' (twenty) rolling gate for well site if there is a desire for something other than/ more appealing to the Town of Queen Creek's current rolling gate design. Gate will need to meet security needs of the Utility.
22. Developer is to provide all landscaping around the perimeter/ exterior of the well site with HOA being responsible for the maintenance of this landscaping so that it remains congruent with the rest of the subdivision.

23. The Developer shall be required to provide sewer flushing unit(s) with water and sewer services, along with Eclipse flushing units. Number TBD when sewer plans are redlined/ reviewed.
- A) Water services are to be minimum two inch (2") in size, developer to purchase 2" water meter from Utility Department.
- B) Sewer service is to be minimum six inch (6") in size
23. The Developer shall provide a copy of sewer as-builts to Sunrise Engineering to be after completion of project for the purpose of maintaining up to date Waste Water master Plan and sewer collection system modeling.
24. Developer is to install the sewer main transmission line fronting Cloud Road from the end sewer stub out on the west boundary of the Hastings East development per existing Town of Queen Creek design with re-imbusement details to be discussed in development agreement.
25. Developer to provide a manhole in the sewer main transmission line on Cloud Road with a 4" (four) inch sewer service provided into the south west corner of the well site at their cost to provide future odor and corrosion control treatment for the portions of waste produced by the subdivision.
26. Developer shall provide all applicable Utility Approval to Construct's and Approval of Construction's to the Town of Queen Creek prior to project's completion.
27. Developer shall insure that Assured Water Supply is transferred into new builder's name, assuring no duplications in Assured Water Supply for that same development.
28. Developer shall provide a multiuse trail from Cloud Road to the Queen Creek Wash along the Crismon Road alignment for equestrian use. Staff to approve final design and configuration.

## ATTACHMENTS

1. Aerial Photo
2. Narrative
3. Ordinance 521-12
4. Preliminary Plats
5. Landscape Plans
6. Design Review Book
7. DRAFT Minutes from the Planning Commission Meeting





Requesting Department:

Real Estate

TAB E

**TO: HONORABLE MAYOR AND TOWN COUNCIL**

**THROUGH: JOHN KROSS, AICP  
TOWN MANAGER**

**FROM: PATRICK FLYNN – ASSISTANT TOWN MANAGER/  
CHIEF FINANCIAL OFFICER  
SANDRA MCGEORGE – MANAGEMENT ASSISTANT II**

**RE: CONSIDERATION AND POSSIBLE APPROVAL OF ORDINANCE 520-12 OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, PURSUANT TO A.R.S. 9-407 AUTHORIZING THE EXCHANGE OF 127 ACRES OF TOWN-OWNED PROPERTY LOCATED AT QUEEN CREEK ROAD EAST OF SIGNAL BUTTE ROAD (THE "TOWN PROPERTY") FOR A 127-ACRE PARCEL OF REAL PROPERTY OWNED BY THE BARNEY FAMILY SPORTS COMPLEX LLLP, NEWELL A. BARNEY AND KATHERINE M. BARNEY AS TRUSTEES OF THE NEWELL A. BARNEY AND KATHERINE M. BARNEY TRUST AGREEMENT, GAIL A. BARNEY AND KENNETH L. BARNEY, AND LOCATED NORTH OF THE NORTHEAST CORNER OF QUEEN CREEK AND MERRILL ROADS, ("THE BARNEY PROPERTY") FOR THE PURPOSE OF A BENEFICIAL LOCATION FOR A POSSIBLE FUTURE PARK SITE AND AUTHORIZING AND DIRECTING THE MAYOR, TOWN MANAGER, TOWN CLERK AND TOWN ATTORNEY TO DO ALL ACTS, EXECUTE ALL DOCUMENTS AND PAY ALL FEES NECESSARY FOR THE EXCHANGE OF SAID REAL PROPERTIES**

**DATE: OCTOBER 17, 2012**

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**Staff Recommendation:**

Staff recommends approval of **Ordinance 520-12**, pursuant to A.R.S. 9-407 authorizing the exchange of 127 acres of Town-owned property located at Queen Creek Road east of Signal Butte Road (the "Town Property") for a 127-acre parcel of real property owned by Barney Family Sports Complex LLLP, Newell A. Barney and Katherine M. Barney as Trustees of the Newell A. Barney and Katherine M. Barney Trust Agreement, Gail A. Barney and Kenneth L. Barney, and located north of the northeast corner of Queen Creek and Merrill roads, (the "Barney Property") for the purpose of a beneficial location for a possible future park site.

**Relevant Council Goal(s):**

Key Result Area # 1- Capital Improvement Program

## Goal #2 – Update Parks, Trails and Open Space Master Plan

### **Proposed Motion:**

Move to approve **Ordinance 520-12** of the Mayor and Common Council of the Town of Queen Creek, Arizona, pursuant to A.R.S. 9-407 authorizing the exchange of 127 acres of Town-owned property located at Queen Creek Road east of Signal Butte Road (the “Town Property”) for a 127-acre parcel of real property owned by Barney Family Sports Complex LLLP, Newell A. Barney and Katherine M. Barney as Trustees of the Newell A. Barney and Katherine M. Barney Trust Agreement, Gail A. Barney and Kenneth L. Barney, and located north of the northeast corner of Queen Creek and Merrill roads, (the “Barney Property”) for the purpose of a beneficial location for a possible future park site.

### **Discussion:**

This ordinance approves an agreement to exchange 127 acres of Town-owned property, located at Queen Creek Road east of Signal Butte Road, and known as the future East Park site and the current Municipal Yard site, for an equally-valued 127-acre property located north of the northeast corner of Merrill Road and Queen Creek Road.

Staff believes the proposed property to be acquired is better situated for the possible future park and municipal yard. The proposed property is a square shape, as opposed to the long and narrow shape of the current property. The current property will lose acreage and be split into two parcels when the new Signal Butte Road is built. The proposed property will have good access from both Merrill Road and the new Signal Butte Road, without losing acreage or being split into two pieces. The proposed property is located adjacent to the Barney Family Sports Complex and will enjoy a dynamic cross-utilization between the park’s recreation fields and the Sports Complex programs.

Some of the major terms include:

1. No cost to the Town, except for closing costs and due diligence studies.
2. Barney Farms is currently farming the Town’s property. This lease will be terminated and a new (7-year) lease will be given to Barney Farms to farm the Town’s new site.
3. The municipal yard will remain at its current site, leasing from the Barneys, for the same period as the farming lease on the Town’s new property is in effect. Barneys may terminate in less than seven years upon three years’ notice to the Town. This gives three to seven years for the Town to plan for the eventual park/municipal yard design and development at the new site.
4. The Barneys will pay the Town the sum of \$60,000 to help pay for some of (a) the cost of a new park master plan; (b) the cost of moving the municipal yard; and (c) the cost of constructing a screen that will obstruct the view of the solar farm adjacent to the new park site. Such payment will occur when Barneys have sold 80 acres of their adjacent development and terminate the farming lease and the municipal yard lease, and upon the Town’s actual incurrence of the

aforementioned expenses, In addition, Barneys will give the Town a \$15,000 credit towards the Town's cost to acquire road right-of-way from the Barneys to help pay for the above items.

All terms have been agreed upon for the exchange. If the Town Council approves the ordinance, a closing date will be set.

**Fiscal Impact:**

There is no purchase price to acquire the fee simple property, as it is an even exchange of 127 acres of Town property for 127 acres of equal value. The Town and the Barneys will split closing costs and due diligence costs, with the Town's share estimated to be \$8,916 for due diligence studies and \$11,000 for closing costs.

The Barneys contribution of \$60,000 plus the road credit helps pay for some of the Town's cost to redesign the park at the new site, screen the solar farm from view, and move the municipal yard.

**Alternatives:**

The Town Council could decide not to exchange its current property for the Barneys' property.

**Attachments:**

1. Ordinance No.520-12
2. Exhibit A - Depiction of two properties to be exchanged
3. Exchange Agreement

**ORDINANCE 520 - 12**

**AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, PURSUANT TO A.R.S. 9-407 AUTHORIZING THE EXCHANGE OF A 127-ACRE PARCEL OF TOWN-OWNED PROPERTY LOCATED AT QUEEN CREEK ROAD EAST OF SIGNAL BUTTE ROAD (THE "TOWN PROPERTY") FOR 127 ACRES OF REAL PROPERTY OWNED BY THE BARNEY SPORTS COMPLEX, LLLP, NEWELL A. BARNEY AND KATHERINE M. BARNEY AS TRUSTEES OF THE NEWELL A. BARNEY AND KATHERINE M. BARNEY TRUST AGREEMENT, GAIL A. BARNEY AND KENNETH L. BARNEY, AND LOCATED NORTH OF THE NORTHEAST CORNER OF QUEEN CREEK AND MERRILL ROADS (THE "BARNEY PROPERTY")**

Arizona Revised Statutes § 9-407 permits cities and towns to exchange a parcel of real property owned by the city or town for another property of substantially equal value;

The Town Council has determined that the Barney Parcel and the Town Parcel are of substantially equal values, and that it is in the best interest of the Town to exchange the Town Property for the Barney Property.

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Common Council of the Town of Queen Creek, Arizona, as follows:

- Section 1.** The Barney Property and the Town Property are of substantially equal value; and that no cash or other consideration is required;
- Section 2.** The exchange is in the best interests of the residents of Queen Creek;
- Section 3.** The Mayor and Council hereby authorize the exchange of the Town Property, located within the Town of Queen Creek and more particularly described on Exhibit A, attached hereto and incorporated herein by reference for the Barney Property, located within the Town of Queen Creek and more particularly described on Exhibit B, attached hereto and incorporated herein by reference; and
- Section 4.** That the Mayor, Town Manager, Town Clerk and Town Attorney are hereby authorized and directed to do all acts, sign all documents and pay all sums necessary for the acquisition of said real property including but not limited to the execution of an Escrow Agreement and/or Exchange Agreement.

**PASSED AND ADOPTED BY** the Mayor and Common Council of the Town of Queen Creek, Arizona, this 17th day of October, 2012.

FOR THE TOWN OF QUEEN CREEK:

ATTESTED TO:

\_\_\_\_\_  
Gail Barney, Mayor

\_\_\_\_\_  
Jennifer Robinson, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:

\_\_\_\_\_  
John Kross, Town Manager

\_\_\_\_\_  
Mariscal, Weeks, McIntyre & Friedlander, P.A.,  
Town Attorneys

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY TO BE EXCHANGED**  
**(THE TOWN PROPERTY)**

A portion of the East half of the West half of Section 12, Township 2 South, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the South quarter corner of said Section 12, said point being a brass cap flush with pavement lying North 89 degrees 59 minutes 36 seconds East 2,627.22 feet away from the Southwest corner of said Section 12, said point being a brass cap in handhole;

THENCE North 00 degrees 31 minutes 08 seconds West 33.00 feet to the POINT OF BEGINNING;

THENCE South 89 degrees 59 minutes 36 seconds West parallel to and 33.00 feet North of the South line of said Section 12, a distance of 940.04 feet;

THENCE North 00 degrees 31 minutes 08 seconds West parallel to and 940.00 feet West of the North-South mid-section line of said Section 12, a distance of 617.02 feet;

THENCE South 89 degrees 59 minutes 36 seconds West parallel to and 650.00 feet North of the South line of said Section 12, a distance of 223.77 feet;

THENCE North 00 degrees 32 minutes 13 seconds West parallel to and 150.00 feet East of the West line of the East half of the West half of said Section 12, a distance of 400.02 feet;

THENCE South 89 degrees 59 minutes 36 seconds West parallel to and 1,050.00 feet North of the South line of said Section 12, a distance of 150.01 feet to a point on the West line of the East half of the West half of said Section 12;

THENCE North 00 degrees 32 minutes 13 seconds West along the West line of the East half of the West half of said Section 12, a distance of 1,577.19 feet to a point on the East-West mid-section line of said Section 12;

THENCE North 00 degrees 32 minutes 08 seconds West continuing along said West line, a distance of 1,838.73 feet;

THENCE South 89 degrees 47 minutes 10 seconds East parallel to and 807.07 feet South of the North line of the Northwest quarter of said Section 12, a distance of 1,315.01 feet;

THENCE South 00 degrees 31 minutes 08 seconds East 4,427.89 to the POINT OF BEGINNING.

**EXHIBIT B**  
**LEGAL DESCRIPTION OF THE PROPERTY TO BE ACQUIRED**  
**(THE BARNEY PROPERTY)**

A portion of the Southeast quarter of Section 11 and a portion of the Southwest quarter of Section 12, Township 2 South, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at a brass cap in a hand hole at the South quarter corner of said Section 11, from which a brass cap in a hand hole at the Southeast corner of said Section 11 bears South 89 degrees 49 minutes 23 seconds East at a distance of 2,642.85 feet;

Thence North 00 degrees 37 minutes 36 seconds West along the West line of the Southeast quarter of said Section 11, for a distance of 691.00 feet to the Point of Beginning;

Thence continuing North 00 degrees 37 minutes 36 seconds West, along said West line, for a distance of 1,938.98 feet to the Northwest corner of the Southeast quarter of said Section 11;

Thence South 89 degrees 46 minutes 27 seconds East, along the North line of the Southeast quarter of said Section 11, for a distance of 2,646.21 feet to the East quarter corner of said Section 11;

Thence North 89 degrees 59 minutes 51 seconds East, along the North line of the Southwest quarter of said Section 12, for a distance of 907.23 feet to a point on a non-tangent curve, concave to the Northwest, the center of which bears North 50 degrees 45 minutes 17 seconds West, at a distance of 1,340.00 feet;

Thence Southwesterly along the arc of said curve, through a central angle of 10 degrees 54 minutes 07 seconds for a distance of 254.97 feet to a point of tangency;

Thence South 50 degrees 08 minutes 50 seconds West for a distance of 303.79 feet to the beginning of a curve, concave to the Southeast, the center of which bears South 39 degrees 51 minutes 10 seconds East at a distance of 1,340.00 feet;

Thence Southwesterly, along the arc of said curve, through a central angle of 50 degrees 42 minutes 05 seconds for a distance of 1,185.77 feet to a point of tangency, said point being on the West line of the Southwest quarter of said Section 12;

Thence South 00 degrees 33 minutes 14 seconds East, along said West line, for a distance of 510.35 feet;

Thence North 89 degrees 49 minutes 23 seconds West for a distance of 1,366.01 feet;

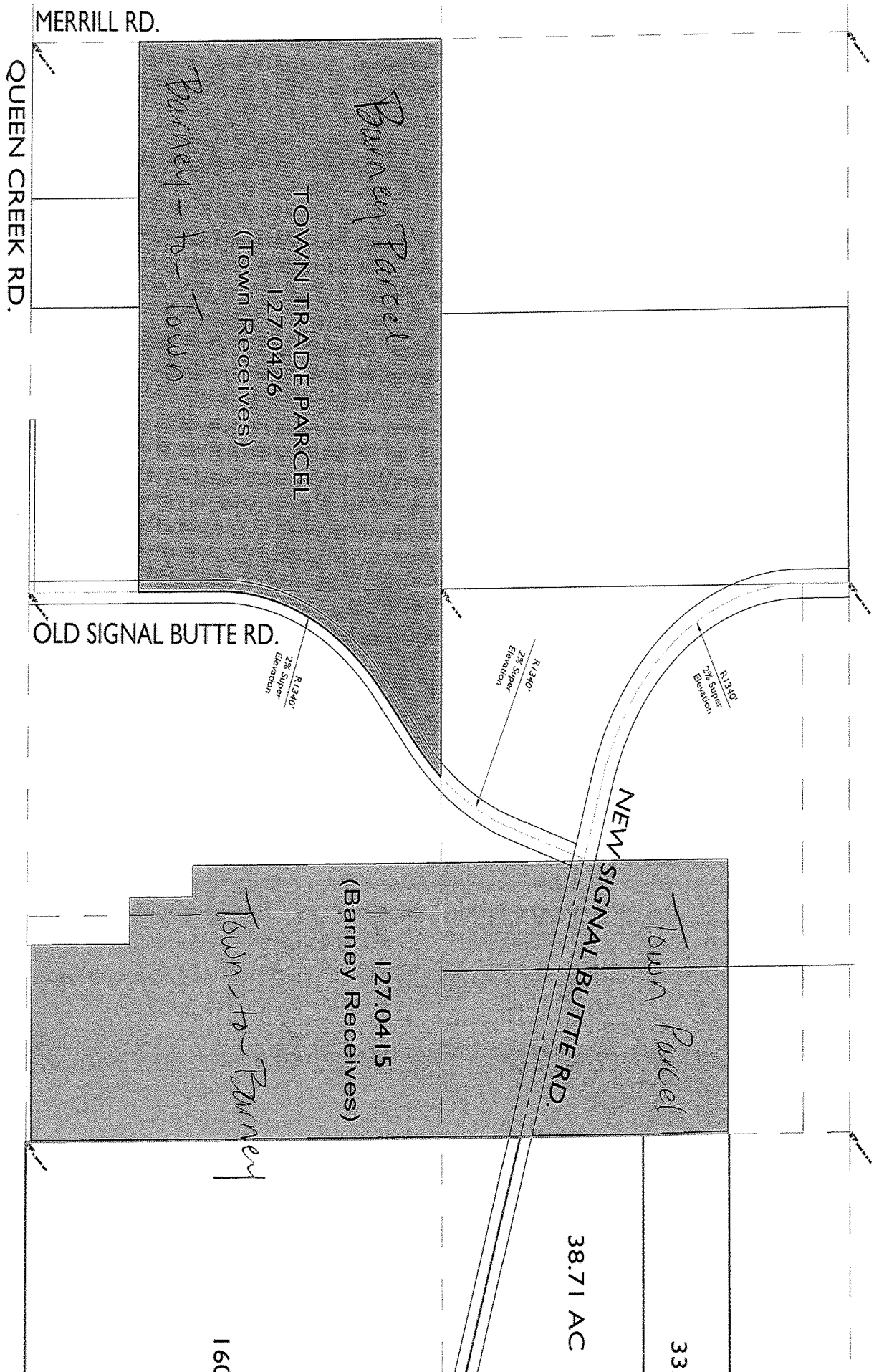
Thence South 89 degrees 11 minutes 41 seconds West for a distance of 525.63 feet;

Thence North 89 degrees 49 minutes 23 seconds West for a distance of 752.05 feet to the Point of Beginning.



**EXHIBIT A - DEPICTION OF THE PROPERTIES TO BE EXCHANGED**

# BARNEY FARMS / QUEEN CREEK PARK TRAD



**EXCHANGE AGREEMENT**

**Among**

**TOWN OF QUEEN CREEK,  
an Arizona municipal corporation,**

**NEWELL A. BARNEY AND KATHERINE M. BARNEY AS  
TRUSTEES OF THE NEWELL A. BARNEY AND KATHERINE  
M. BARNEY TRUST AGREEMENT, UNDER AGREEMENT  
DATED MAY 9, 1991;**

**BARNEY FAMILY SPORTS COMPLEX, LLLP, AN ARIZONA  
LIMITED LIABILITY LIMITED PARTNERSHIP;**

**KENNETH L. BARNEY, A MARRIED MAN, DEALING WITH  
HIS SOLE AND SEPARATE PROPERTY; AND**

**GAIL A. BARNEY, A MARRIED MAN, DEALING WITH HIS  
SOLE AND SEPARATE PROPERTY**

**Re: Real Properties  
Located on Queen Creek Road Queen Creek, Arizona**

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**LIST OF EXHIBITS**

A-1	-	Legal Description of the Town Parcel
A-2	-	Legal Description of the Barney Parcel
B-1	-	Diagram of the Town Parcel
B-2	-	Diagram of the Barney Parcel
C	-	Barney Deed
D	-	Town Deed
E	-	Affidavit of No Parties in Possession
F	-	Termination of Restrictions

(DD 10/05/12)

- G - Mutual Termination of Farming License Agreement
- H - Replacement Farming License
- I - Corp. Yard Lease
- J - Legal Description of Corp. Yard
- K - 1445 Non-Foreign Affidavit

## EXCHANGE AGREEMENT

DATED: Dated to be effective as of the \_\_\_ day of \_\_\_\_\_, 2012, (the "Effective Date").

PARTIES: This Exchange Agreement (the "Agreement") is among:

- (i) the TOWN OF QUEEN CREEK, an Arizona municipal corporation (the "Town");
- (ii) NEWELL A. BARNEY and KATHERINE M. BARNEY, as Trustees of THE NEWELL A. BARNEY AND KATHERINE M. BARNEY TRUST AGREEMENT, under agreement dated May 9, 1991;
- (iii) BARNEY FAMILY SPORTS COMPLEX, LLLP, an Arizona limited liability limited partnership;
- (iv) KENNETH L. BARNEY, a married man, dealing with his sole and separate property; and
- (v) GAIL A. BARNEY a married man, dealing with his sole and separate property, (ii) – (v) are collectively referred to as the "Barneys") as their interests may appear of record.

RECITALS:

A. The Town is the owner of approximately 127 acres $\pm$  of real property, including all tenements, hereditaments and appurtenances, if any, pertaining thereto; all mineral, irrigation and other water rights, if any, running with or otherwise pertaining thereto; all interest, if any, in any road adjoining such property to the centerline thereof as legally described on Exhibit "A-1" attached hereto and as shown on the diagram attached hereto as Exhibit "B-1" (the "Town Parcel").

B. The Barneys are the owners of approximately 127 acres  $\pm$  of real property, including all tenements, hereditaments and appurtenances, if any, pertaining thereto; all mineral, irrigation and other water rights, if any, running with or otherwise pertaining thereto; all interest, if any, in any road adjoining such property to the centerline thereof as legally described on Exhibit "A-2" attached hereto and as shown on the diagram attached hereto as Exhibit "B-2" (the "Barney Parcel").

C. The Town is authorized to enter into this Agreement pursuant to A.R.S. § 9-407 and has authorized the undersigned to execute this Agreement on behalf of the Town.

D. The Town and Barneys understand and agree that the Town Parcel and the Barney Parcel are substantially equal in value.

E. The Exchange (herein so-called) which is the subject of this Agreement is in the best interest of the citizens of the Town and the requirements of Arizona state and local law, including A.R.S. § 9-407 have been satisfied.

F. The Barneys have incurred costs in connection with the Barney Parcel Survey (as defined below). The Parties have agreed that the costs of the Barney Parcel Survey (the "Barney Parcel Survey Costs") are to be split evenly between the Town and the Barneys.

G. Additionally, the Town and the Barneys have incurred and/or will incur costs (the "Exchange Costs") in connection with certain other studies, inspections, reports and plans related to the Exchange (collectively, the "Preliminary Work"), such Preliminary Work including: (i) an appraisal of the Town Parcel; (ii) an appraisal of the Barney Parcel; (iii) the Barney Parcel Environmental Report (as defined below); (iv) a redesign of the Town's existing park property; and (v) the Barney Parcel Survey. The Parties have agreed that the Exchange Costs are to be split evenly between the Town and the Barneys.

H. The Parties have also agreed that the payment into escrow by the Barneys of the Barneys' share of the Exchange Costs shall be a condition to the closing of the Exchange transaction, as more particularly described herein.

#### AGREEMENTS:

NOW THEREFORE, in consideration of the promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and the Barneys (collectively the "Parties" or individually a "Party"), hereby agree as follows:

1. INCORPORATION OF RECITALS. All of the foregoing Recitals are hereby incorporated as agreements of the Parties.

2. BINDING AGREEMENT. This Agreement constitutes the binding agreement between the Town and the Barneys for the exchange of the Town Parcel and the Barney Parcel. Subject to the limitations set forth in this Agreement regarding assignment, this Agreement shall bind and inure to the benefit of the Parties and their respective successors and assigns. This Agreement supersedes all other written or verbal agreements, if any, between the Parties concerning this exchange transaction. No claim of waiver or modification concerning any provision of this Agreement shall be made against a Party unless based upon a written instrument signed by such Party.

3. THE EXCHANGE DOCUMENTS. The following fully executed documents are to be delivered into the Escrow (as defined below) for use by the Escrow Agent (as defined below) at the Closing (as defined below):

3.1. The Barneys' Deed. The fee title to the Barney Parcel shall be transferred and conveyed to the Town by the Barneys' execution and delivery to the Town of the original special warranty deed, a specimen of which is attached hereto as Exhibit "C" (the "Barney Deed");

3.2. The Town Deed. The fee title to the Town Parcel shall be transferred and conveyed to the Barneys by the Town's execution and delivery to the Barneys of the original special warranty deed, a specimen of which is attached hereto as Exhibit "D" (the "Town Deed"); and

3.3. Additional Documents. The following additional original documents are to be delivered at Closing, duly executed and acknowledged, as applicable, by the applicable Parties:

3.3.1. Affidavit of No Tenants in Possession. An executed Affidavit of No Tenants in Possession relating to the Barney Parcel and to the Town Parcel, in the form attached hereto as Exhibit "E";

3.3.2. Termination of Restrictions. A Termination of Restrictions in the form attached hereto as Exhibit "F" to be recorded by Escrow Agent at Closing to terminate that certain Declaration of Restrictions for Park Use recorded at Instrument No. 2006-1383988 MCR (the "Termination of Restrictions");

3.3.3. Mutual Termination of Farming License Agreement. A mutual termination in the form attached hereto as Exhibit "G" to terminate that certain Farming License Agreement between the Town, as licensor, and Barney Farms, an Arizona general partnership, as licensee dated to be effective as of September 16, 2009 (the "Original Farming License");

3.3.4. Replacement Farming License. A farming license agreement in the form attached hereto as Exhibit "H", between the Town, as licensor, and Barney Farms, as licensee (the "Replacement Farming License"); and

3.3.5. Corp. Yard Lease. A lease between the Barneys, as Lessor, and the Town, as Lessee, in the form attached hereto as Exhibit "I" (the "Corp. Yard Lease") leasing to the Town that portion of the Town Property legally described on Exhibit "J" after its conveyance to the Barneys (the "Corp. Yard").

#### 4. THE ESCROW AGENT, THE ESCROW AND THE CLOSING.

4.1. The Escrow Agent. The Parties hereby agree to jointly engage Pioneer Title Agency, Inc. (the "Escrow Agent") (Michele Lucero, Escrow Officer), as the escrow agent through which the Exchange shall be prosecuted.

4.2. The Escrow. The Parties agree that the Exchange shall be prosecuted through the Escrow Agent's Escrow No. 11012087 (the "Escrow").

4.3. The Closing. The Closing (herein so-called) of the Escrow shall be on or before 5:00 p.m. MST on the 60<sup>th</sup> day after end of the Opening of Escrow (as defined below).

#### 5. EXCHANGE CONSIDERATION.

5.1. For the Barney Deed. The consideration for the Barney Deed is the Town Deed.



5.2. For the Town Deed. The consideration for the Town Deed is the Barney Deed, plus the Screening Costs, as defined and set forth in the Corp. Yard Lease, Exhibit "I."

6. IRS SECTION 1445. The Town and the Barneys shall each furnish to the other at the Closing completed and executed sworn affidavits, in the form of Exhibit "K" attached hereto (the "Non-Foreign Affidavit") stating under penalty of perjury that the Town and the Barneys, as applicable, are not a "foreign person" as such term is defined in Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended (the "Code").

7. TOWN WARRANTIES. The Town hereby represents and warrants to the Barneys as of the Effective Date and again as of Closing that:

7.1. the Town has full power and authority to execute, deliver and perform under this Agreement as well as the documents, specimens of which are attached hereto as Exhibits;

7.2. to the Town's knowledge, there are no actions or proceedings pending or to Town's knowledge, threatened against the Town which may in any manner whatsoever affect the validity or enforceability of this Agreement or any of the documents, specimens of which are attached hereto as Exhibits;

7.3. the Town has not received any notice from any county or state authority or other political, governmental, or quasi-governmental authority or subdivision having jurisdiction over the Town Parcel requiring or specifying that any work be done to the Town Parcel, and the Town has no knowledge that any work is required to be done to the Town Parcel;

7.4. there are no outstanding and enforceable leases, tenancies, options, rights of first refusal, licenses, or operating or other agreements applicable to or affecting the Town Parcel to which the Town is a party or as to which the Town has actual knowledge; no third party has any right to utilize or possess the Town Parcel; and other than this Agreement, there are no contracts or agreements relating to the sale, exchange or transfer of the Town Parcel or any part thereof; and

7.5. should the Town receive notice or knowledge of any information regarding any of the matters set forth in this Paragraph after the Effective Date and prior to Closing, the Town will immediately notify the Barneys of the same in writing.

8. BARNEYS' WARRANTIES. The Barneys (and each of them) hereby represent and warrant to the Town as of the Effective Date and again as of Closing that:

8.1. the Barneys (and each of them) have full power and authority to execute, deliver and perform under this Agreement as well as the documents, specimens of which are attached hereto as Exhibits:

8.2. to the Barneys' knowledge, there are no actions or proceedings pending or threatened against the Barneys which may in any manner whatsoever affect the validity or enforceability of this Agreement or any of the documents, specimens of which are attached hereto as Exhibits;

8.3. the Barneys have not received any notice from any city, county or state authority or other political, governmental, or quasi-governmental authority or subdivision having jurisdiction over the Barney Parcel requiring or specifying that any work be done to the Barney Parcel, and the Barneys have no knowledge that any work is required to be done to the Barney Parcel;

8.4. there are no outstanding and enforceable leases, tenancies, options, rights of first refusal, licenses, or operating or other agreements applicable to or affecting the Barney Parcel to which the Barneys are a party or as to which the Barneys has actual knowledge; no third party has any right to utilize or possess the Barney Parcel; and other than this Agreement, there are no contracts or agreements relating to the sale, exchange or transfer of the Barney Parcel or any part thereof; and

8.5. should the Barneys receive notice or knowledge of any information regarding any of the matters set forth in this Paragraph after the Effective Date and prior to Closing the Barneys will immediately notify Town of the same in writing.

9. "AS IS" / "WHERE IS".

9.1. Barneys' Acknowledgement. The Barneys (and each of them) hereby agree and acknowledge that the Barneys are acquiring the Town Parcel in an "AS-IS" "WHERE IS" condition, with no representation or warranty being made by the Town of any type or nature except as may be expressly set forth in this Agreement and the Town Deed.

9.2. Town's Acknowledgement. The Town hereby agrees and acknowledges that the Town is acquiring the Barney Parcel in an "AS-IS" "WHERE IS" condition, with no representation or warranty being made by the Barneys of any type or nature except as may be expressly set forth in this Agreement and the Barney Deed.

10. BROKER'S COMMISSION.

10.1 No Brokers. Concerning any brokerage commission, the Parties warrant to one another that they have not dealt with any finder, broker or realtor in connection with this Agreement.

10.2 Indemnity. If any person shall assert a claim to a finder's fee or brokerage commission on account of alleged employment as a finder or broker in connection with the Exchange, the Party under whom the finder or broker is claiming shall and does hereby agree to indemnify, defend and hold the other Party harmless from and against any such claim and all costs, expenses and liabilities incurred in connection with such claim or any action or proceeding brought on such claim, including, but not limited to, counsel and witness fees and court costs in defending against such claims. The provision of this Subparagraph shall survive cancellation of this Agreement or Closing.

11. DUE DILIGENCE.

11.1. Title Reports and Objections.

11.1.1. The Town shall have the right to cause Escrow Agent to issue and deliver to the Parties a commitment for title insurance concerning the Barney Parcel (the "Barney Parcel Report") by 5:00 p.m. MST on the 10<sup>th</sup> day following the Opening of Escrow (as defined below). The Town shall pay all costs in regard to the Barney Parcel Report. The Town shall have until 5:00 p.m. MST on the 10<sup>th</sup> business day after its receipt of the Barney Parcel Report in which to advise the Barneys and Escrow Agent, in writing, that the condition of the title to the Barney Parcel is unacceptable (the "Town's Title Objections"). The Barneys may attempt to cure the Town's Title Objections by 5:00 p.m. on the 10<sup>th</sup> day after the Barneys' receipt of the Town's Title Objections. If the Barneys are unwilling, or unable, to cure the Town's Title Objections, as determined in the sole discretion of the Town, within the 10 day period, the Town may either waive, in writing, the Town's Title Objections or it may terminate this Agreement, and, except whereupon and as provided in this Agreement, neither party shall have any further liability or obligation under this Agreement. All title exceptions approved or deemed approved by the Town in accordance with this Subparagraph are hereafter referred to as the "Barney Parcel Permitted Exceptions."

11.1.2. The Barneys shall have the right to cause Escrow Agent to issue and deliver to the Parties a commitment for title insurance concerning the Town Parcel (the "Town Parcel Report") by 5:00 p.m. MST on the 10<sup>th</sup> day following the Opening of Escrow (as defined below). The Barneys shall pay all costs in regard to the Town Parcel Report. The Barneys shall have until 5:00 p.m. MST on the 10<sup>th</sup> business day after its receipt of the Town Parcel Report in which to advise the Town and Escrow Agent, in writing, that the condition of the title to the Town Parcel is unacceptable (the "Barneys' Title Objections"). The Town may attempt to cure the Barneys' Title Objections by 5:00 p.m. on the 10<sup>th</sup> day after the receipt of the Barneys' Title Objections. If the Town is unwilling, or unable, to cure the Barneys' Title Objections, as determined in the sole discretion of the Barneys, within the 10 day period, the Barneys may either waive, in writing, the Barneys' Title Objections or they may terminate this Agreement, and, except whereupon and as provided in this Agreement, neither party shall have any further liability or obligation under this Agreement. All title exceptions approved or deemed approved by the Barneys in accordance with this Subparagraph are hereafter referred to as the "Town Parcel Permitted Exceptions."

## 11.2. Rights of Entry.

11.2.1. In consideration of the Town's execution of this Agreement, the Barneys hereby grant to the Town and the Town's authorized agents, employees and contractors the right to enter upon the Barney Parcel at any reasonable time until 5:00 p.m. MST on the 45<sup>th</sup> day after the Opening of Escrow (the "Due Diligence Period") to study and review the Barney Parcel (the "Town's Exam"). During the Due Diligence Period, the Town shall have the right to: (a) cause a certified ALTA survey of the Barneys Parcel to be completed by a reputable surveyor licensed in the State of Arizona (the "Barney Parcel Survey"); (b) cause a so-called Phase I environmental assessment of the Barneys Parcel to be completed by a reputable environmental consultant (the "Barney Parcel Environmental Report"); and (c) cause such other investigations of the Barneys Parcel as the Town deems necessary ("Other Barney Parcel Reports"). In consideration of the Town's right of entry, the Town shall indemnify, defend and hold the Barneys harmless from any and all liabilities, claims, losses or damages which may be incurred by the Town because of the Town's Exam. The Town shall have until the expiration of the Due

Diligence Period in which to advise the Barneys and Escrow Agent, in writing, that the Barney Parcel Survey, Barney Parcel Environmental Report or Other Barney Parcel Reports are unacceptable (the "Town's Property Objections"). The Barneys may attempt to cure the Town's Property Objections by 5:00 p.m. on the 10<sup>th</sup> day after their receipt of the Town's Property Objections. If the Barneys are unwilling, or unable to cure the Town's Property Objections, as determined in the sole discretion of the Town, within the 10 day period, the Town may either waive, in writing, the Town's Objections or it may terminate this Agreement, and, except as provided in this Agreement, neither Party shall have any further liability or obligation under this Agreement.

11.2.2. In consideration of the Barneys' execution of this Agreement, the Town hereby grants to the Barneys and the Barneys' authorized agents, employees and contractors the right to enter upon the Town Parcel at any reasonable time during (the Due Diligence Period) to study and review the Town Parcel (the "Barneys' Exam"). During the Due Diligence Period, the Barneys shall have the right to: (a) cause a certified ALTA survey of the Town Parcel to be completed by a reputable surveyor licensed in the State of Arizona (the "Town Parcel Survey"); (b) cause a so-called Phase I environmental assessment of the Town Parcel to be completed by a reputable environmental consultant (the "Town Parcel Environmental Report"); and (c) cause such other investigations of the Town Parcel as the Barneys deem necessary ("Other Town Parcel Reports"). In consideration of the Town's right of entry, the Barneys shall indemnify, defend and hold the Town harmless from any and all liabilities, claims, losses or damages which may be incurred by the Barneys because of the Barneys' Exam. The Barneys shall have until the expiration of the Due Diligence Period in which to advise the Town and Escrow Agent, in writing, that the Town Parcel Survey, Town Parcel Environmental Report or Other Town Parcel Reports are unacceptable (the "Barneys' Property Objections"). The Town may attempt to cure the Barneys' Property Objections by 5:00 p.m. MST on the 10<sup>th</sup> day after its receipt of the Barneys' Property Objections. If the Town is unwilling, or unable, to cure the Barneys' Property Objections, as determined in the sole discretion of the Barneys, within the 10 day period, the Barneys may either waive, in writing, the Barneys' Objections or they may terminate this Agreement, and, except as provided in this Agreement, neither Party shall have any further liability or obligation under this Agreement.

11.3. Delivery of Possession. Subject to the satisfaction of the conditions set forth herein, including the condition set forth in Section 20, and if this Agreement is not earlier terminated pursuant to Section 11.1 or 11.2: (i) the Barneys, at the Barneys' sole cost, shall deliver possession of the Barney Parcel to the Town at the Closing, free and clear of all tenants or other occupants; and (ii) the Town, at the Town's sole cost, shall deliver possession of the Town Parcel to the Barneys at the Closing, free and clear of all tenants or other occupants.

12. NO ASSIGNMENT. Neither Party shall have the right or authority to assign this Agreement or any of such Party's rights under this Agreement to any person, partnership, corporation or other entity.

13. RISK OF LOSS. Each Party shall bear all material risk of loss, damage or taking of its property which may occur prior to the Closing.

14. NOTICES.

14.1. Addresses. Except as otherwise required by law, any notice required or permitted hereunder shall be in writing and shall be given by personal delivery, or by deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at the addresses set forth below, or at such other address as a Party may designate in writing pursuant hereto, or facsimile, or any express or overnight delivery service [e.g. Federal Express serving the locality to which addressed], delivery charges prepaid:

if to Barneys:	Newell A. Barney 22340 East Queen Creek Road Queen Creek, Arizona 85142 Telephone: 480.987.3582
with a copy to:	Jason Barney 4915 E. Baseline Road, Suite 105 Gilbert, Arizona 85234 Telephone: 480.818.2000
if to Town:	Town of Queen Creek 22350 South Ellsworth Road Queen Creek, Arizona 85142 Attn: Town Manager Telephone: 480.358.3000 Facsimile: 480.358.3189
with a copy to:	Mariscal, Weeks, McIntyre & Friedlander, P.A. 2901 North Central Avenue, Suite 200 Phoenix, Arizona 85012 Attn: Fredda J. Bisman Telephone: 602.285.5047 Facsimile: (602) 285-5100

14.2. Effective Date of Notices. Notice shall be deemed to have been given on the date on which notice is delivered, if notice is given by personal delivery, telex, telegrams or telecopies, and on the date of deposit in the mail, if mailed or deposited with the overnight carrier, if used. Notice shall be deemed to have been received on the date on which the notice is received, if notice is given by personal delivery, and on the 3<sup>rd</sup> day following deposit in the mail, if notice is mailed.

15. NO PRORATIONS. Any provision of this Agreement to the contrary notwithstanding, the Parties agree that there shall be no prorations calculated or payable at the Closing.

16. ADDITIONAL ACTS. The Parties agree to execute promptly such other documents and to perform such other acts as may be reasonably necessary to carry out the purpose and intent of this Agreement.

17. GOVERNING LAW. This Agreement shall be governed by and construed or enforced in accordance with the laws of the State of Arizona.

18. TIME OF ESSENCE. Time is of the essence of this Agreement.

19. CANCELLATION. This Agreement is subject to cancellation pursuant to A.R.S. §38-511.

20. BARNEY PARCEL SURVEY COSTS; EXCHANGE COSTS. Any provision of this Agreement to the contrary notwithstanding, as a condition to the Town's obligation to close the Exchange transaction, the Barneys, on or before the Closing, shall deposit into the Escrow the following amount: \$2,184.00, such amount representing the Barneys' share of the Exchange Costs. Following the Closing, Escrow Agent promptly shall deliver the Barneys' Payments to the Town.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TOWN:

TOWN OF QUEEN CREEK, an Arizona municipal corporation

By: \_\_\_\_\_  
Robin Benning, Vice Mayor

ATTEST:

\_\_\_\_\_  
Jennifer Robinson, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
MARISCAL, WEEKS, McINTYRE &  
FRIEDLANDER, P.A.,  
Town Attorneys

BARNEYS:

\_\_\_\_\_  
Newell A. Barney, solely as Trustee of the  
Newell A. Barney and Katherine M. Barney  
Trust Agreement under agreement dated May  
9, 1991

\_\_\_\_\_  
Katherine M. Barney, solely as Trustee of the  
Newell A. Barney and Katherine M. Barney  
Trust Agreement under agreement dated May  
9, 1991

BARNEY FAMILY SPORTS COMPLEX,  
LLLP, an Arizona limited liability limited  
partnership

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

\_\_\_\_\_  
KENNETH L. BARNEY

\_\_\_\_\_  
GAIL A. BARNEY

**SPOUSAL ACKNOWLEDGEMENTS AND WAIVERS**

The undersigned: (i) \_\_\_\_\_ Barney, spouse of Kenneth L. Barney; and (ii) Pamela Barney, spouse of Gail A. Barney hereby respectively release individually and as part of their respective marital community their respective interests, if any, in the Town Parcel and the Barney Parcel.

\_\_\_\_\_  
Barney

\_\_\_\_\_  
Pamela Barney

**ESCROW AGENT ACCEPTANCE  
AND OPENING OF ESCROW DATE**

The undersigned Escrow Agent hereby agrees to act as Escrow Agent in regard to the foregoing Agreement and acknowledges receipt of triplicate originals of the Agreement as executed by the Parties and by its signature below confirms that the date of Opening of Escrow is deemed to be the \_\_\_ day of \_\_\_\_\_, 2012.

PIONEER TITLE AGENCY, Inc.

By: \_\_\_\_\_  
Escrow Officer



**LEGAL DESCRIPTION OF THE TOWN PARCEL**

A portion of the East half of the West half of Section 12, Township 2 South, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the South quarter corner of said Section 12, said point being a brass cap flush with pavement lying North 89 degrees 59 minutes 36 seconds East 2,627.22 feet away from the Southwest corner of said Section 12, said point being a brass cap in handhole;

THENCE North 00 degrees 31 minutes 08 seconds West 33.00 feet to the POINT OF BEGINNING;

THENCE South 89 degrees 59 minutes 36 seconds West parallel to and 33.00 feet North of the South line of said Section 12, a distance of 940.04 feet;

THENCE North 00 degrees 31 minutes 08 seconds West parallel to and 940.00 feet West of the North-South mid-section line of said Section 12, a distance of 617.02 feet;

THENCE South 89 degrees 59 minutes 36 seconds West parallel to and 650.00 feet North of the South line of said Section 12, a distance of 223.77 feet;

THENCE North 00 degrees 32 minutes 13 seconds West parallel to and 150.00 feet East of the West line of the East half of the West half of said Section 12, a distance of 400.02 feet;

THENCE South 89 degrees 59 minutes 36 seconds West parallel to and 1,050.00 feet North of the South line of said Section 12, a distance of 150.01 feet to a point on the West line of the East half of the West half of said Section 12;

THENCE North 00 degrees 32 minutes 13 seconds West along the West line of the East half of the West half of said Section 12, a distance of 1,577.19 feet to a point on the East-West mid-section line of said Section 12;

THENCE North 00 degrees 32 minutes 08 seconds West continuing along said West line, a distance of 1,838.73 feet;

THENCE South 89 degrees 47 minutes 10 seconds East parallel to and 807.07 feet South of the North line of the Northwest quarter of said Section 12, a distance of 1,315.01 feet;

THENCE South 00 degrees 31 minutes 08 seconds East 4,427.89 to the POINT OF BEGINNING.

(DD 10/05/12)

**EXHIBIT "A-1" TO  
EXCHANGE AGREEMENT**

**LEGAL DESCRIPTION OF THE BARNEY PARCEL**

**[CHECK WITH TOWN FOR NEW SURVEY LEGAL]**

(DD 10/05/12)

**EXHIBIT "A-2" TO  
EXCHANGE AGREEMENT**

Old Republic National Title Insurance Company – Issued by

Pioneer Title Agency, Inc.

Exhibit A-2  
to Exch. Agree.

Order No.: 05750529-MML

Your No.: TRW\drw\5

08/24/2012\5

SCHEDULE A - continued

Exhibit A

A portion of the Southeast quarter of Section 11 and a portion of the Southwest quarter of Section 12, Township 2 South, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at a brass cap in a hand hole at the South quarter corner of said Section 11, from which a brass cap in a hand hole at the Southeast corner of said Section 11 bears South 89 degrees 49 minutes 23 seconds East at a distance of 2,642.85 feet;

Thence North 00 degrees 37 minutes 36 seconds West along the West line of the Southeast quarter of said Section 11, for a distance of 691.00 feet to the Point of Beginning;

Thence continuing North 00 degrees 37 minutes 36 seconds West, along said West line, for a distance of 1,938.98 feet to the Northwest corner of the Southeast quarter of said Section 11;

Thence South 89 degrees 46 minutes 27 seconds East, along the North line of the Southeast quarter of said Section 11, for a distance of 2,646.21 feet to the East quarter corner of said Section 11;

Thence North 89 degrees 59 minutes 51 seconds East, along the North line of the Southwest quarter of said Section 12, for a distance of 907.23 feet to a point on a non-tangent curve, concave to the Northwest, the center of which bears North 50 degrees 45 minutes 17 seconds West, at a distance of 1,340.00 feet;

Thence Southwesterly along the arc of said curve, through a central angle of 10 degrees 54 minutes 07 seconds for a distance of 254.97 feet to a point of tangency;

Thence South 50 degrees 08 minutes 50 seconds West for a distance of 303.79 feet to the beginning of a curve, concave to the Southeast, the center of which bears South 39 degrees 51 minutes 10 seconds East at a distance of 1,340.00 feet;

Thence Southwesterly, along the arc of said curve, through a central angle of 50 degrees 42 minutes 05 seconds for a distance of 1,185.77 feet to a point of tangency, said point being on the West line of the Southwest quarter of said Section 12;

Thence South 00 degrees 33 minutes 14 seconds East, along said West line, for a distance of 510.35 feet;

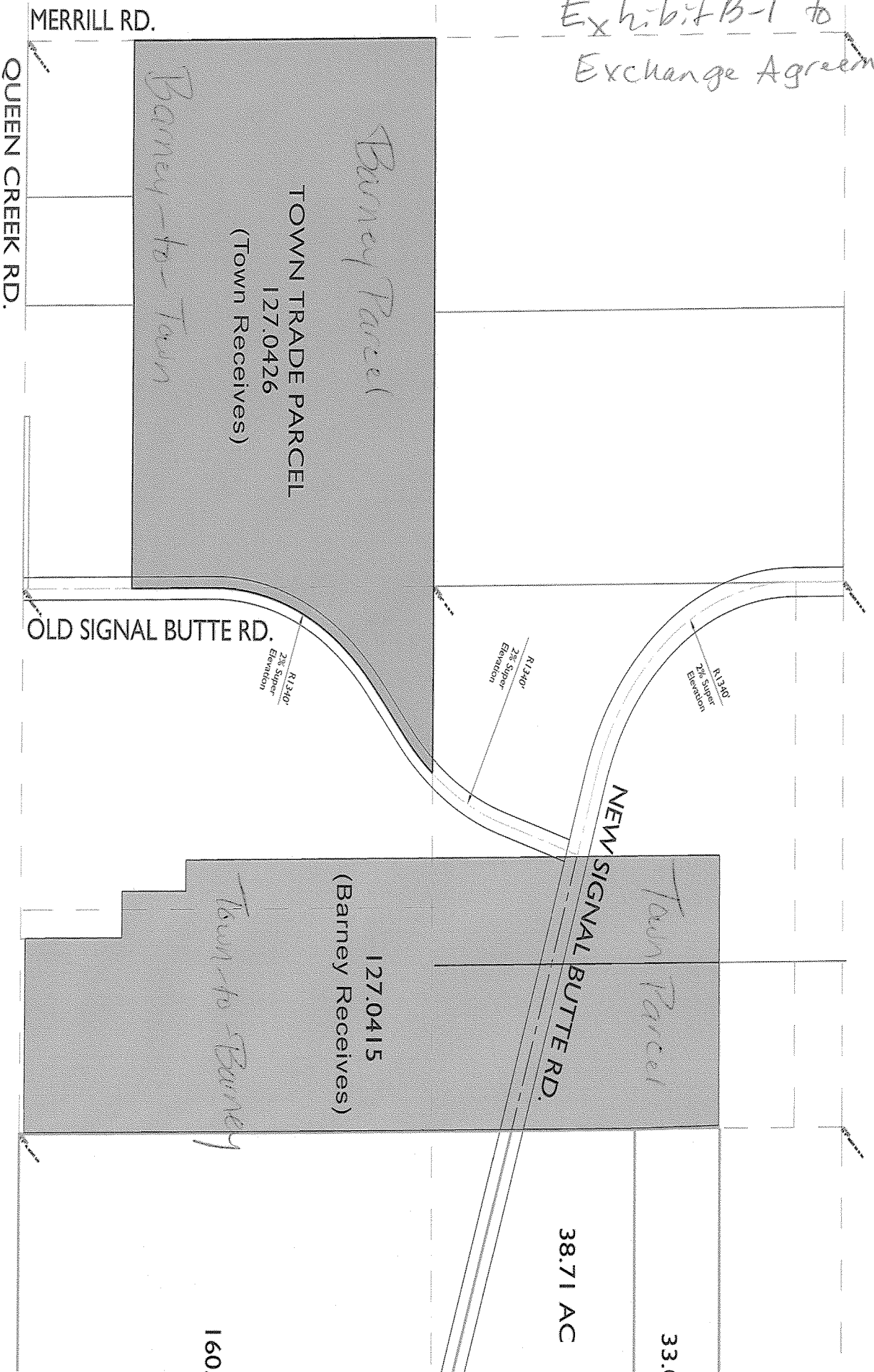
Thence North 89 degrees 49 minutes 23 seconds West for a distance of 1,366.01 feet;

Thence South 89 degrees 11 minutes 41 seconds West for a distance of 525.63 feet;

Thence North 89 degrees 49 minutes 23 seconds West for a distance of 752.05 feet to the Point of Beginning.

BARNEY FARMS / QUEEN CREEK PARK TRADE

Exhibit B-1 to Exchange Agreement



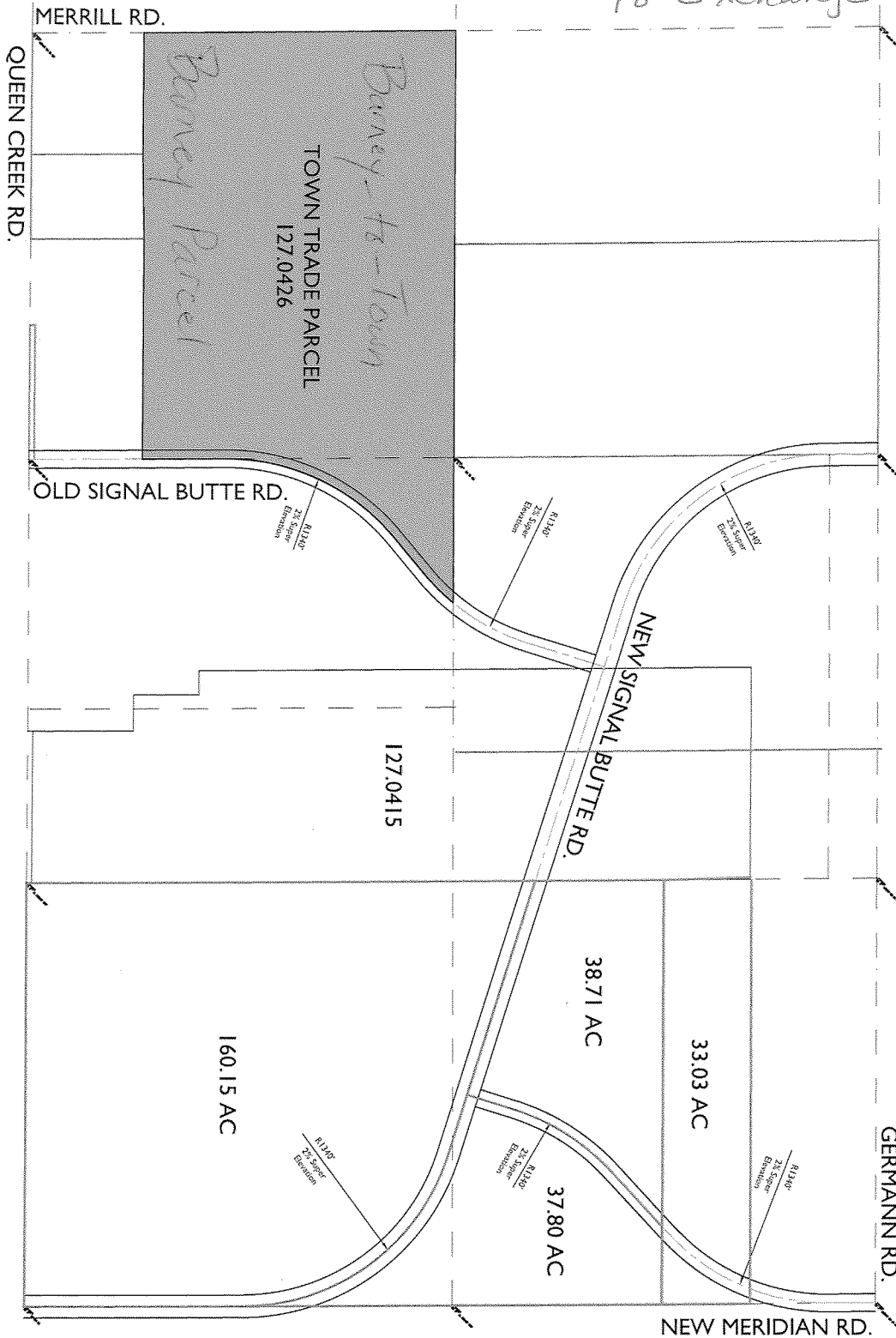
33.1

38.71 AC

160

Exhibit B-2  
to Exchange Agree.

BARNEY FARMS / QUEEN CREEK PARK TRADE



SHEET NO. 1 of 1	DRAWING NO. 11-092	PROJECT BARNEY FARMS / QUEEN CREEK PARK TRADE QUEEN CREEK, AZ	Eps group, Inc. Engineers, Planners & Surveyors 2045 S. Vineyard, Ste. 101, Mesa, Arizona 85210 Phone (480) 552-2250 Fax (480) 552-2250

When recorded, return to: )  
)  
Fredda J. Bisman, Esq. )  
Mariscal, Weeks, McIntyre )  
& Friedlander, P.A. )  
2901 N. Central Avenue, Suite 200 )  
Phoenix, AZ 85012 )

**THIS DEED IS EXEMPT FROM A.R.S. § 11-1133 BY VIRTUE OF A.R.S. § 11-1134A.3.**

**SPECIAL WARRANTY DEED**

For the consideration of Ten Dollars, and other valuable consideration:

(i) NEWELL A. BARNEY AND KATHERINE M. BARNEY, as Trustees of the Newell A. Barney and Katherine M. Barney Trust Agreement, U/T/D May 9, 1991 as to [a 60 % undivided tenancy-in-common interest] [Parcel<sup>s</sup> No. 1 and 2 on Exhibit "A" attached hereto];  
304-63-010P (1)  
-014J (2)

(ii) BARNEY FAMILY SPORTS COMPLEX, LLP, an Arizona limited liability partnership as to [a 100 % undivided tenancy-in-common interest] [Parcel No. 3+4 on Exhibit "A" attached hereto];  
304-63-010N (3)  
010Q (4)

(iii) KENNETH L. BARNEY, a married man dealing with his sole and separate property as to [a 20 % undivided tenancy-in-common interest] [Parcel<sup>s</sup> No. 1+2 on Exhibit "A" attached hereto]; and  
Same as Trust  
(1)+(2)

(iv) GAIL A. BARNEY, a married man dealing with his sole and separate property as to [a 20 % undivided tenancy-in-common interest] [Parcel<sup>s</sup> No. 1+2 on Exhibit "A" attached hereto].  
Same as Trust  
(1)+(2)

} other  
40%  
with  
Trust

(collectively the "Grantor"), hereby conveys to TOWN OF QUEEN CREEK, an Arizona municipal corporation (the "Grantee"), the following described real property situated in Maricopa County, Arizona, together with all rights and privileges appurtenant thereto:

See the legal description set forth in Exhibit "A" attached and incorporated by this reference (the "Property").

Such that upon the recording of this Deed the Grantee shall own 100% of the fee title to the Property.

**EXHIBIT "C" TO  
EXCHANGE AGREEMENT**

SUBJECT TO only those matters listed on Exhibit "B" attached hereto (the "Permitted Exceptions).

In accordance with A.R.S. §§ 33-401 et seq., the names and addresses of the beneficiaries of the trust referenced in Subparagraph (i) above are listed on Exhibit "C" attached hereto.

The Grantor hereby binds itself and its successors to warrant and defend the title, as against all acts of the Grantor herein and no other, subject only to the Permitted Exceptions.

Dated as of the \_\_\_\_ day of \_\_\_\_\_, 2012.

GRANTORS:

\_\_\_\_\_  
Newell A. Barney, solely as Trustee of the  
Newell A. Barney and Katherine M. Barney  
Trust Agreement under agreement dated May  
9, 1991

\_\_\_\_\_  
Katherine M. Barney, solely as Trustee of the  
Newell A. Barney and Katherine M. Barney  
Trust Agreement under agreement dated May  
9, 1991

BARNEY FAMILY SPORTS COMPLEX,  
LLLP, an Arizona limited liability limited  
partnership

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

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

\_\_\_\_\_  
KENNETH L. BARNEY

\_\_\_\_\_  
GAIL A. BARNEY

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me by Newell A. Barney, solely as Trustee of the Newell A. Barney and Katherine M. Barney Trust dated May 9, 1991 on behalf of the Trust this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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

My Commission Expires:

\_\_\_\_\_

**Description of Document (to be completed by notary if notary block is not on the same page as all signers whose signatures are notarized)**

Document Title: \_\_\_\_\_.

Document signers other than those names in the notarial certificate above:

\_\_\_\_\_.

Document date: \_\_\_\_\_.

Document pages: \_\_\_\_\_ (including covers, tables of contents and signature and notary pages, but not including attachments, schedules or exhibits).



STATE OF ARIZONA            )  
  ) ss.  
County of Maricopa            )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me by Katherine M. Barney, solely as Trustee of the Newell A. Barney and Katherine M. Barney Trust dated May 9, 1991 on behalf of the Trust this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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

My Commission Expires:

\_\_\_\_\_

**Description of Document (to be completed by notary if notary block is not on the same page as all signers whose signatures are notarized)**

Document Title: \_\_\_\_\_.

Document signers other than those names in the notarial certificate above:

\_\_\_\_\_.

Document date: \_\_\_\_\_.

Document pages: \_\_\_\_\_ (including covers, tables of contents and signature and notary pages, but not including attachments, schedules or exhibits).

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me by \_\_\_\_\_, as the \_\_\_\_\_ of Barney Family Sports Complex, LLLP, an Arizona limited liability partnership on behalf of the limited partnership this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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

My Commission Expires:

\_\_\_\_\_

**Description of Document (to be completed by notary if notary block is not on the same page as all signers whose signatures are notarized)**

Document Title: \_\_\_\_\_.

Document signers other than those names in the notarial certificate above:

\_\_\_\_\_.

Document date: \_\_\_\_\_.

Document pages: \_\_\_\_\_ (including covers, tables of contents and signature and notary pages, but not including attachments, schedules or exhibits).

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me by Kenneth L. Barney  
this \_\_\_\_ day of \_\_\_\_\_, 2012.

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

My Commission Expires:

\_\_\_\_\_

**Description of Document (to be completed by notary if notary block is not on the same page as all signers whose signatures are notarized)**

Document Title: \_\_\_\_\_.

Document signers other than those names in the notarial certificate above:

\_\_\_\_\_.

Document date: \_\_\_\_\_.

Document pages: \_\_\_\_\_ (including covers, tables of contents and signature and notary pages, but not including attachments, schedules or exhibits).

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me by Gail A. Barney this  
\_\_\_\_\_ day of \_\_\_\_\_, 2012.

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

My Commission Expires:

\_\_\_\_\_

**Description of Document (to be completed by notary if notary block is not on the same page as all signers whose signatures are notarized)**

Document Title: \_\_\_\_\_.

Document signers other than those names in the notarial certificate above:

\_\_\_\_\_.

Document date: \_\_\_\_\_.

Document pages: \_\_\_\_\_ (including covers, tables of contents and signature and notary pages, but not including attachments, schedules or exhibits).

LEGAL DESCRIPTION OF THE BARNEY PARCEL

[CHECK FOR NEW SURVEY LEGAL]

**EXHIBIT "A" TO  
BARNEY DEED**

(DD 10/05/12)



Exhibit A-1

Parcel One

Legal Description  
Portion of  
Parcel 304-63-010P  
To Town Of Queen Creek

owned by Trust  
60%  
and Coail 20  
Ken 20

Job No. 11-092

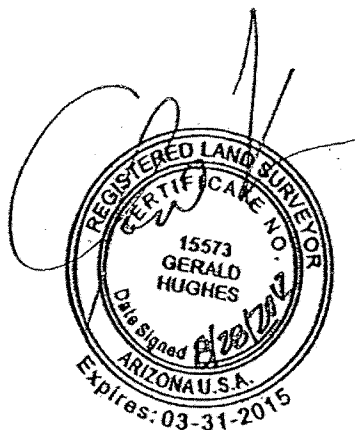
August 28, 2012

A portion of the Southeast Quarter of Section 11, Township 2 South, Range 7 East, Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at a brass cap in a hand hole at the south quarter corner of said Section 11, from which a brass cap in a hand hole at the southeast corner of said Section 11 bears S89°49'23"E at a distance of 2,642.85 feet; thence N00°37'36"W, along the west line of the Southeast Quarter of said Section 11, for a distance of 1,737.52 feet to the POINT OF BEGINNING;

Thence continuing N00°37'36"W, along said west line, for a distance of 892.46 feet to the northwest corner of the Southeast Quarter of said Section 11; thence S89°46'27"E, along the north line of the Southeast Quarter of said Section 11, for a distance of 2,646.21 feet to the east quarter corner of said Section 11; thence S00°33'14"E, along the east line of the Southeast Quarter of said Section 11, for a distance of 1,927.69 feet; thence N89°49'23"W, along a line parallel with the south line of the Southeast Quarter of said Section 11, for a distance of 1,366.01 feet; thence N00°33'07"W for a distance of 1,037.49 feet; thence N89°49'23"W, along a line parallel with the south line of the Southeast Quarter of said Section 11, for a distance of 1,279.08 feet to the POINT OF BEGINNING.

An area containing 3,774,990 square feet or 86.6619 acres, more or less.





Parcel 2  
Two

Exhibit A-2  
**Legal Description  
Portion of  
Parcel 304-63-014J  
To Town Of Queen Creek**

owned by  
Trust 60  
Gail 20  
Ken 20

Job No. 11-092

August 28, 2012

A portion of the Southwest Quarter of Section 12, Township 2 South, Range 7 East, Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at a brass cap in a hand hole at the southwest corner of said Section 12, from which a brass cap in a hand hole at the south quarter corner of said Section 11 bears N89°49'23"W at a distance of 2,642.85 feet; thence N00°33'14"W, along the west line of the Southwest Quarter of said Section 12, for a distance of 1,210.35 feet to the POINT OF BEGINNING;

Thence continuing N00°33'14"W, along said west line, for a distance of 1,417.34 feet to the west quarter corner of said Section 12; thence N89°59'51"E, along the north line of the Southwest Quarter of said Section 12, for a distance of 907.23 feet to a point on a non-tangent curve, concave to the northwest, the center of which bears N50°45'17"W, at a distance of 1,340.00 feet; thence southwesterly along the arc of said curve, through a central angle of 10°54'07" for a distance of 254.97 feet to a point of tangency; thence S50°08'50"W for a distance of 303.79 feet to the beginning of a curve, concave to the southeast, the center of which bears S39°51'10"E at a distance of 1,340.00 feet; thence southwesterly, along the arc of said curve, through a central angle of 50°42'04" for a distance of 1,185.77 feet the POINT OF BEGINNING.

An area containing 423,555 square feet or 9.7235 acres, more or less.





Sports Complex  
Parcel 3

Exhibit A-3

**Legal Description  
Portion of  
Parcel 304-63-010N  
To Town Of Queen Creek**

Job No. 11-092

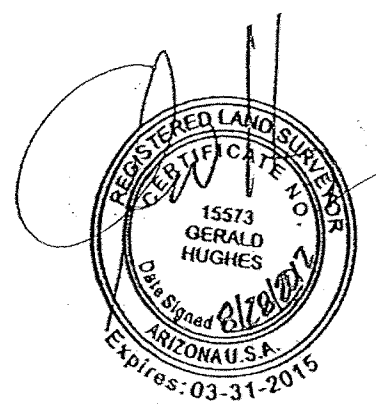
August 28, 2012

A portion of the Southeast Quarter of Section 11, Township 2 South, Range 7 East, Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at a brass cap in a hand hole at the south quarter corner of said Section 11, from which a brass cap in a hand hole at the southeast corner of said Section 11 bears S89°49'23"E at a distance of 2,642.85 feet; thence N00°37'36"W, along the west line of the Southeast Quarter of said Section 11, for a distance of 1,056.08 feet to the POINT OF BEGINNING;

Thence continuing N00°37'36"W, along said west line, for a distance of 681.44 feet; thence S89°49'23"E, along a line parallel with the south line of the Southeast Quarter of said Section 11, for a distance of 1,279.08 feet; thence S00°33'07"E for a distance of 681.43 feet; thence N89°49'23"W, along a line parallel with the south line of the Southeast Quarter of said Section 11, for a distance of 1,278.19 feet to the POINT OF BEGINNING.

An area containing 871,223 square feet or 20.0005 acres, more or less.





Sports Complex  
Parcel Four



Exhibit A-4

**Legal Description  
Portion of  
Parcel 304-63-010Q  
To Town Of Queen Creek**

Job No. 11-092

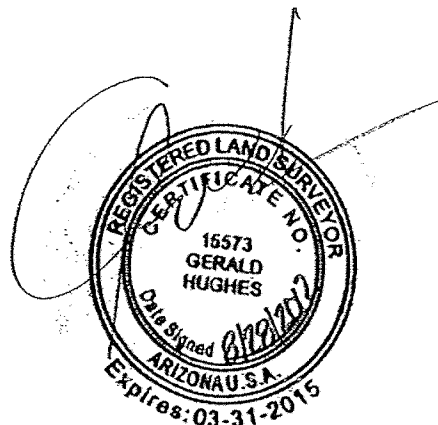
August 28, 2012

A portion of the Southeast Quarter of Section 11, Township 2 South, Range 7 East, Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at a brass cap in a hand hole at the south quarter corner of said Section 11, from which a brass cap in a hand hole at the southeast corner of said Section 11 bears S89°49'23"E at a distance of 2,642.85 feet; thence N00°37'36"W, along the west line of the Southeast Quarter of said Section 11, for a distance of 691.00 feet to the POINT OF BEGINNING;

Thence continuing N00°37'36"W, along said west line, for a distance of 365.08 feet; thence S89°49'23"E, parallel with the south line of the Southeast Quarter of said Section 11, for a distance of 1,278.19 feet; thence S00°33'07"E for a distance of 356.06 feet; thence S89°11'41"W for a distance of 525.63 feet; thence N89°49'23"W for a distance of 752.05 feet to the POINT OF BEGINNING.

An area containing 464,144 square feet or 10.6553 acres, more or less.



**BARNEY PARCEL**  
**PERMITTED EXCEPTIONS**

[TO BE INSERTED BY TOWN AT CLOSING]

**EXHIBIT "B" TO  
BARNEY DEED**

(DD 10/05/12)

**LIST OF TRUST BENEFICIARIES  
AND ADDRESSES**

[TO BE INSERTED BY ESCROW AGENT AT CLOSING]

Name

Address

1.

2.

**EXHIBIT "C" TO  
BARNEY DEED**

(DD 10/05/12)

When recorded, return to: )  
)  
Fredda J. Bisman, Esq. )  
Mariscal, Weeks, McIntyre )  
& Friedlander, P.A. )  
2901 N. Central Avenue, Suite 200 )  
Phoenix, AZ 85012 )

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**THIS DEED IS EXEMPT FROM A.R.S. § 11-1133 BY VIRTUE OF A.R.S. § 11-1134A.3.**

**SPECIAL WARRANTY DEED**

For the consideration of Ten Dollars, and other valuable consideration, TOWN OF QUEEN CREEK, an Arizona municipal corporation (the "Grantor"), hereby conveys to:

[CONFIRM VESTING BASED ON UPDATED TITLE REPORT FOR BARNEY PARCEL.]

(i) NEWELL A. BARNEY AND KATHERINE M. BARNEY, as Trustees of the Newell A. Barney and Katherine M. Barney Trust Agreement, U/T/D May 9, 1991 as to \_\_\_\_% undivided tenancy-in-common interest;

(ii) BARNEY FAMILY SPORTS COMPLEX, LLP, an Arizona limited liability partnership as to a \_\_\_\_% undivided tenancy-in-common interest;

(iii) KENNETH L. BARNEY, a married man dealing with his sole and separate property as to a \_\_\_\_% undivided tenancy-in-common interest; and

(iv) GAIL A. BARNEY, a married man dealing with his sole and separate property as to a \_\_\_\_% undivided tenancy-in-common interest.

(collectively the "Grantee"), the following described real property situated in Maricopa County, Arizona, together with all rights and privileges appurtenant thereto:

See the legal description set forth in Exhibit "A" attached and incorporated by this reference (the "Property").

Such that upon the recording of this Deed the Grantee shall own 100% of the fee title to the Property.

SUBJECT TO only those matters listed on Exhibit "B" attached hereto (the "Permitted Exceptions").

**EXHIBIT "D" TO  
EXCHANGE AGREEMENT**

1 of 2

(DD 10/05/12)

In accordance with A.R.S. §§ 33-401 et. seq., the names and addresses of the beneficiaries of the trust referenced in Subparagraph (i) above are listed on Exhibit "C" attached hereto.

The Grantor hereby binds itself and its successors to warrant and defend the title, as against all acts of the Grantor herein and no other, subject only to the Permitted Exceptions.

Dated as of the \_\_\_\_ day of \_\_\_\_\_, 2012.

GRANTOR:

TOWN OF QUEEN CREEK, an Arizona municipal corporation

By: \_\_\_\_\_  
Robin Benning, Vice Mayor

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

SUBSCRIBED AND SWORN TO before me this \_\_\_\_ day of \_\_\_\_\_, 2012 by Robin Benning as the Vice Mayor of the TOWN OF QUEEN CREEK, an Arizona municipal corporation, on behalf of the Town.

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

My Commission Expires:

\_\_\_\_\_

**LEGAL DESCRIPTION OF THE TOWN PARCEL**

A portion of the East half of the West half of Section 12, Township 2 South, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the South quarter corner of said Section 12, said point being a brass cap flush with pavement lying North 89 degrees 59 minutes 36 seconds East 2,627.22 feet away from the Southwest corner of said Section 12, said point being a brass cap in handhole;

THENCE North 00 degrees 31 minutes 08 seconds West 33.00 feet to the POINT OF BEGINNING;

THENCE South 89 degrees 59 minutes 36 seconds West parallel to and 33.00 feet North of the South line of said Section 12, a distance of 940.04 feet;

THENCE North 00 degrees 31 minutes 08 seconds West parallel to and 940.00 feet West of the North-South mid-section line of said Section 12, a distance of 617.02 feet;

THENCE South 89 degrees 59 minutes 36 seconds West parallel to and 650.00 feet North of the South line of said Section 12, a distance of 223.77 feet;

THENCE North 00 degrees 32 minutes 13 seconds West parallel to and 150.00 feet East of the West line of the East half of the West half of said Section 12, a distance of 400.02 feet;

THENCE South 89 degrees 59 minutes 36 seconds West parallel to and 1,050.00 feet North of the South line of said Section 12, a distance of 150.01 feet to a point on the West line of the East half of the West half of said Section 12;

THENCE North 00 degrees 32 minutes 13 seconds West along the West line of the East half of the West half of said Section 12, a distance of 1,577.19 feet to a point on the East-West mid-section line of said Section 12;

THENCE North 00 degrees 32 minutes 08 seconds West continuing along said West line, a distance of 1,838.73 feet;

THENCE South 89 degrees 47 minutes 10 seconds East parallel to and 807.07 feet South of the North line of the Northwest quarter of said Section 12, a distance of 1,315.01 feet;

THENCE South 00 degrees 31 minutes 08 seconds East 4,427.89 to the POINT OF BEGINNING.

(DD 10/05/12)

**EXHIBIT "A" TO  
TOWN DEED**

**TOWN PARCEL PERMITTED EXCEPTIONS**

(DD 10/05/12)

**EXHIBIT "B" TO  
TOWN DEED**

**LIST OF BENEFICIARIES AND ADDRESSES**

[TO BE INSERTED BY ESCROW AGENT AT CLOSING]

	<u>Name</u>	<u>Address</u>
1.		
2.		



**AFFIDAVIT OF NO PARTIES IN POSSESSION**

DATED: The \_\_\_\_ day of \_\_\_\_\_, 2012 (the "Effective Date")

AFFIANT: \_\_\_\_\_

RECITALS:

A. As of the Effective Date, Affiant is conveying the real property more particularly described in Exhibit "A" attached hereto (the "Property") to \_\_\_\_\_ (the "Sale" and the "Grantee").

B. In conjunction with the Sale, Grantee requires this Affidavit from the Affiant.

**REPRESENTATIONS AND WARRANTIES**

1. For good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Affiant hereby represents, warrants and covenants, as of the Effective Date, that there are no persons or entities in possession or control of the Property nor does any person or entity have any legal or equitable right to be in possession or control of the Property other than Affiant.

2. Affiant shall and does hereby agree to indemnify, defend and hold Grantee harmless from any or all costs or damages in the event Affiant's warranties or representations as set forth above are incorrect.

AFFIANT: \_\_\_\_\_

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

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

STATE OF ARIZONA        )  
                                      ) ss:  
County of Maricopa        )

SUBSCRIBED AND SWORN TO before me this \_\_\_\_ day of \_\_\_\_\_, 2012  
by \_\_\_\_\_ as the \_\_\_\_\_ of \_\_\_\_\_, on behalf of the  
\_\_\_\_\_.

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

My Commission Expires:  
  
\_\_\_\_\_

**LEGAL DESCRIPTION OF PROPERTY**

[CHECK FOR NEW SURVEY LEGAL OF THE BARNEY PARCEL TO BE INSERTED AT  
CLOSING ON BARNEY AFFIDAVIT]

[INSERT LEGAL OF TOWN PARCEL AT CLOSING ON TOWN AFFIDAVIT]

(DD 10/05/12)

**EXHIBIT "A" TO  
AFFIDAVIT**

Old Republic National Title Insurance Company – Issued by

# Pioneer Title Agency, Inc.

Order No.: 05750529-MML

Your No.: TRW\drw\5

08/24/2012\5

## SCHEDULE A - continued

### Exhibit A

A portion of the Southeast quarter of Section 11 and a portion of the Southwest quarter of Section 12, Township 2 South, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at a brass cap in a hand hole at the South quarter corner of said Section 11, from which a brass cap in a hand hole at the Southeast corner of said Section 11 bears South 89 degrees 49 minutes 23 seconds East at a distance of 2,642.85 feet;

Thence North 00 degrees 37 minutes 36 seconds West along the West line of the Southeast quarter of said Section 11, for a distance of 691.00 feet to the Point of Beginning;

Thence continuing North 00 degrees 37 minutes 36 seconds West, along said West line, for a distance of 1,938.98 feet to the Northwest corner of the Southeast quarter of said Section 11;

Thence South 89 degrees 46 minutes 27 seconds East, along the North line of the Southeast quarter of said Section 11, for a distance of 2,646.21 feet to the East quarter corner of said Section 11;

Thence North 89 degrees 59 minutes 51 seconds East, along the North line of the Southwest quarter of said Section 12, for a distance of 907.23 feet to a point on a non-tangent curve, concave to the Northwest, the center of which bears North 50 degrees 45 minutes 17 seconds West, at a distance of 1,340.00 feet;

Thence Southwesterly along the arc of said curve, through a central angle of 10 degrees 54 minutes 07 seconds for a distance of 254.97 feet to a point of tangency;

Thence South 50 degrees 08 minutes 50 seconds West for a distance of 303.79 feet to the beginning of a curve, concave to the Southeast, the center of which bears South 39 degrees 51 minutes 10 seconds East at a distance of 1,340.00 feet;

Thence Southwesterly, along the arc of said curve, through a central angle of 50 degrees 42 minutes 05 seconds for a distance of 1,185.77 feet to a point of tangency, said point being on the West line of the Southwest quarter of said Section 12;

Thence South 00 degrees 33 minutes 14 seconds East, along said West line, for a distance of 510.35 feet;

Thence North 89 degrees 49 minutes 23 seconds West for a distance of 1,366.01 feet;

Thence South 89 degrees 11 minutes 41 seconds West for a distance of 525.63 feet;

Thence North 89 degrees 49 minutes 23 seconds West for a distance of 752.05 feet to the Point of Beginning.

When recorded, return to: )  
)  
Fredda J. Bisman, Esq. )  
Mariscal, Weeks, McIntyre )  
& Friedlander, P.A. )  
2901 N. Central Avenue, Suite 200 )  
Phoenix, AZ 85012 )

**TERMINATION OF DECLARATION OF RESTRICTIONS FOR PARK USE**

The undersigned, as the Declarant under that certain Declaration of Restrictions For Park Use dated as of October 1, 2006 and recorded on October 19, 2006 at Instrument No. 2006-1383988 in the Official Records of Maricopa County Arizona (the "Declarations") hereby terminates the Declaration of record as of the effective date such that the Declaration shall be of no further force and effect.

Dated to be effective as of the \_\_\_\_ day of \_\_\_\_\_, 2012 (the "Effective Date").

Declarant: TOWN OF QUEEN CREEK, an Arizona  
municipal corporation

By: \_\_\_\_\_  
Robin Benning, Vice Mayor

STATE OF ARIZONA )  
) ss:  
County of Maricopa )

SUBSCRIBED AND SWORN TO before me this \_\_\_\_ day of \_\_\_\_\_, 2012  
by Robin Benning, Vice Mayor of the Town of Queen Creek.

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

My Commission Expires:  
\_\_\_\_\_

**EXHIBIT "F" TO  
EXCHANGE AGREEMENT**

## MUTUAL TERMINATION OF FARMING LICENSE AGREEMENT

DATED: This Mutual Termination of Farming License Agreement (the "Termination Agreement") is dated to be effective as of the \_\_\_ day of \_\_\_\_\_, 2012 (the "Effective Date").

PARTIES: The Parties to this Termination Agreement are:

(i) THE TOWN OF QUEEN CREEK, an Arizona municipal corporation (the "Town"); and

(ii) BARNEY FARMS, an Arizona general partnership ("Licensee"). The Town and Licensee may be hereafter collectively referred to as the "Parties."

RECITALS:

A. The Parties entered into that certain Town of Queen Creek Farming License Agreement dated to be effective as of September 16, 2009 (the "License").

B. The Parties desire to mutually terminate the License as of the Effective Date as more particularly provided in this Termination Agreement.

### AGREEMENTS

1. Termination. Any provision of the License to the contrary regarding the date of the termination of the License notwithstanding, the Parties hereby mutually and voluntarily terminate the License as of the Effective Date (the "Termination").

2. Waiver of Claims. Except for Licensee's obligations under Section 4F of the License and in light of the Termination and for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by the Parties, the Town and the Licensee each hereby now and forever waive any and all claims, costs and expenses, now or hereafter existing against the other to any matter which may arise under or in any way relate to the License.

3. Crop Reimbursement. As of the Effective Date, Licensee does not have any crops growing on the Premises (as defined in the License) and therefore Licensee is not entitled to and shall and does hereby waive any and all claims to any reimbursement in accordance with Paragraph 14 of the License.

IN WITNESS WHEREOF the Parties have executed this Termination as of the Effective Date.

### EXHIBIT "G" TO EXCHANGE AGREEMENT

1 of 2

TOWN:

TOWN OF QUEEN CREEK, an Arizona  
municipal corporation

By: \_\_\_\_\_  
Robin Benning, Vice Mayor

Attest:

\_\_\_\_\_  
Jennifer Robinson, Town Clerk

Approved as to Form:

\_\_\_\_\_  
Mariscal, Weeks, McIntyre & Friedlander, P.A.  
Town Attorney

LICENSEE:

BARNEY FARMS, an Arizona general partnership

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

## TOWN OF QUEEN CREEK FARMING LICENSE

This license of real property for farming (the "License") is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 2012 (the "Effective Date"), by and between the TOWN OF QUEEN CREEK, an Arizona municipal corporation, located at 22350 South Ellsworth Road, Queen Creek, AZ 85142 (the "**Town**"), and BARNEY FARMS, an Arizona general Partnership, whose principal place of business is located at [22340 East Queen Creek Road], Queen Creek, AZ 85142, (the "**Licensee**"). Town and Licensee may be referred to in this License collectively as the "Parties" and each individually as a "Party".

### RECITALS

A. Town is the owner of the property to be used for farming by Licensee which is described in Exhibit "A" attached hereto and incorporated herein by this reference subject, however, to current taxes and assessments, reservations in patents and all rights-of-way, canals, ditches, levees, roads, utility lines, covenants, conditions, restrictions, easements, and encumbrances whether of record or not, and to all applicable governmental laws, rules, regulations and ordinances (the "Premises").

B. Town desires to temporarily eliminate the maintenance costs associated with the Premises and implement measures which mitigate emissions of dust and particulate matter from the Premises. To receive these benefits, Town desires to license the Premises to Licensee solely for farming purposes in accordance with this License.

C. The Licensee desires to use the Premises for farming operations only in accordance with this License.

### **I.LICENSES**

NOW, THEREFORE, in consideration of the premises and representations, covenants and mutual promises herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. License to Licensee. Town hereby grants a license for the Premises to the Licensee described above, and Licensee hereby accepts the license for said Premises from Town, subject to the terms and conditions of this License.

2. Term.

### EXHIBIT "H" TO EXCHANGE AGREEMENT

1 of 12

2.1 The term of this License shall be for a period of 7 years commencing on the Effective Date unless otherwise sooner terminated, in writing, as provided in Paragraph 13 (the "Term").

3. **License Fee.** In consideration for this License, the Licensee shall pay to Town, without deduction or offset, a licensing fee in the amount of \$1.00 per year for the License all to be paid in advance on the Effective Date (the "License Fee").

4. **Use of Premises.**

4.1 The Licensee agrees to use the Premises only for farming (the "Use"), and at its own expense to cultivate, plant, irrigate, farm and harvest such crops in a good and farmer like manner, consistent with industry standards, and to keep the Premises free and clear of all noxious weeds and grasses.

4.2 Licensee agrees to farm the Premises in a manner that will minimize soil erosion, and if cotton is planted on the Premises to shred, disk and plow under all cotton stalks to the extent necessary to destroy the plant and root system with no stalks remaining attached to the soil.

4.3 Any improvements or repairs made to the Premises or appurtenances constructed thereon shall be pre-approved, in writing, by the Town Manager and become the property of Town and remain on the Premises at the end of the Term or earlier termination of this License.

4.4 Licensee shall not commit or permit any wasteful, unlawful, improper or offensive use of the Premises or create or permit any public or private nuisance or act or thing which may disturb the quiet enjoyment of Town or Town's employees, tenants, and agents on reserved or adjacent property, or the owners of any adjacent property.

4.5 Licensee, at Licensee's sole expense, shall comply with and abide by all laws, regulations, ordinances, orders, code, laws and requirements of all municipal, county, state, and federal laws that are applicable to the Premises and/or Licensee's operations on or at the Premises including but not limited to all Environmental Laws (as defined below).

4.6 The term "Environmental Law" shall mean any federal or state law, statute, ordinance or regulation pertaining to health, Hazardous Substance, industrial limitation, CERCLA (Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., and RCRA (Resources, Compensation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.). The term "Hazardous Substance" shall mean any material or substance that is: (a) a "hazardous substance" pursuant to CERCLA or CWA (Clean Water Act, 33 U.S.C. § 1251 et seq.); (b) a "hazardous waste" pursuant to RCRA; (c) a toxic pollutant under CWA; (d) a "hazardous air pollutant" under the Clean Air Act, 42 U.S.C. § 7401 et seq.; (e) a "hazardous material" under the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; (f) toxic or hazardous pursuant to regulations promulgated under the aforementioned laws or any other Environmental Law; (g) a risk to the environment under any other applicable federal, state or



local laws, ordinances or regulations; or (h) asbestos, polychlorinated biphenyls (“PCBs”), petroleum and petroleum-based derivatives, and urea formaldehyde. Licensee shall not use, produce, store, release, dispose or handle in or about the Premises or transfer to or from the Premises (or permit any other party to do such acts) any Hazardous Substance except in compliance with all Environmental Laws. Licensee shall immediately notify Town, in writing, of: (i) the existence of any Hazardous Substance on or about the Premises that may be in violation of any Environmental Law (regardless of whether Licensee is responsible for the existence of such Hazardous Substance); (ii) any proceeding or investigation by any federal, state or local governmental authority regarding the presence of any Hazardous Substance on the Premises or the migration thereof to or from any other property; (iii) all claims made or threatened by any third party against Licensee relating to any loss or injury resulting from any Hazardous Substance, or (iv) Licensee’s notification of the National Response Center of any release of a reportable quantity of a Hazardous Substance in or about the Premises. Town acknowledges that Licensee intends to use chemicals for pest control, disease control, and fertilization as are standard and normal in the farming industry. Licensee shall use, store and apply such chemicals in accordance with good farming practices consistent with the industry standard and in accordance with all applicable Laws, including Environmental Laws. Licensee shall and does hereby agree to defend and indemnify Town and hold Town harmless from all claims, charges, penalties, orders, judgments, costs, attorneys’ fees, damages, expenses, liabilities and losses arising out of or in connection with, resulting from or related to in any manner, directly or indirectly, in whole or in part, to Licensee’s use of Hazardous Substances on the Premises, regardless of whether such claims, charges, penalties, orders, judgments, costs, attorneys’ fees, damages, expenses, liabilities and losses arise or are incurred before or after expiration of the License Term. The provisions of this Subparagraph 4.6 shall survive the expiration or earlier termination of this License.

4.7 Licensee shall not put the Premises into combination with other lands without the prior written consent of Town to be given or withheld in Town’s sole discretion.

**5. Acceptance of Licensed Area.** Licensee is familiar with and has examined the Premises and Licensee hereby accepts the Premises “as is” and “where is” and Licensee shall and does hereby waive all claims Licensee, now or hereafter may have, against the Town arising out of or in any way attributable to the physical status or condition of the Premises. Licensee acknowledges that Town has not made any representations or warranty, express or implied, as to the suitability of the Premises for the Use.

**6. Utilities, Repair and Maintenance.**

6.1 Licensee agrees to pay all utilities serving the Premises and, at its own expense, to maintain all canals, laterals, ditches, all equipment installed in connection with wells and pumps situated on the Premises located above or below the surface of the ground and all other improvements (the “Improvements”) located upon the Premises.

6.2 The Licensee, at Licensee’s sole cost, shall promptly repair any damage to the Premises and improvements now or hereafter thereon (the “Improvements”) resulting from the Use. At least 48 hours prior to the end of the Term, Town and Licensee shall conduct a joint

inspection of the Premises and Improvements with the object of preparing a jointly-prepared list of those items, if any, which are to be repaired by the Licensee, at Licensee's sole cost, resulting from the Use (the "Repair Items"). Licensee's obligations under this Subparagraph 6.2 shall survive the expiration or earlier termination of this License and, in this regard at a mutually agreed upon time not to exceed 5 days after the termination or expiration of the Term, Licensee shall cause the Repair Items to be completed to Town's reasonable satisfaction.

7. **Subleases, Assignment and Mortgage.** Licensee will not assign this License or sublet the whole or any part of the Premises without the prior written consent of Town to be given or withheld in the Town's sole discretion. Licensee will not subject the Premises to any cross mortgage, security License, encumbrance or lien, without the prior written approval of Town to be given or withheld in the Town's sole discretion.

8. **Indemnification.**

8.1 Licensee shall and does hereby defend, indemnify, save and hold harmless Town and its elected officials, officers, employees, council members and agents (collectively the "Indemnitees") for, from and against any and all claims, demands, losses, damages, suits, actions, liabilities, fines, charges, penalties, obligations, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and professional, expert or consultant fees (including, but not limited to, such expenses incurred in any attempt to enforce this indemnification provision and the cost of appellate proceedings) (collectively the "Claims"), which may arise out of, in connection with, resulting from or related to in any manner, directly or indirectly, in whole or in part, out of the exercise of this License by Licensee including, without limitation, claims for bodily injury, death, damage to property, loss of use of property or defects in workmanship or materials and regardless of whether asserted as a breach of contract, breach of warranty, tort or any other theory of recovery. It is the specific intention of the Parties that the Indemnitee shall be indemnified by Licensee or by anyone for whose acts the Licensee may be legally liable, including employees, customers, agents, invitees, licensees, or guests. It is the specific intention of the Parties that the Indemnitee shall be indemnified by Licensee from and against all Claims other than those arising from the Indemnitees' sole willful or gross negligence.

8.2 In the event that any action or proceeding shall at any time be brought against any of the Indemnitees by reason of any Claim referred to in this Section 8, Licensee, at Licensee's sole cost and upon at least 10 days' prior written notice from Town, shall defend the same with counsel acceptable to Town, in Town's sole discretion.

8.3 Except for Town's sole willful or gross negligence, Licensee, on its own behalf and on behalf of its successor and assigns, shall and does hereby release Town and the Indemnitees for all liabilities and Claims incurred by Licensee based on the exercise of this License by Licensee.

8.4 Licensee shall and does hereby agree to indemnify, defend and save the Indemnitees harmless against all claims arising directly or indirectly, in whole or in part, from

any breach or default on Licensee's part in the performance of any covenant or License of Licensee under this License.

8.5 Licensee's obligations and waivers under this Section 8 shall survive the expiration or earlier termination of this License.

8.6 The insurance provisions set forth in this License are separate and independent from the indemnity provisions of this License and shall not be construed in any way to limit the scope and magnitude of the indemnification obligations, nor shall Licensee's indemnification obligations be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

## **9. Insurance.**

9.1 Without limiting any liabilities or any obligations of Licensee under this License, Licensee shall provide and maintain minimum insurance coverages as follows: (a) commercial general public liability insurance with limits of not less than \$1,000,000.00 each occurrence, \$2,000,000 annual general aggregate per location and \$1,000,000.00 property damage liability insurance and casualty insurance covering the wells, and (b) workmen's compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Licensee's employees. All such policies shall be issued by a responsible company or companies licensed to do business in the State of Arizona and possessing an AM Best rating of not less than A-, and shall provide for at least 10 days' prior written notice to Town from the insurer prior to cancellation or expiration of such policy. Before Licensee shall enter upon the Premises under the terms of this License, Licensee shall furnish to Town a certificate that such insurance has been provided, is in full force and effect, and that the policy covers Town as an additional named insured. Such certificate of insurance shall specify the date when such liability insurance expires and shall provide for at least 10 days' prior written notice of expiration or a cancellation to be given to Town. Licensee agrees that such insurance shall be maintained until the expiration of the term of this License. In the event that such insurance is written on a claims-made basis, Licensee shall provide, prior to commencement of the Use, an initial certificate of insurance evidencing required coverage limits from date of contract execution through date of policy expiration. Subsequently, a certificate of insurance or a renewal quotation accompanied by evidence of premium payment shall be presented to this Town at least 30 days prior to date of expiration of the current certificate. Such certificate of insurance shall be provided on a periodic basis for a minimum of 3 years after expiration or termination of this License, and shall contain a certification that the claims period for such insurance is retroactive to the effective date of this License. In the event Licensee fails to provide such certificate of coverage retroactive to the beginning of the Term, Town may, but shall not be required to, purchase insurance, if available, to protect itself against any losses which would have been covered by the policies Licensee is required to maintain under this Section 9. If Town elects to purchase the insurance under this provision, Licensee shall be liable to Town for all costs incurred by Town for purchasing such insurance. Licensee hereby waives all of Licensee's rights of recovery against Town, and its officers, employees, agents, and representatives for loss or damage, where such loss or damage is insured against under any such insurance policy, and all such insurance policies shall contain a waiver of subrogation provision.

9.2 During the Term, Licensee, at Licensee's sole cost, shall obtain extended coverage insurance for Licensee's personal property, if any, brought by or used by Licensee on or about the Premises during the Term.

9.3 Contemporaneously with the Effective Date, Licensee shall deliver to Town a certificate of Licensee's insurer evidencing all the insurance required to be maintained under this License by Licensee.

9.4 Licensor and Licensee each hereby release the other from any and all liability or responsibility to the other or anyone claiming through or under it by way of subrogation or otherwise for the loss or damage to property or for injury to person caused by any insured peril, even if such loss or damage shall have been caused by the act, omission, fault or negligence of the other party or anyone for whom such party may be responsible provided, however, that this release and waiver shall be effective only in the event and to the extent of actual recovery or payment under the applicable insurance policy or policies, and provided, further, that this waiver shall be applicable and in force and effect only with respect to loss or damage occurring during such time as the insurance policies required to be carried by Licensor and Licensee hereunder shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or eliminate or prejudice in any way the recovery thereunder by the releasing party.

9.5 Except for Licensor's negligence or intentional breach of this Lease, Licensee shall and does hereby agree to defend, indemnify and hold harmless Lessor from and against any and all claims arising from Lessee's use or occupancy of the Premises.

**10. Town's Performance of Licensee's Obligations.** If Licensee shall default in the performance of any covenant or obligation contained herein to be performed by the Licensee, Town, at its sole election, may perform the same for the account and for the expense of Licensee. In the event Town shall advance any funds in connection with the performance of Licensee's obligations such sums so advanced shall bear interest at the rate of 10% per annum from the date of expenditure until fully paid and shall be immediately reimbursed to Town.

**11. Inspections and Right of Entry by Town.** Town or its agents shall have the right at any time or times to enter upon the Premises for the purposes of inspecting the same, conducting surveys and engineering work and developing plans for any lawful purpose, so long as such entry does not unreasonably interfere with Licensee's farming operation.

**12. Condemnation.**

12.1 If at any time during the Term the whole or any part of the Premises shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain (a "Condemnation Proceeding"), Licensee shall only be entitled to a reasonable value for unharvested crops (which Town and Licensee agree shall be equal to actual out-of-pocket expenses incurred by Licensee for the unharvested portion

of the crop at the date of taking plus an additional amount equal to 15% of the expenses actually incurred by Licensee attributable to the unharvested portion of the crop).

12.2 If a condemnation proceeding shall result in the taking of the whole or substantially all of the Premises, this License and the term hereof shall terminate and expire on the date of such taking, and the rent, and other sums or charges provided in this License to be paid by Licensee shall be apportioned and paid to the date of such taking.

12.3 If less than the whole or less than substantially all of the Premises shall be taken in such proceedings, this License shall terminate only as to the portion of the Premises so taken, and this License shall continue for the balance of its term as to the part of the Premises remaining without any reduction or abatement of effect upon the Term or the liability of Licensee to pay in full the licensing fee, and all other sums and charges herein reserved and provided to be paid by the Licensee, adjusted pro-rata with the resulting reduction in the useful portion of the Premises remaining.

12.4 For the purposes of this Section 12, substantially all of the Premises shall be deemed to have been taken if the portion of the Premises not so taken does not constitute a complete plot reasonably usable by Licensee for the Use.

### **13. Termination of License.**

13.1 Termination for Cause. Either Party shall be entitled to terminate this License prior to the expiration of the Term upon the occurrence of any of the following events:

13.1.1 a breach of this License;

13.1.2 any event which the provisions of this License specifically provide to be a basis for such termination; and

13.1.3 any final judgment order or decree or any ruling, statute, ordinance, rule or regulation of any local, state or federal court, government, agency or other governmental body having jurisdiction over either Party, declaring the subject matter of this License or establishing this License or any material portion of the provisions hereof to be unlawful.

13.2 Early Termination by Licensor. Early termination of this License by Licensor shall be effectuated by written notice given by Licensor to Licensee on or before the end of the 4<sup>th</sup> year of the Term (the "Early Termination Deadline") such termination to be effective no earlier than 3 years after the date of this notice. Licensor shall not be entitled to early termination of this License after the Early Termination Deadline. Upon termination of this License, neither Party shall have any further liability or obligation to the other hereunder except for those which accrued prior to, or which pertain to matters occurring prior to the effective date of such termination, and except as otherwise specifically provided for in this License.

14. **Cancellation Upon Sale.** If all or any part of the Premises is sold by Town and or Town's successor no longer desires that Licensee farm such Town part to be sold, Town may terminate this License and Licensee's rights as to such part only upon at least 60 days prior written notice to Licensee (the "Termination Notice"). If at the time of the Termination Notice, Licensee has crops planted which cannot be harvested in the ordinary course of farming within the 60 day notice period, then Town, in its sole discretion, shall pay to Licensee damages for the loss of that crop or the portion thereof, or allow Licensee to harvest such crops before termination of the License as to such part. The damages if Licensee is unable to harvest the crops in the ordinary course of farming business within the 60 day notice period shall mean actual out-of-pocket expenses incurred by Licensee for the unharvested portion of the crop on the release part at the date of termination plus an additional amount equal to 15% of the expenses actually incurred (as evidenced by bona fide paid receipts) by Licensee attributable to the unharvested portion of the crop. Licensee shall not receive the damages set forth in this Section for crops which are not planted in the ordinary course of farming business, as determined in the sole discretion of the Town.

15. **Default.**

15.1 Licensee shall be in default under this License if Licensee fails to keep or perform any of the terms, covenants or conditions herein contained, which failure shall continue for a period of 10 days after written notice from Town of such failure or default. If Licensee signs, executes, or files any assignment for the benefit of creditors, any petition in bankruptcy, or for any arrangement or composition with creditors, including, but not limited to, any petition under any chapter of the bankruptcy laws of the United States, or if any such petition is filed against Licensee or by Licensee's creditors, then, upon the happening of any such event, this License automatically shall terminate without further acts or action of any person and shall thereupon be null and void and of no further force or effect.

15.2 In the event of any default hereunder Licensor, without further notice to Licensee, may terminate this License and take possession of the Premises, together with all Improvements thereon and growing crops, and in addition thereto shall be entitled to exercise any or all rights or remedies available to it at law, in equity or by statute, including without limitation, lien rights. The remedies conferred in this Section 15.2 shall be cumulative and shall be in addition to every other remedy given under this License, or at law, in equity, or by statute. No delay or omission of either Party to exercise any right or power arising from any default by the other shall impair any such right or power or be construed to be a waiver of or an acquiescence in any such default.

16. **Surrender of the Premises.** Licensee shall, upon the expiration of the Term or upon earlier termination thereof for any reason and at Licensee's sole cost, immediately quit and surrender the Premises in good condition, free and clear of all garbage, weeds, grasses and debris. If Licensee remains in possession of the Premises after the expiration of the Term without written permission of the Town, then such holding over shall be construed as a month-to-month license, subject to all the conditions, provisions, and obligations of this License except that the License Fee shall be automatically increased to \$2,500.00 per month, adjusted each year on

January 1<sup>st</sup> of such year, commencing January 1, 2014 to reflect increases in the U.S. Bureau of Labor Statistics Consumer Price Index For All Urban Consumers.

17. **Notices.** Any and all notices required to be given by this License shall be in writing, sent by certified mail, return receipt requested, and shall be deemed given by depositing same, postage prepaid, in any United States Mail receptacle to the address hereinabove set forth. Any Party may change its address from time to time by giving written notice to the other Party of such change.

18. **Water.** Anything to the contrary in this License notwithstanding, Town and Licensee acknowledge and agree that the following provisions shall govern the use of water by Licensee on the Premises:

18.1 all requirements for measuring and reporting water pumped from private wells on or off of the Premises will be the responsibility of the Licensee;

18.2 Licensee agrees to comply with all rules, regulations and statutes which regulate or affect the use of groundwater in the Phoenix Active Management Area (the "Groundwater Provisions"). Such Groundwater Provisions include, but are not limited to, Management Plans for the Phoenix Active Management Area;

18.3 if the Groundwater Provisions mandate conservation measures, acquisition of additional equipment required to conserve water, or changes in operation, Licensee shall be solely responsible for any and all costs, charges, penalties or expenses associated with said measures, acquisition or changes in operation; and

18.4 Licensee agrees to obtain and to pay for all charges for water and water assessments relating to irrigation of the Premises, if any, assessed during and attributable to the Term, and all charges and other utilities which are used by Licensee on the Premises. Licensee agrees that upon the expiration or earlier termination of this License, there will not be a deficit in the State of Arizona Department of Water Resources Flex Account relating to Licensee's farming of the Premises. Licensee agrees to cooperate with Town to assure that all water use reports and filings are made in accordance with the Department's rules during the Term.

19. **General Provisions.**

19.1 The Recitals are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as Licenses of the Parties.

19.2 In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this License, or on account of any breach or default hereof, the prevailing Party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses (including expert witness fees), determined by the arbitrator or court sitting without a jury, which fees shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

19.3 This License constitutes the entire understanding of the parties and supersedes all previous representations, written or oral. This License may not be modified or amended except by a written document, signed by authorized representatives of each Party.

19.4 This License shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this License shall be solely in the Superior Court of Maricopa County, Arizona (the "Court") and both Parties consent to jurisdiction and venue in this Court for such purposes.

19.5 Licensee shall be solely responsible for any and all tax obligations which may result out of the Licensee's performance of this License. The Town shall have no obligation to pay any amounts for taxes, of any type, incurred by the Licensee. Licensee is responsible for consulting the local I.R.S. office for current information on estimated tax requirements. The Town agrees to pay and discharge all real property taxes, if any, and other assessments imposed and levied against the Premises during the Term, except as may otherwise be specifically provided herein. The Licensee agrees to pay all taxes and assessments, if any, whatsoever imposed upon or levied against the Licensee's personal property and equipment on the Premises.

19.6 Any amendment, modification or variation from the terms of this License shall be in writing and signed by all Parties.

19.7 Licensee specifically agrees that in the performance of the Use by Licensee or anyone acting on their behalf, Licensee will comply with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance of the Use under this License.

19.8 In the event that any provision of this License shall be held to be invalid and/or unenforceable by a final, non-appealable order of the Court, the remaining provisions shall be valid and binding upon the Parties.

19.9 No waiver by any Party of a breach of this License will be construed as a waiver of a succeeding breach of the same or any other covenant of this License. No delay in exercising any right granted by this License will constitute a waiver of that right. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

19.10 This License may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties intend that faxed signatures constitute original signatures and that a faxed License containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

19.11 Pursuant to the provisions of A.R.S. §41-4401, Licensee warrants to Town that Licensee and all its subcontractors are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Licensee acknowledges that a breach of this warranty by Licensee or any of its subcontractors is a material breach of this License subject to penalties up to and including



termination of this License. Town retains the legal right to inspect the papers of any employee of the Licensee or any subcontractor who works on the Premises to ensure compliance with this warranty. Town may conduct random verification of the employment records of Licensee and any of its subcontractors to ensure compliance with this warranty. Town will not consider Licensee or any of its subcontractors in material breach of the foregoing warranty if Licensee and its subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A). The provisions of this section must be included in any contract Licensee enters into with any and all of its subcontractors who provide services under this License or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

19.12 Pursuant to A.R.S. §§35-391.06 and 35-393.06, Licensee certifies that it does not have a scrutinized business operation, as defined in A.R.S. §§35-391 and 35-393, in either Sudan or Iran.

19.13 Pursuant to the provisions of A.R.S. §38-511, Town may cancel any contract or License, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of Town is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

19.14 The terms and provisions of this License represent the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and neither of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this License shall be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this License, and agree that ambiguous or conflicting terms or provisions contained in this License shall be interpreted or construed against the Party whose attorney prepared or drafted the executed License or any earlier draft of the same or any of its exhibits.

19.15 It is not intended by this License to, and nothing contained in this License shall, create any partnership, joint venture or other arrangement between the Licensee and the Town. No term or provision of this License is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party to this License, and no such other person, firm, organization or corporation shall have any right or cause of action under this License.

[SEE NEXT PAGE FOR SIGNATURES]

IN WITNESS WHEREOF, the Parties have executed this License to be effective as of the Effective Date.

TOWN:

TOWN OF QUEEN CREEK, an Arizona municipal corporation

By: \_\_\_\_\_  
Robin Benning, Vice Mayor

Attest:

\_\_\_\_\_  
Jennifer Robinson, Town Clerk

Approved as to Form:

\_\_\_\_\_  
Mariscal, Weeks, McIntyre & Friedlander P.A.  
Town Attorneys

LICENSEE:

BARNEY FARMS, an Arizona general Partnership

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

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

**LEGAL DESCRIPTION OF THE PREMISES**

**EXHIBIT "A" TO  
REPLACEMENT LICENSE**

(DD 10/05/12)

Old Republic National Title Insurance Company – Issued by  
**Pioneer Title Agency, Inc.**

Order No.: 05750529-MML  
Your No.: TRW\drw\5  
08/24/2012\5

**SCHEDULE A - continued**

**Exhibit A**

A portion of the Southeast quarter of Section 11 and a portion of the Southwest quarter of Section 12, Township 2 South, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at a brass cap in a hand hole at the South quarter corner of said Section 11, from which a brass cap in a hand hole at the Southeast corner of said Section 11 bears South 89 degrees 49 minutes 23 seconds East at a distance of 2,642.85 feet;

Thence North 00 degrees 37 minutes 36 seconds West along the West line of the Southeast quarter of said Section 11, for a distance of 691.00 feet to the Point of Beginning;

Thence continuing North 00 degrees 37 minutes 36 seconds West, along said West line, for a distance of 1,938.98 feet to the Northwest corner of the Southeast quarter of said Section 11;

Thence South 89 degrees 46 minutes 27 seconds East, along the North line of the Southeast quarter of said Section 11, for a distance of 2,646.21 feet to the East quarter corner of said Section 11;

Thence North 89 degrees 59 minutes 51 seconds East, along the North line of the Southwest quarter of said Section 12, for a distance of 907.23 feet to a point on a non-tangent curve, concave to the Northwest, the center of which bears North 50 degrees 45 minutes 17 seconds West, at a distance of 1,340.00 feet;

Thence Southwesterly along the arc of said curve, through a central angle of 10 degrees 54 minutes 07 seconds for a distance of 254.97 feet to a point of tangency;

Thence South 50 degrees 08 minutes 50 seconds West for a distance of 303.79 feet to the beginning of a curve, concave to the Southeast, the center of which bears South 39 degrees 51 minutes 10 seconds East at a distance of 1,340.00 feet;

Thence Southwesterly, along the arc of said curve, through a central angle of 50 degrees 42 minutes 05 seconds for a distance of 1,185.77 feet to a point of tangency, said point being on the West line of the Southwest quarter of said Section 12;

Thence South 00 degrees 33 minutes 14 seconds East, along said West line, for a distance of 510.35 feet;

Thence North 89 degrees 49 minutes 23 seconds West for a distance of 1,366.01 feet;

Thence South 89 degrees 11 minutes 41 seconds West for a distance of 525.63 feet;

Thence North 89 degrees 49 minutes 23 seconds West for a distance of 752.05 feet to the Point of Beginning.

**CORP. YARD LEASE**

**Among**

**NEWELL A. BARNEY AND KATHERINE M. BARNEY AS  
TRUSTEES OF THE NEWELL A. BARNEY AND  
KATHERINE M. BARNEY TRUST AGREEMENT, UNDER  
AGREEMENT  
DATED MAY 9, 1991;**

**BARNEY FAMILY SPORTS COMPLEX, LLLP, AN  
ARIZONA LIMITED LIABILITY LIMITED  
PARTNERSHIP;**

**KENNETH L. BARNEY, A MARRIED MAN, DEALING  
WITH HIS SOLE AND SEPARATE PROPERTY; AND**

**GAIL A. BARNEY, A MARRIED MAN, DEALING WITH  
HIS SOLE AND SEPARATE PROPERTY,**

**Collectively as Lessor**

**and**

**TOWN OF QUEEN CREEK,  
an Arizona municipal corporation,  
as Lessee**

**13.7± Acre Portion of  
22700 E. Queen Creek Road  
Queen Creek, Arizona**

**EXHIBIT "I" TO  
EXCHANGE AGREEMENT**

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LIST OF EXHIBITS

- A – Diagram of the Real Property
- B – Legal Description of the Real Property
- C – Legal Description of New Park Site

**CORP. YARD LEASE**

This Corp. Yard Lease (the "Lease"), executed to be effective as of the \_\_\_ day of \_\_\_\_\_, 2012 (the "Effective Date") is between:

The TOWN OF QUEEN CREEK, an Arizona municipal corporation (the "Town"), as Lessee and;

(i) NEWELL A. BARNEY and KATHERINE M. BARNEY, as Trustees of THE NEWELL A. BARNEY AND KATHERINE M. BARNEY TRUST AGREEMENT, under agreement dated May 9, 1991;

(ii) BARNEY FAMILY SPORTS COMPLEX, LLLP, an Arizona limited liability limited partnership;

(iii) KENNETH L. BARNEY, a married man, dealing with his sole and separate property; and

(iv) GAIL A. BARNEY a married man, dealing with his sole and separate property, (collectively the "Barneys" as their interests may appear of record), as Lessor

The Lessor and Lessee may hereafter be collectively referred to as the "Parties" and individually as a "Party".

**RECITALS:**

A. Lessor is the fee owner of that certain real property in Queen Creek, Arizona, containing 13.7± acres as generally depicted on Exhibit "A" attached hereto and as legally described on Exhibit "B" attached hereto (the "Real Property").

B. As of the Effective Date, the Premises is improved with:

- (i) a 5,000 sq. ft. ± metal Utilities Building; and
- (ii) a 5,580 sq. ft. ± metal Office Building; and
- (iii) a 30' x 100' paved and covered Parking Area

The Utilities Building the Office Building and the Parking Area are referred to collectively as the "Existing Improvements."

C. Lessee desires to lease the Premises and the Existing Improvements from Lessor pursuant to this Lease. The Premises and the Existing Improvements may sometimes be collectively referred to as the "Premises".

## AGREEMENTS:

The Parties hereby agree and covenant as follows:

### 1. LEASE OF THE PREMISES.

Lessor hereby leases the Premises to Lessee and Lessee hereby leases the Premises from Lessor subject to the terms set forth in this Lease.

### 2. TERM.

2.1 The Term. The Term (herein so-called) of this Lease and Lessee's obligation to pay rent hereunder shall commence at 12:01 a.m. MST on the Effective Date (the "Commencement Date") and terminate at 11:59 p.m. MST on the date which is 7 years thereafter (the "Expiration Date") subject to Lessor's and Lessee's respective rights to early termination as set forth in Paragraphs 2.2 and 2.3.

2.2 Early Termination by Lessor. Only at such time as Lessor is ready to develop (i.e.: had a site plan approved by the Town Council) the Real Property and Lessor's adjacent property, Lessor may terminate the Lease by written notice given by Lessor to Lessee on or before the end of the 4<sup>th</sup> year of the Term (the "Early Termination Deadline") such termination to be effective no earlier than 3 years after the date of the notice. Lessor shall not be entitled to early termination of this Lease after the Early Termination Deadline.

### 2.3 Termination Payment by Lessor.

2.3.1 Subject to Section 2.3.2, and except as provided in Subsection 2.3.4, as a condition to the effectiveness of: (i) Lessor's Notice of Early Termination in accordance with Section 2.2; or (ii) any other termination of this Lease at any time, Lessor shall pay to Lessee within 10 days after Lessor's receipt of written demand from Lessee, the sum of \$60,000.00, to be used by Lessee toward: (a) the cost of a new master plan for a park to be developed by Lessee on that certain real property described on Exhibit "C" attached hereto (the "New Park Site"); (b) Lessee's cost to relocate its corporation yard from the Real Property to another site of Lessee's choosing; and (c) Lessee's cost to design and construct screening, which may consist of a block wall, landscaping or other means (as determined by Lessee in Lessee's sole discretion) to be located parallel to Merrill Road commencing at a point which is 660 feet north of the Northwest Corner of Merrill Road and Queen Creek Road and continuing eighteen hundred linear feet North to a point South of the Southwest Corner of Merrill Road and Ryan Road.

2.3.2 The Termination Payment set forth in this Section 2.3 shall not be payable to Town until such time as Lessor has sold eighty acres of the Adjacent Real Properties. The Adjacent Real Properties are properties owned by Lessor and comprised of 1) the Property to be deeded to Lessor pursuant to the terms of the



Exchange Agreement between Lessor and Lessee dated \_\_\_\_\_, 2012 and referenced therein as the "Town Parcel" and 2) the eighty (80) acres of real property adjacent to the Town Parcel to the east. (The intent of this provision is that the Termination Payment is payable to Lessee when eighty acres of the Adjacent Real Properties have been sold by Lessor, and this Lease has been terminated.) In order to allow Lessee to determine when eighty acres of Adjacent Real Property have been sold, Lessor agrees to record against the Adjacent Real Properties a Memorandum of this Agreement in the form attached hereto as Exhibit "D."

2.3.3 Lessor shall also provide Lessee with a \$15,000.00 credit to be applied toward Lessee's cost to acquire from Lessor rights-of-way for road improvements related to the Town Parcel (the "ROW"), which costs would otherwise be borne by Lessee.

2.3.4 Any provision of Subsection 2.3.1 to the contrary notwithstanding, Lessor shall not be required to pay the amounts in Subsections 2.3.1 in the event this Lease is terminated based: (a) upon an uncured event of default by Lessee as determined by a final, non-applicable judgment of the Court (as defined below); or (b) on Section 9.1 below.

3. RENT. In consideration for this Lease, the Town shall pay to Lessor, without deduction or offset, rent in the amount of \$1.00 per year to be paid in advance on the Effective Date.

3.1 Basic Annual Rent. During the Term, Lessee agrees to pay \$1.00 annually for the Premises (the "Basic Annual Rent"), all payable in advance on the Effective Date.

3.2 No Rent Proration. Should the Term commence on a day other than the first calendar day of the year, or expire on a day other than the last day of a calendar year, the Basic Annual Rent shall not be prorated

4. TAXES.

4.1 Miscellaneous Taxes. Lessee shall pay any privilege tax, sales tax, gross proceeds tax, rent tax, or like tax (but not including any net income, inheritance, succession or franchise tax imposed upon Lessor), now or hereafter levied assessed or imposed by any governmental authority upon any rent or other payments required to be paid by Lessee hereunder.

4.2 Personal Property Tax. Lessee shall also pay before delinquent all personal property taxes and assessments, if any, levied or assessed by any governmental authority against any personal property or fixtures of Lessee on the Premises.

4.3 Real Property Tax. Lessor, at Lessor's sole cost, shall fully and timely pay all real property taxes and assessments levied or assessed against the Premises during the Term.

5. USE. The Premises are for the exclusive use of Lessee and Lessee shall use and occupy the Premises for the purpose of a public works storage and equipment maintenance facility and yard (the "Permitted Use"). Lessee may not use the Premises for any other purpose without Lessor's prior written consent which consent shall be given or withheld in Lessor's reasonable discretion.

6. UTILITIES. Lessee, at Lessee's sole cost, shall obtain the utilities, if any, to be used by Lessee on the Premises in Lessee's name and shall pay before delinquent, all charges for water, gas, electricity, telephone service, sewage services, garbage services or other utilities and services used on the Property by Lessee.

7. MAINTENANCE, REPAIRS AND REPLACEMENTS.

7.1 Lessee's Obligation to Maintain. During the Term, Lessee, at Lessee's sole cost, shall keep and maintain the Premises (including the Existing Improvements) in good condition and repair, normal wear and tear excepted. Lessee shall not cause any nuisance or cause or permit any waste or allow any trash to accumulate on or about the Premises. Lessee also agrees to maintain all landscaping, if any, now or hereafter existing on the Premises.

7.2 Lessee's Improvements. During the Term Lessee, at Lessee's sole cost and discretion, may make improvements to the Premises (the "Lessee Improvements"). Lessee need not seek Lessor's consent to make the Lessee Improvements. At the end of the Term all Lessee Improvements shall be removed by Lessee, at Lessee's cost.

7.3 Return of Premises. On the last day of the Term, or on any sooner cancellation or termination of this Lease, Lessee shall remove the Existing Improvements from the Premises and otherwise surrender the Premises to Lessor in the same condition as received, broom clean, ordinary wear and tear excepted.

8. INSURANCE AND INDEMNITY.

8.1 Liability Insurance. Lessee, at Lessee's sole cost, shall obtain and keep in force during the Term a policy of comprehensive public liability insurance insuring Lessor and Lessee to the extent of their interests, against any liability arising out of Lessee's use or occupancy of the Premises. Such insurance shall be in an amount of not less than \$1,000,000.00 for injury to or death of one or more persons in any one accident or occurrence. Such insurance shall further insure Lessor and Lessee against liability for property damage for at least \$100,000.00 per occurrence.

8.2 Property Insurance. Lessee, at Lessee's sole cost, shall obtain and keep in force during the Term a policy of insurance covering loss or damage to the Existing Improvements in the amount Town deems reasonable.

8.3 Waiver of Subrogation. Lessor and Lessee each hereby release the other from any and all liability or responsibility to the other or anyone claiming through or under it by way of subrogation or otherwise for the loss or damage to property or for injury to person caused by any insured peril, even if such loss or damage shall have been caused by the act, omission, fault or negligence of the other party or anyone for whom such party may be responsible provided, however, that this release and waiver shall be effective only in the event and to the extent of actual recovery or payment under the applicable insurance policy or policies, and provided, further, that this waiver shall be applicable and in force and effect only with respect to loss or damage occurring during such time as the insurance policies required to be carried by Lessor and Lessee hereunder shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or eliminate or prejudice in any way the recovery thereunder by the releasing party.

8.4 Lessee's Indemnification of Lessor. Except for Lessor's negligence or intentional breach of this Lease, Lessee shall and does hereby agree to defend, indemnify and hold harmless Lessor from and against any and all claims arising from Lessee's use or occupancy of the Premises.

9. CONDEMNATION/ DESTRUCTION.

9.1 Complete Taking. If the Premises, or such a substantial portion thereof as shall prevent Lessee from conducting its business shall be taken by proper authority for public use, Lessee may terminate this Lease by giving Lessor written notice of such termination within 30 days after such taking and the rent shall abate during the unexpired portion of this Lease, effective from the date when possession of the part so taken shall be required.

9.2 Partial Taking. If a portion of the Premises is taken and the part not taken shall be sufficient for the reasonable use of Lessee's use of Lessee's business, this Lease and the Rent due hereunder shall be reduced in proportion to which the Premises so taken bears to the Premises originally leased, provided, that consideration shall be given to the respective value of the space taken and the space not taken.

9.3 Condemnation Proceeds. All compensation awarded for any such taking shall belong to and be the property of Lessor provided, however, that, in the event Lessee makes a separate claim therefore, Lessee shall only be entitled to an award for the value of lessee's loss of its business and the taking of Lessee's Improvements and Lessee's trade fixtures, equipment and other personal property on the Premises.

9.4 Lessee's Obligations. In case any Existing Improvements or any Lessee Improvements shall be damaged or wholly or partly destroyed by fire, the elements or other causes, Lessee may in Lessee's sole discretion, repair or replace and

rebuild the same. All insurance proceeds regarding destruction of the Existing Improvements shall be paid to Lessee. Rent shall abate during any period of damage or reconstruction on an equitable basis.

10. ASSIGNMENT.

10.1 Lessee. Lessee shall not have the right to assign this Lease or any interest it may have hereunder.

10.2 Lessor. Lessor, upon at least 10 days prior written notice to Lessee but without being obligated to seek or obtain Lessee's written consent, shall have the right to assign all (but not less than all) of Lessor's rights under this Lease to the purchaser, if any, of the Premises (the "Assignee") provided, however, that: (i) Lessor shall assign, in writing, and Assignee shall assume, in writing, the Lessor's right and obligations under this Lease (the "Assignment"); (ii) Lessor shall deliver to Lessee a fully executed copy of the assignment between Lessor and the Assignee; and (iii) Lessor shall remain liable for all continuing indemnity, defense and hold harmless obligations to the extent provided in this Lease and relating to a period prior to the effective date of the assignment to Assignee.

11. DEFAULT/REMEDIES. Neither Lessee nor Lessor shall be in default of this Lease unless such Defaulting Party fails to perform its obligations within 30 days after such Defaulting Party's receipt of written notice by the other Party specifying the nature of the default and the steps required to cure the same. If the nature of the default is such that more than 30 days are required to cure, then the Defaulting Party shall not be in default unless it fails to commence performance within such 30-day period and thereafter diligently prosecutes the same to completion.

12. SUBORDINATION. This Lease shall be subject to and subordinate to the lien of any mortgage or deed of trust which now or hereafter may constitute a lien on the Real Property held by a mortgagee, and to any agreements at any time made by Lessor, modifying, supplementing, extending or renewing any such mortgage or deed of trust. The provisions for the subordination of the Lease shall be self-operative and no further instrument shall be required to effect such subordination provided that the Lessee, upon at least 10-days prior written request by the mortgagee at any time or times, shall execute and deliver any and all instruments that may be reasonable, necessary or proper to effect such subordination.

13. ENTRY RESERVED BY LESSOR. During the Term of this Lease Lessor may, at any time or times, enter upon the Premises for the purpose of inspecting the same, or to do anything required or permitted by this Lease and may at any time during the last 12 months of the Term post for sale or rent signs and show the Premises to prospective lessees or prospective purchasers.

14. ENVIRONMENTAL INDEMNITY. Except for those matters, if any, as are set forth in that certain Phase I Environmental Report (herein so-called) obtained by Lessee from SUMMERS TECHNOLOGIES, INC., dated as of April 13, 2006, Lessee

shall and does hereby agree to indemnify, protect, defend and hold Lessor harmless from and against any and all loss of rents and/or damages, liabilities, judgments, costs, claims, liens, expenses, penalties, permits and attorney's and consultant's fees arising out of or involving any hazardous substance or storage tank in, on and under the Real Property. Lessee's obligations under this Paragraph shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee (but not by Lessor) and the cost of investigation (including consultant's and attorney's fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier termination of this Lease.

15. FORCE MAJEURE. Whenever Lessee or Lessor shall be required by the terms of this Lease or by law to perform any contract, act, work, labor or services, or to perform and comply with any laws, rules, order, ordinances, regulations or zoning regulations, Lessee or Lessor shall not be deemed to be in default herein if and so long as nonperformance or default herein shall be directly caused by strikes, non-availability of materials, war or national defense, preemptions, governmental restrictions, acts of God or other similar causes beyond the reasonable control of such party; provided, the Lessee or Lessor shall commence such performance and continue the same with diligence and continuity immediately after the removal of any of the causes hereinabove specified.

16. NO JOINT VENTURE. Nothing in this Lease shall cause Lessor in any way to be construed as a partner, joint venturer or associated in any way with Lessee in regard to Lessee's use or occupancy of the Premises or to subject Lessor to any obligation, loss, charge or expense in connection with or arising from Lessee's use or occupancy of the Premises.

17. LESSOR'S COVENANTS. In consideration for the improvements to be made to the Property by Lessee, Lessor guarantees to Lessee the use, possession and quiet enjoyment of the Premises at all times during the Term.

18. ENTIRE AGREEMENT. This Lease contains the entire agreement between the parties hereto with regard to the subject matter hereof and no term or provision hereof may be changed, waived, discharged or terminated unless the same shall be in writing executed by Lessor and Lessee.

19. APPLICABLE LAW. This Lease shall be governed by and construed and enforced in accordance with the laws of the State of Arizona. The Parties hereby submit solely to the jurisdiction of the courts of the State of Arizona in Maricopa County, Arizona (the "Court") in regard to any matter arising under this Lease.

20. TIME OF ESSENCE. Time shall be of the essence in the performance of every term, covenant and condition of this Lease.

21. NO RECORDING. Lessee covenants and agrees that it will not record the original or a copy of this Lease.

22. NOTICES.

22.1 Written Notice. Any notice, demand or other communication required or appropriate to be given pursuant to this Lease shall be in writing and shall be delivered by hand or sent by U.S. certified mail, postage prepaid or by telecopy, addressed as follows, or to such other address as any party hereto may from time to time designate in writing:

If to Lessor:                   Newell A. Barney  
  22340 East Queen Creek Road  
  Queen Creek, Arizona 85142  
  Telephone: (480) 987-3582

with a copy to:                 Jason Barney  
  4915 E. Baseline Road, Suite 105  
  Gilbert, Arizona 85234  
  Telephone: 480.818.2000

If to Lessee:                    TOWN OF QUEEN CREEK  
  22350 South Ellsworth Road  
  Queen Creek, AZ 85142  
  Attn: Town Manager  
  Telephone: (480) 358-3000  
  Facsimile: (480) 358-3189

With a copy to:                 MARISCAL, WEEKS, MCINTYRE  
  & FRIEDLANDER, P.A.  
  2901 North Central Avenue, Suite 200  
  Phoenix, Arizona 85012  
  Attn: Fredda J. Bisman  
  Telephone: (602) 285-5000  
  Facsimile: (602) 285-5100

22.2 Effective Delivery. All notices shall be deemed effective upon delivery if personally delivered or 24 hours after deposit in the U.S. mail if by mail or upon receipt of its telecopy.

23. ATTORNEYS' FEES. In the event any suit is instituted by either Party against the other to enforce any right under this Lease, the successful Party, as determined by the Court, shall be entitled to recover as part of any judgment rendered therein its court costs and a reasonable sum for its attorneys' fees, which fees shall be determined by the Court.

24. BROKER'S COMMISSION.

24.1 No Broker. Lessor and Lessee warrant that they have not dealt with any finder, broker or realtor in connection with the transaction embodied by this lease.

24.2 Indemnity. If any person shall assert a claim to a finder's fee or brokerage commission on account of alleged employment as a finder or broker in connection with the transaction embodied by this Lease, the Party under whom the finder or broker is claiming shall and does hereby agree to defend, indemnify and hold the other Party harmless from and against any such claim and all costs, expenses and liabilities incurred in connection with such claim or any action or proceeding brought on such claim, including, but not limited to, counsel and witness fees and court costs in defending against such claims.

25. CANCELLATION BY LESSEE. Lessor hereby acknowledges and agrees that, based on A.R.S. §38-511, Lessee may cancel any contract or agreement, including this Lease, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the contract or agreement on behalf of Lessee's departments or agencies is, at any time while the contract or agreement or any extension thereof is in effect, an employee of any other party to this Lease in any capacity or a consultant to any other party to this Lease with respect to the subject matter of this Lease. The cancellation shall be effective when written notice from Lessee is received by all other parties to the contract or agreement, unless the notice specifies a later time.

[SIGNATURE PAGE FOLLOWS]

WHEREFORE, the Parties have executed this Lease as of the Effective Date.

LESSOR:

\_\_\_\_\_  
Newell A. Barney, solely as Trustee of the  
Newell A. Barney and Katherine M. Barney  
Trust Agreement under agreement dated May  
9, 1991

\_\_\_\_\_  
Katherine M. Barney, solely as Trustee of the  
Newell A. Barney and Katherine M. Barney  
Trust Agreement under agreement dated May  
9, 1991

BARNEY FAMILY SPORTS COMPLEX,  
LLLP, an Arizona limited liability limited  
partnership

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

\_\_\_\_\_  
KENNETH L. BARNEY

\_\_\_\_\_  
GAIL A. BARNEY

LESSEE:

TOWN OF QUEEN CREEK, an Arizona municipal  
corporation

By \_\_\_\_\_  
Robin Benning, Vice Mayor



ATTEST:

---

Jennifer Robinson, Town Clerk

APPROVED AS TO FORM:

---

MARISCAL, WEEKS, MCINTYRE &  
FRIEDLANDER, P.A.  
Town Attorneys

DIAGRAM OF THE REAL PROPERTY

[TO COME FROM LESSEE]

**EXHIBIT "A" TO  
CORP. YARD LEASE**

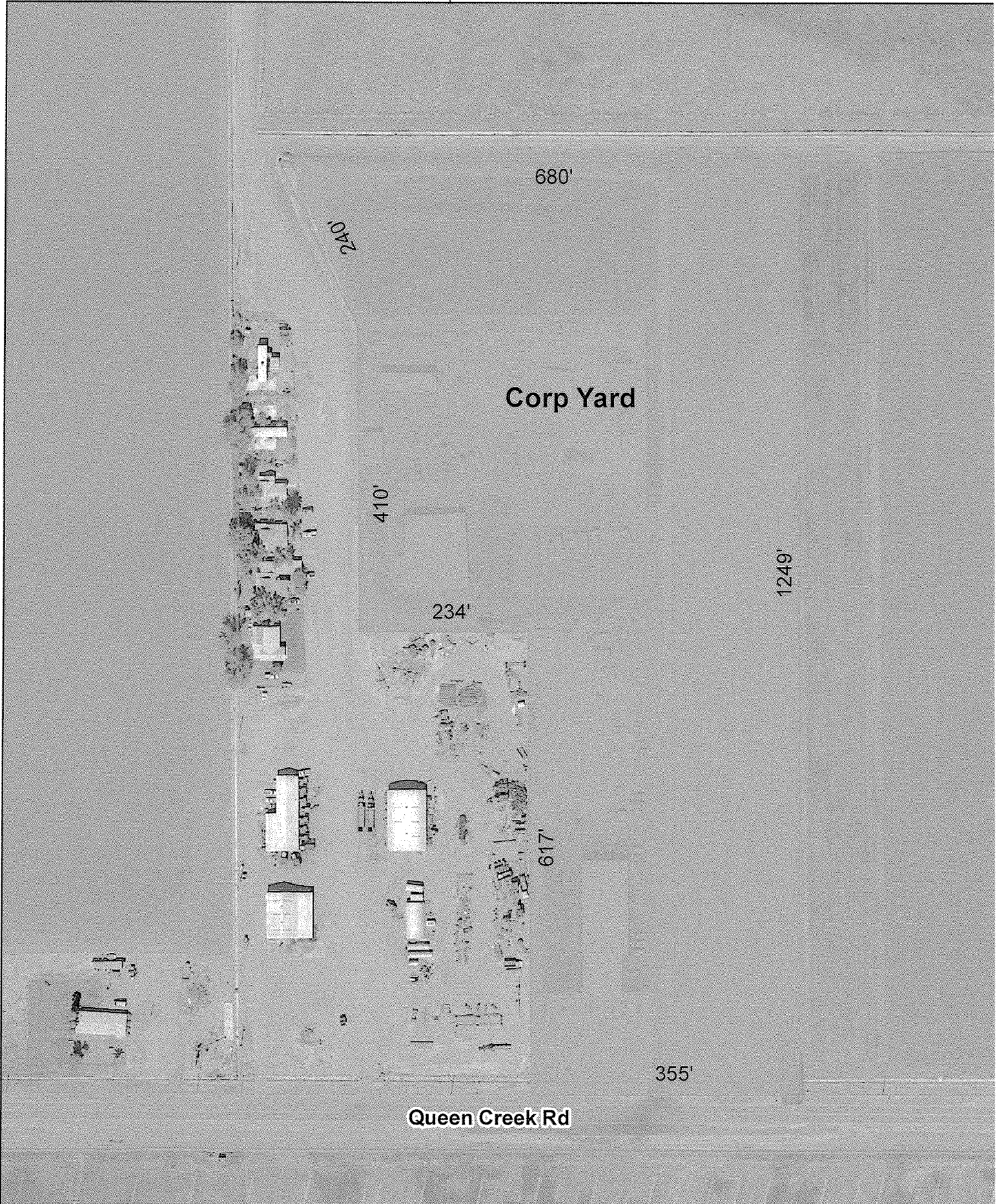
(DD 10/05/12)



# Exhibit A to Corp Yard Lease Diagram of Real Property



Map Date: 8/28/12



**LEGAL DESCRIPTION OF REAL PROPERTY**

[TO COME FROM LESSEE]

**EXHIBIT "B" TO  
CORP YARD LEASE**

(DD 10/05/12)

Exhibit B

Corp Yard Lease

A portion of the East Half of the West Half of Section 12, Township 2 South, Range 7 East of the G. & S.R.B. & M., Maricopa County, Arizona, generally described as:

From a found brass cap in hand hole at the Southwest Corner of Sec. 12, T-2-S, R-7-E, thence North a distance of 33 feet along the section line, thence East a distance of 1348.57 feet along a line parallel to the South section line of said Section 12 to the POINT OF BEGINNING; thence East a distance of 355 feet, thence North a distance of 1249 feet, thence West a distance of 680 feet, thence Southeasterly a distance of 240 feet, thence South a distance of 400 feet, thence East a distance of 224 feet, thence South a distance of 617 feet to the POB.

Said area contains 597,083 square feet, or 13.7 acres, more or less.

**LEGAL DESCRIPTION OF  
NEW PARK SITE**

[TO COME FROM LESSEE]

**EXHIBIT "C" TO  
CORP YARD LEASE**

(DD 10/05//12)

Old Republic National Title Insurance Company – Issued by

Pioneer Title Agency, Inc.

Exhibit C

Order No.: 05750529-MML

Your No.: TRWdrwA5

08/24/2012\5

SCHEDULE A - continued

Exhibit A

A portion of the Southeast quarter of Section 11 and a portion of the Southwest quarter of Section 12, Township 2 South, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at a brass cap in a hand hole at the South quarter corner of said Section 11, from which a brass cap in a hand hole at the Southeast corner of said Section 11 bears South 89 degrees 49 minutes 23 seconds East at a distance of 2,642.85 feet;

Thence North 00 degrees 37 minutes 36 seconds West along the West line of the Southeast quarter of said Section 11, for a distance of 691.00 feet to the Point of Beginning;

Thence continuing North 00 degrees 37 minutes 36 seconds West, along said West line, for a distance of 1,938.98 feet to the Northwest corner of the Southeast quarter of said Section 11;

Thence South 89 degrees 46 minutes 27 seconds East, along the North line of the Southeast quarter of said Section 11, for a distance of 2,646.21 feet to the East quarter corner of said Section 11;

Thence North 89 degrees 59 minutes 51 seconds East, along the North line of the Southwest quarter of said Section 12, for a distance of 907.23 feet to a point on a non-tangent curve, concave to the Northwest, the center of which bears North 50 degrees 45 minutes 17 seconds West, at a distance of 1,340.00 feet;

Thence Southwesterly along the arc of said curve, through a central angle of 10 degrees 54 minutes 07 seconds for a distance of 254.97 feet to a point of tangency;

Thence South 50 degrees 08 minutes 50 seconds West for a distance of 303.79 feet to the beginning of a curve, concave to the Southeast, the center of which bears South 39 degrees 51 minutes 10 seconds East at a distance of 1,340.00 feet;

Thence Southwesterly, along the arc of said curve, through a central angle of 50 degrees 42 minutes 05 seconds for a distance of 1,185.77 feet to a point of tangency, said point being on the West line of the Southwest quarter of said Section 12;

Thence South 00 degrees 33 minutes 14 seconds East, along said West line, for a distance of 510.35 feet;

Thence North 89 degrees 49 minutes 23 seconds West for a distance of 1,366.01 feet;

Thence South 89 degrees 11 minutes 41 seconds West for a distance of 525.63 feet;

Thence North 89 degrees 49 minutes 23 seconds West for a distance of 752.05 feet to the Point of Beginning.

**EXHIBIT D TO CORP. YARD LEASE**  
**MEMORANDUM OF AGREEMENT**

[TO COME FROM TOWN]

**EXHIBIT "J" TO**  
**EXCHANGE AGREEMENT**

(DD 10/05/12)



**SECTION 1445 AFFIDAVIT**

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest (the "Transferee") must withhold tax if the transferor is a foreign person. To inform Transferee, that withholding of tax is not required upon the disposition of a U.S. real property interest by \_\_\_\_\_ ("Transferor"), the undersigned hereby certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. Transferor's U.S. social security number is \_\_\_\_\_; and

3. Transferor's address is \_\_\_\_\_

Transferor understands that this certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury the undersigned declares that he/she has examined this certification and to the best of his/her knowledge and belief it is true, correct, and complete, and he/she further declares that he/she has authority to sign this document on behalf of Transferor.

Dated to be effective \_\_\_\_\_, 2012.

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

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

SUBSCRIBED AND SWORN TO before me this \_\_\_\_ day of \_\_\_\_\_, 2012  
by \_\_\_\_\_.

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

My Commission Expires:

\_\_\_\_\_

**EXHIBIT "K" OF  
EXCHANGE AGREEMENT**