

2

JUL 25 2011

ORDINANCE NO. 4293

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, TO AUTHORIZE AND APPROVE THE GRANTING OF A NO COST, NON-EXCLUSIVE IRRIGATION EASEMENT TO THE ROOSEVELT WATER CONSERVATION DISTRICT (RWCD) TO RELOCATE IRRIGATION FACILITIES ALONG THE NORTH SIDE OF QUEEN CREEK ROAD AT EMMETT ROAD AND FROM GILBERT ROAD EASTWARD.

WHEREAS, an irrigation easement is necessary to relocate irrigation facilities in conjunction with the improvement of Gilbert Road from Germann Road to Queen Creek Road (the "Project"); and

WHEREAS, the City of Chandler is willing to grant a non-exclusive irrigation easement to the Roosevelt Water Conservation District (RWCD) to relocate irrigation facilities on the north side of Queen Creek Road at Emmett Road and from Gilbert Road eastward as required by the Project;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Chandler, Arizona, as follows:

Section 1. That the City Council of the City of Chandler, Arizona is authorized to approve the granting of a no cost, non-exclusive irrigation easement to the Roosevelt Water Conservation District (RWCD), through, over, under, and across that certain property described in Exhibit "A", attached hereto and made a part hereof by reference.

Section 2. That the granting of the no cost non-exclusive irrigation easement shall be in a form approved by the City Attorney.

Section 3. That the Mayor of the City of Chandler, Arizona, is hereby authorized to execute the easement document on behalf of the City.

INTRODUCED AND APPROVED by the City Council this ____ day of _____, 2011.

ATTEST:

CITY CLERK

MAYOR

PASSED AND ADOPTED by the City Council this _____ day of _____, 2011.

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4293 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the _____ day of _____, 2011 and that a quorum was present thereat.

CITY CLERK

PUBLISHED:

APPROVED AS TO FORM:

CITY ATTORNEY

GAB

When recorded return to:
Roosevelt Water Conservation District
ATTN: Shane Leonard
P.O. Box 100
Higley, Arizona 85236

IRRIGATION EASEMENT AND AGREEMENT

This Irrigation Easement and Agreement (this "Agreement") is entered into as of this ____ day of _____, 2011, among the ROCK-QUEEN CREEK LLC, a Delaware limited liability company ("Rockefeller"); and ROOSEVELT WATER CONSERVATION DISTRICT, a political subdivision of the State of Arizona, its successors and assigns ("RWCD").

RECITALS

A. Rockefeller is the owner of that certain real property legally described on *Exhibit A* (the "Rockefeller Property") which is immediately adjacent and abuts real property owned by the City of Chandler ("City") as a right of way that is commonly known as Queen Creek Road ("City ROW").

B. RWCD has existing irrigation facilities in the City ROW (the "Existing RWCD Facilities").

C. City desires to develop the City ROW in a manner that would require the relocation of the Existing RWCD Facilities to the land legally described on *Exhibit B* (the "New Easement Area"), which is located within the Rockefeller Property.

D. RWCD is willing to permit the City to relocate the Existing RWCD Facilities to the New Easement Area (a) subject to the City agreeing to provide RWCD an easement for the portion of the New Easement Area located within the City ROW and consenting to the joint use with RWCD of the New Easement Area in any locations where any public utility easements overlap the New Easement Area, and (b) based upon Rockefeller providing RWCD an easement on the terms and subject to the conditions herein contained.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. **Grant of Easement.** Rockefeller hereby grants to RWCD a permanent and exclusive easement over, across, under and through the New Easement Area to construct, maintain, operate, repair, and replace an underground irrigation water delivery system and all

necessary and appurtenant facilities and improvements, including any above ground appurtenances, within the New Easement Area (the "Improvements"), together with an easement for ingress and egress over that portion of the Rockefeller Property as is reasonably necessary for RWCD to access the New Easement Area and exercise the easement rights granted herein. Due to the nature of the Improvements, Rockefeller will not retain any access rights within the New Easement Area and access will only be permitted through prior written approval by RWCD. To the extent that the New Easement Area exists within any public utility easements held by the City, the easement granted under this paragraph shall be non-exclusive.

2. **Maintenance Within the New Easement Area.** In the event RWCD performs work within the New Easement Area or repairs or maintains the Improvements within the New Easement Area ("Maintenance"), RWCD shall restore the surface of the New Easement Area to grade level. No replacement of curbs, sidewalks, paving, trees, shrubs, or other landscaping material shall be performed by RWCD as a result of its Maintenance within the New Easement Area. Rockefeller acknowledges that RWCD did not choose to locate the Improvements within the City ROW and the Rockefeller Property and RWCD is not responsible for replacing any curbs, sidewalks, or paving that is placed over the New Easement Area that must be disturbed in order to permit RWCD to access the Improvements.

3. **Initial Construction of Improvements; Mechanic's Liens.** RWCD shall cause the City to construct the Improvements in accordance with (i) the specifications and requirements of RWCD's engineers ("Design Plans"), as may be reasonably modified as needed to conform to the specifications and requirements of RWCD's engineers, and (ii) all local, state and federal laws and regulations.

4. **Obstructions.** No Obstruction(s) shall be permitted and RWCD will have the right to enter upon the Rockefeller Property and remove any Obstruction(s) from the New Easement Area without prior notice to Rockefeller. "Obstruction(s)" shall mean any structure or any blockage or impediment of any kind within the New Easement Area that (a) impairs the use or functioning of the Improvements in any way or (b) impairs RWCD access to its irrigation system or the Improvements. Obstructions shall include, but not be limited to, any drainage swells or other retention placed within the New Easement Area.

5. **Indemnity.** Rockefeller shall defend, indemnify and hold RWCD harmless for, from and against any and all claims, liabilities and expenses (including reasonable attorneys' fees) relating to accidents, injuries, loss, or damage of or to any person or property arising from the use of the Rockefeller Property by Rockefeller, its officers, employees, agents, contractors, successors and assigns. To the extent permitted by applicable law, RWCD shall defend, indemnify and hold Rockefeller harmless for, from and against any and all claims, liabilities and expenses (including reasonable attorneys' fees) relating to accidents, injuries, loss, or damage of or to any person or property arising only from the gross negligence or intentional misconduct of RWCD in the use of the Improvements within the New Easement Area.

6. **Covenants Running with Land and Binding Upon Successors; Further Acts.** The obligations, burdens, rights and benefits stated herein shall run with the land and shall be appurtenant to the Rockefeller Property and the New Easement Area, as applicable.

The terms "Rockefeller" and "RWCD" shall be deemed respectively to include any successor holder of fee title to the Rockefeller Property (including (i) any municipality obtaining title by dedication or condemnation or (ii) any Association, as defined below, which is a successor (or whose members are successors), in whole or in part, to Rockefeller), and any successor holder of the easement rights to the New Easement Area, and this Agreement shall bind and inure to the benefit of the successors and assigns in title of such parties. Rockefeller may assign its rights and obligations under this Agreement in connection with the conveyance of all or a portion of the Rockefeller Property or to an association created to act as a property owners' association (the "Association") within the Rockefeller Property so long as the Association or other successor agrees in writing to accept the obligations of this Agreement. Rockefeller will give prompt written notice to RWCD of any assignment made pursuant to the terms of this Section 7 and must provide RWCD a fully signed copy of the written assumption. Any assignment made by Rockefeller that does not contain a written assumption of the obligations of this Agreement is invalid and unenforceable.

7. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one and the same instrument.

8. **Remedies; Attorneys' Fees, Engineers' Fees, and Costs.** In addition to any other remedies available herein or at law or in equity, the parties shall have the right to maintain an action at law for actual damages sustained as a result of the breach of this Agreement (but specifically excluding exemplary, punitive, or consequential damages) and/or to enjoin or otherwise restrain any such breach, or continuing breaches thereafter. All costs and expenses incurred by the non-breaching party to seek damages from, or equitable relief against, a defaulting party as a result of breaches of this Agreement, together with the non-breaching party's reasonable attorneys' fees, engineers' fees, expert witness fees, costs of tests and analyses, deposition and trial transcript costs and costs of court shall be assessed against, and paid by, the defaulting party.

9. **Not a Public Dedication.** Nothing contained herein shall be deemed to be a gift or dedication of any portion of the properties encumbered hereby to the general public or for any public purpose whatsoever, it being the parties' intent that this Agreement shall be strictly limited to and for the purposes expressed in this Agreement.

10. **Not a Partnership.** This Agreement is neither intended to create a partnership nor to create a joint venture between Rockefeller and RWCD, and no relationship may be deemed to have occurred contrary to this intent.

11. **Miscellaneous.** Time is of the essence of this Agreement and each and every provision hereof. The captions and headings of the various sections of this Agreement are for convenience and identification only and shall not be deemed to limit or to define the contents of the respective sections. Invalidation of any one of the covenants, conditions, restrictions or other provisions contained herein by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions or provisions hereof, and the same shall remain in full force and effect. This Agreement shall be construed according to its ordinary meaning and shall not be strictly construed for or against any party hereto. This Agreement has been executed in

the State of Arizona and the laws of the State of Arizona shall govern its construction, performance and terms. Jurisdiction and venue for any disputes arising from this Agreement shall be with the Maricopa County Superior Court or the Federal District Court in Phoenix, Arizona, as applicable. The parties hereto agree to execute and acknowledge such additional documents and to perform such additional acts as may be reasonably necessary to carry out the purpose and intent of this Agreement. Any modification or waiver of any term herein, including a modification or waiver of this term, must be in writing signed by the party or parties against which enforcement of the modification or waiver is sought. This Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof, and all prior and contemporaneous representations and understandings, written or oral, are hereby superseded and merged into this Agreement.

IN WITNESS WHEREOF, Rockefeller and RWCD have signed this Agreement as of the date first above written.

"RWCD": Roosevelt Water Conservation District, a political subdivision of the State of Arizona

By: _____
Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing was acknowledged before me this _____ day of _____, 2011, by _____, the _____ of Roosevelt Water Conservation District, a political subdivision of the State of Arizona, on behalf of the political subdivision.

Notary Public

My Commission Expires:

"ROCKEFELLER"

ROCK-QUEEN CREEK LLC, a Delaware limited liability company

By: _____
Name: _____
Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing was acknowledged before me this ____ day of _____, 2011, by _____, the _____ of ROCK-QUEEN CREEK LLC, a Delaware limited liability company, on behalf of the company.

Notary Public

My Commission Expires:

EXHIBIT A

Rockefeller Property

The South half of the Southeast quarter of Section 12, Township 2 South, Range 5 of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

Except the East and South 33 feet thereof; and

Except the North 10 feet thereof.

**EXHIBIT A
BOUNDARY DESCRIPTION
RWCD LATERAL 15**

A ROOSEVELT WATER CONSERVATION DISTRICT EASEMENT LOCATED IN THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 2 SOUTH, RANGE 5 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA. SAID EASEMENT MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP IN HAND HOLE MARKING THE SOUTHEAST QUARTER OF SAID SECTION 12, FROM WHICH A BRASS CAP IN HAND HOLE MARKING THE SOUTH QUARTER CORNER OF SAID SECTION 12 BEARS SOUTH 89 DEGREES 20 MINUTES 15 SECONDS WEST AT A DISTANCE OF 2638.57 FEET;

THENCE ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 12, SOUTH 89 DEGREES 20 MINUTES 15 SECONDS WEST A DISTANCE OF 2585.74 FEET;

THENCE LEAVING SAID SOUTH LINE, NORTH 00 DEGREES 39 MINUTES 45 SECONDS WEST A DISTANCE OF 79.00 FEET TO THE **POINT OF BEGINNING**;

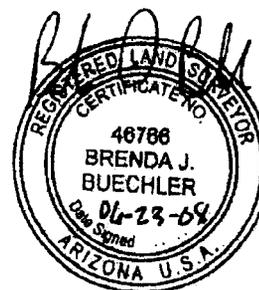
THENCE NORTH 45 DEGREES 21 MINUTES 34 SECONDS WEST A DISTANCE OF 12.66 FEET;

THENCE NORTH 89 DEGREES 20 MINUTES 15 SECONDS EAST A DISTANCE OF 11.25 FEET;

THENCE SOUTH 45 DEGREES 21 MINUTES 34 SECONDS EAST A DISTANCE OF 12.66 FEET

THENCE SOUTH 89 DEGREES 20 MINUTES 15 SECONDS WEST A DISTANCE OF 11.25 FEET TO THE **POINT OF BEGINNING**.

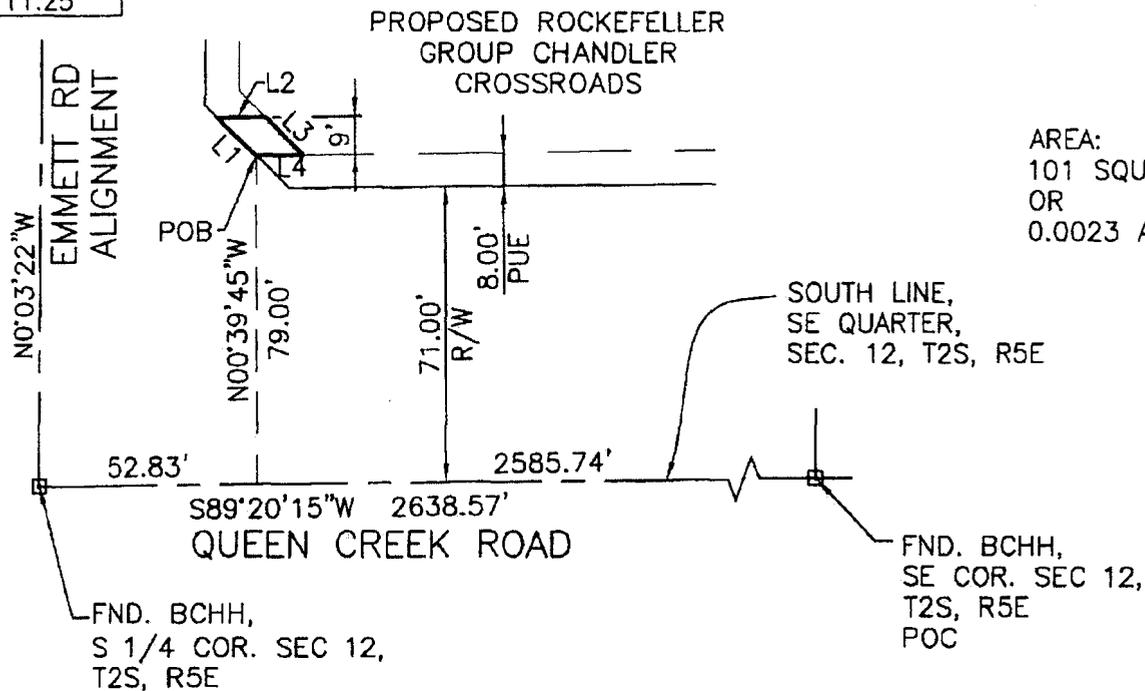
CONTAINING:
101 SQUARE FEET OR 0.0023 ACRES MORE OR LESS.



Expires 09-30-2010

EXHIBIT B
RWCD LATERAL 15 PHASE 2
PUE-1 EASEMENT

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N45°21'34"W	12.66'
L2	N89°20'15"E	11.25'
L3	S45°21'34"E	12.66'
L4	S89°20'15"W	11.25'



AREA:
101 SQUARE FEET
OR
0.0023 ACRES



AH ATWELL-HICKS
DEVELOPMENT CONSULTANTS

Engineering Planning Ecological
Surveying Environmental Water Resources

4700 E. SOUTHERN AVE.
MESA, ARIZONA 85206
PHONE (480) 218-8831
FAX (480) 830-4888

JOB NO. 07000931
FILE: 07000931rwc7
DATE: 6/23/2008

**EXHIBIT A
BOUNDARY DESCRIPTION
RWCD LATERAL 15**

A ROOSEVELT WATER CONSERVATION DISTRICT EASEMENT LOCATED IN THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 2 SOUTH, RANGE 5 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA. SAID EASEMENT MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP IN HAND HOLE MARKING THE SOUTHEAST QUARTER OF SAID SECTION 12, FROM WHICH A BRASS CAP IN HAND HOLE MARKING THE SOUTH QUARTER CORNER OF SAID SECTION 12 BEARS SOUTH 89 DEGREES 20 MINUTES 15 SECONDS WEST AT A DISTANCE OF 2638.57 FEET;

THENCE ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 12, SOUTH 89 DEGREES 20 MINUTES 15 SECONDS WEST A DISTANCE OF 1504.02 FEET;

THENCE LEAVING SAID SOUTH LINE, NORTH 00 DEGREES 39 MINUTES 45 SECONDS WEST A DISTANCE OF 79.00 FEET TO THE **POINT OF BEGINNING**;

THENCE SOUTH 89 DEGREES 20 MINUTES 15 SECONDS WEST A DISTANCE OF 1070.46 FEET;

THENCE NORTH 45 DEGREES 21 MINUTES 34 SECONDS WEST A DISTANCE OF 12.66 FEET;

THENCE NORTH 89 DEGREES 20 MINUTES 15 SECONDS EAST A DISTANCE OF 1097.42 FEET;

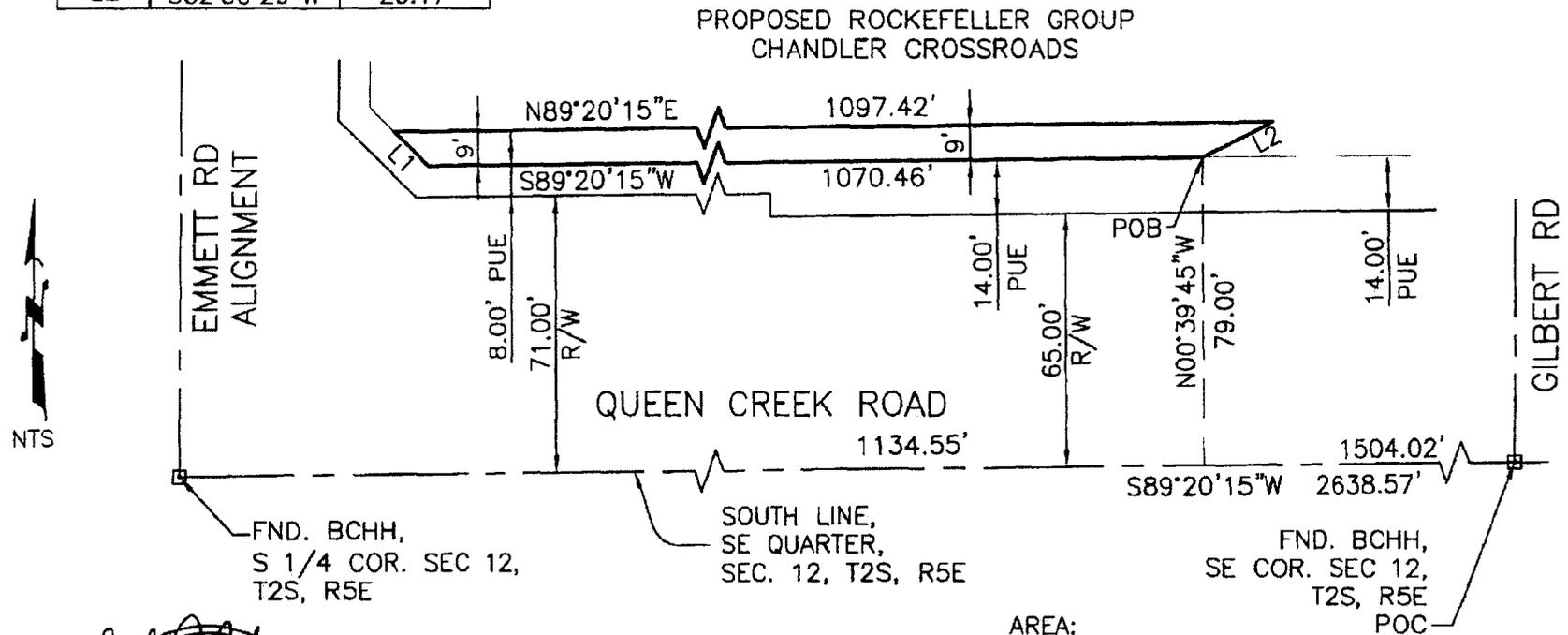
THENCE SOUTH 62 DEGREES 50 MINUTES 29 SECONDS WEST A DISTANCE OF 20.17 FEET TO THE **POINT OF BEGINNING**.

CONTAINING:
9,755 SQUARE FEET OR 0.2240 ACRES MORE OR LESS.



EXHIBIT B
 RWCD LATERAL 15 PHASE 2
 PARCEL-1 EASEMENT

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N45°21'34"W	12.66'
L2	S62°50'29"W	20.17'



AREA:
 9,755 SQUARE FEET
 OR
 0.2240 ACRES



	ATWELL-HICKS DEVELOPMENT CONSULTANTS
	Engineering Planning Ecological Surveying Environmental Water Resources

4700 E. SOUTHERN AVE.
 MESA, ARIZONA 85206
 PHONE (480) 218-8831
 FAX (480) 830-4888

JOB NO. 07000931
FILE: 07000931rwc6
DATE: 6/23/2008

**EXHIBIT A
BOUNDARY DESCRIPTION
RWCD LATERAL 15**

A ROOSEVELT WATER CONSERVATION DISTRICT EASEMENT LOCATED IN THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 2 SOUTH, RANGE 5 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA. SAID EASEMENT MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP IN HAND HOLE MARKING THE SOUTHEAST QUARTER OF SAID SECTION 12, FROM WHICH A BRASS CAP IN HAND HOLE MARKING THE SOUTH QUARTER CORNER OF SAID SECTION 12 BEARS SOUTH 89 DEGREES 20 MINUTES 15 SECONDS WEST AT A DISTANCE OF 2638.57 FEET;

THENCE ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 12, SOUTH 89 DEGREES 20 MINUTES 15 SECONDS WEST A DISTANCE OF 1504.02 FEET;

THENCE LEAVING SAID SOUTH LINE, NORTH 00 DEGREES 39 MINUTES 45 SECONDS WEST A DISTANCE OF 79.00 FEET TO THE **POINT OF BEGINNING**;

THENCE NORTH 62 DEGREES 50 MINUTES 29 SECONDS EAST A DISTANCE OF 20.17 FEET;

THENCE NORTH 89 DEGREES 20 MINUTES 15 SECONDS EAST A DISTANCE OF 1193.76 FEET;

THENCE NORTH 00 DEGREES 39 MINUTES 45 SECONDS WEST A DISTANCE OF 4.00 FEET;

THENCE NORTH 89 DEGREES 20 MINUTES 15 SECONDS EAST A DISTANCE OF 193.15 FEET;

THENCE SOUTH 85 DEGREES 44 MINUTES 24 SECONDS EAST A DISTANCE OF 9.77 FEET;

THENCE SOUTH 44 DEGREES 36 MINUTES 56 SECONDS WEST A DISTANCE OF 11.60 FEET;

THENCE SOUTH 89 DEGREES 20 MINUTES 15 SECONDS WEST A DISTANCE OF 184.72 FEET;

THENCE SOUTH 00 DEGREES 39 MINUTES 45 SECONDS EAST A DISTANCE OF 4.00 FEET;

THENCE SOUTH 89 DEGREES 20 MINUTES 15 SECONDS WEST A DISTANCE OF
1221.74 FEET TO THE **POINT OF BEGINNING**.

CONTAINING:

12,653 SQUARE FEET OR 0.2905 ACRES MORE OR LESS.

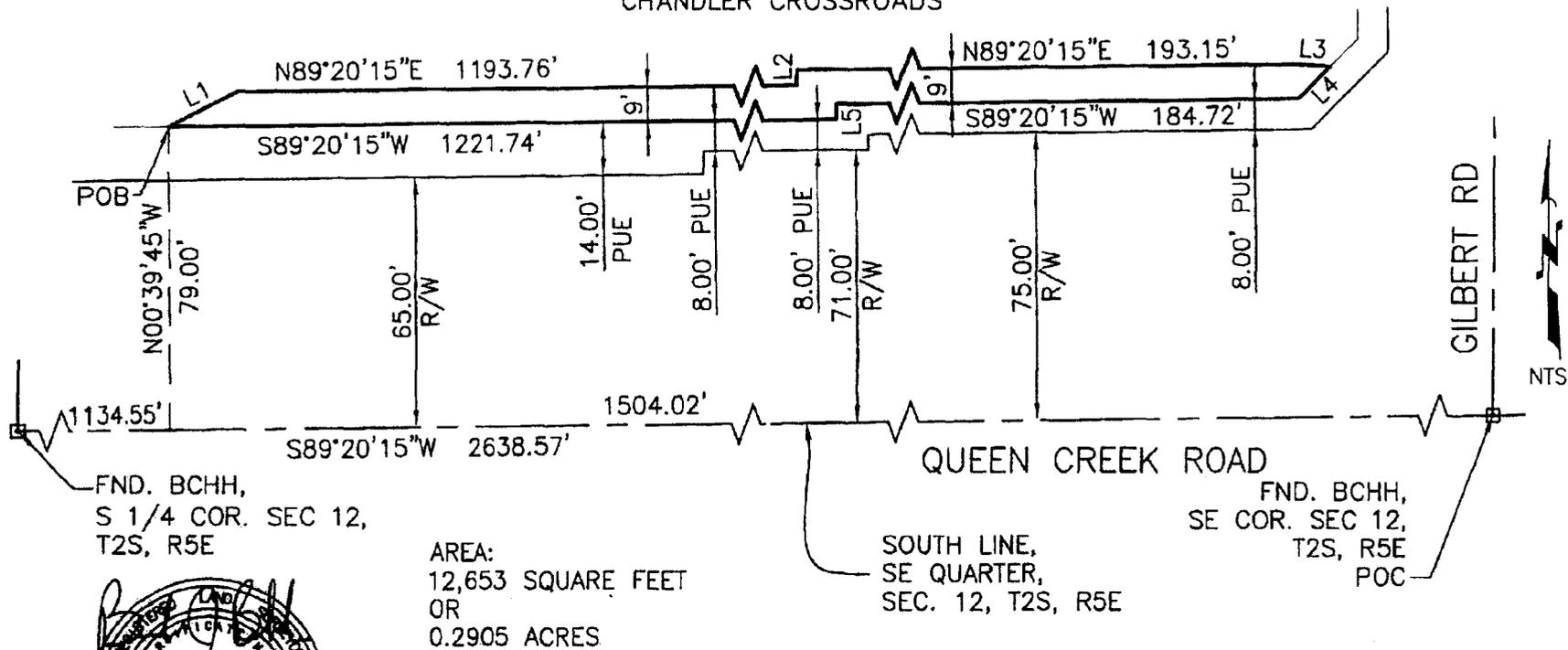


Expires 09-30-2010

EXHIBIT B
RWCD LATERAL 15 PHASE 1
PARCEL-1 EASEMENT

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N62°50'29"E	20.17'
L2	N00°39'45"W	4.00'
L3	S85°44'24"E	9.77'
L4	S44°36'56"W	11.60'
L5	S00°39'45"E	4.00'

PROPOSED ROCKEFELLER GROUP
CHANDLER CROSSROADS



FND. BCHH,
S 1/4 COR. SEC 12,
T2S, R5E

AREA:
12,653 SQUARE FEET
OR
0.2905 ACRES

SOUTH LINE,
SE QUARTER,
SEC. 12, T2S, R5E

FND. BCHH,
SE COR. SEC 12,
T2S, R5E
POC



AI ATWELL-HICKS
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PHONE (480) 218-8831
FAX (480) 830-4888

JOB NO. 07000931
FILE: 07000931rwc3
DATE: 6/23/2008

**EXHIBIT A
BOUNDARY DESCRIPTION
RWCD LATERAL 15**

A ROOSEVELT WATER CONSERVATION DISTRICT EASEMENT LOCATED IN THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 2 SOUTH, RANGE 5 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA. SAID EASEMENT MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP IN HAND HOLE MARKING THE SOUTHEAST QUARTER OF SAID SECTION 12, FROM WHICH A BRASS CAP IN HAND HOLE MARKING THE SOUTH QUARTER CORNER OF SAID SECTION 12 BEARS SOUTH 89 DEGREES 20 MINUTES 15 SECONDS WEST AT A DISTANCE OF 2638.57 FEET;

THENCE ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 12, SOUTH 89 DEGREES 20 MINUTES 15 SECONDS WEST A DISTANCE OF 89.98 FEET;

THENCE LEAVING SAID SOUTH LINE, NORTH 00 DEGREES 39 MINUTES 45 SECONDS WEST A DISTANCE OF 79.25 FEET TO THE **POINT OF BEGINNING**;

THENCE NORTH 85 DEGREES 42 MINUTES 56 SECONDS WEST A DISTANCE OF 43.40 FEET;

THENCE NORTH 89 DEGREES 20 MINUTES 15 SECONDS EAST A DISTANCE OF 35.69 FEET;

THENCE NORTH 44 DEGREES 36 MINUTES 56 SECONDS EAST A DISTANCE OF 11.60 FEET;

THENCE SOUTH 85 DEGREES 44 MINUTES 24 SECONDS EAST A DISTANCE OF 10.50 FEET;

THENCE SOUTH 44 DEGREES 36 MINUTES 56 SECONDS WEST A DISTANCE OF 15.64 FEET TO THE **POINT OF BEGINNING**.

CONTAINING:
175 SQUARE FEET OR 0.0040 ACRES MORE OR LESS.

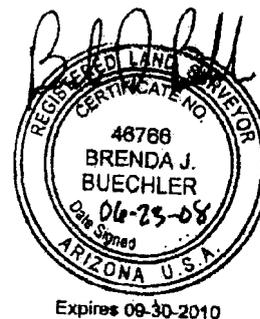
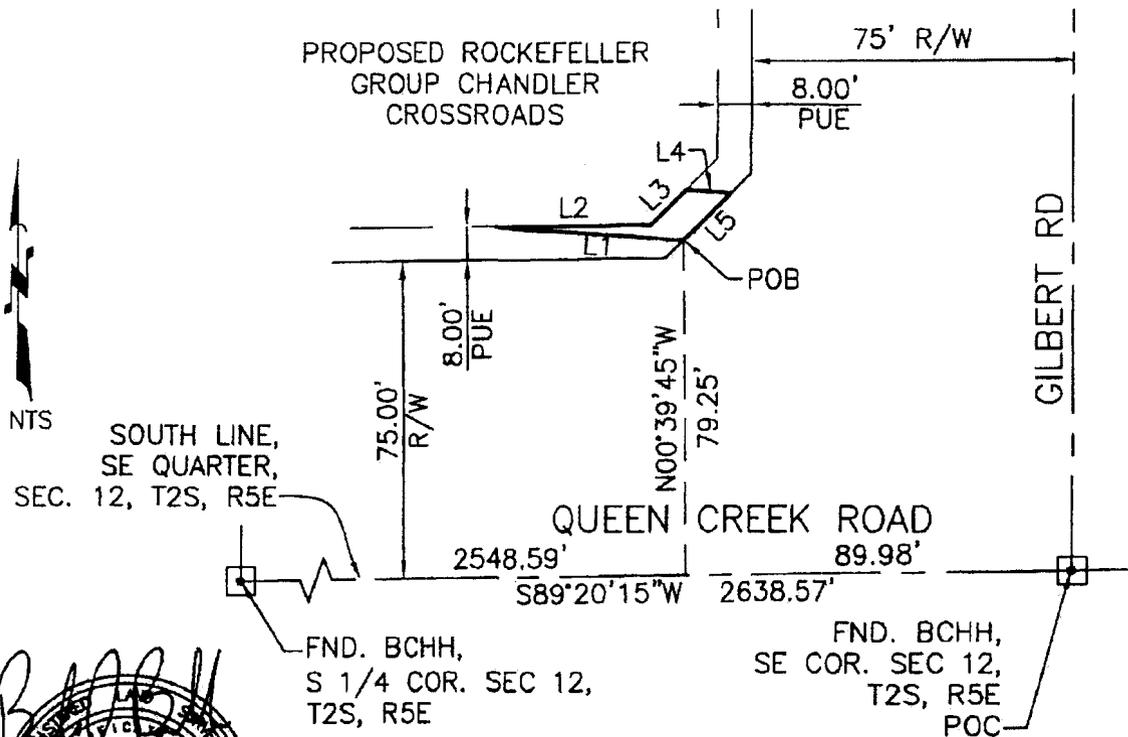
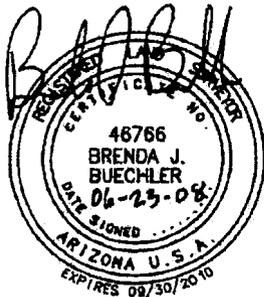


EXHIBIT B
 RWCD LATERAL 15 PHASE 1
 PUE-1 EASEMENT



LINE TABLE		
LINE	BEARING	DISTANCE
L1	N85°44'24"W	44.51'
L2	N89°20'15"E	36.84'
L3	N44°36'56"E	11.60'
L4	S85°44'24"E	10.50'
L5	S44°36'56"W	15.75'

AREA:
 175 SQUARE FEET
 OR
 0.0040 ACRES



AH **ATWELL-HICKS**
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JOB NO. 07000931
 FILE: 07000931rwc2
 DATE: 6/23/2008