

After Recording, Return to:

EC BAR RANCH ESTATES PROPERTY
OWNERS ASSOCIATION, INC.
Post Office Box 44
Nutrioso, Arizona 85932

EC BAR RANCH ESTATES PROPERTY OWNERS ASSOCIATION, INC.
IRRIGATION WATER MANAGEMENT, STIPULATION &
FORBEARANCE AGREEMENT

This Irrigation Water Management, Stipulation & Forbearance Agreement (“this Agreement”) is dated _____, 20____, and entered by and between EC BAR RANCH ESTATES PROPERTY OWNERS ASSOCIATION, INC., an Arizona nonprofit corporation (“the ASSOCIATION”), JAMES WAYNE CROSSWHITE TRUST L.L.C., an Arizona limited liability company (“DECLARANT”), and _____, purchaser of Lot ____ of the EC Bar Ranch Estates subdivision (“LOT OWNER”), and all other owners of Designated Lots (defined herein) (the ASSOCIATION, LOT OWNER, and other owners of Designated Lots sometimes collectively referred to as “the Parties”). This Agreement is solely for the purpose of non-potable irrigation water delivered through existing ditches.

W I T N E S S E T H :

WHEREAS, this Agreement is created pursuant to the Declaration of Covenants, Conditions and Restrictions of EC Bar Ranch Estates Property Owners Association, Inc. dated August 25, 2009, and recorded at Fee No. 2009-005445 of the official records of Apache County, Arizona (“the Restrictive Covenants”);

WHEREAS, the Restrictive Covenants govern the EC Bar Ranch Estates subdivision (“the Subdivision”);

WHEREAS, certain water rights recognized and confirmed in the decree entered on April 29, 1918, in *The St. Johns Irrigation Company and the Meadows Reservoir Irrigation Company, et al, v. Round Valley Water Storage & Ditch Company, et al*, by the Apache County Superior Court in Case No. 569 (as amended or modified, “the Norviel Decree”) are appurtenant to a number of lots within the Subdivision (“the Designated Lots”);

WHEREAS, pursuant to the Norviel Decree, each Designated Lot may irrigate a specified number of acres within the Designated Lot (“the Decreed Acres”)

with irrigation water (“the Decreed Water Rights”) delivered by the Water System, as such term is defined in the Restrictive Covenants;

WHEREAS, the map attached to this Agreement as Exhibit “A” shows the location of Designated Lots, the number of Decreed Acres associated with each Designated Lot, and the locations of the East Ditch and the West Ditch that are used to transport the Decreed Water Rights throughout the Subdivision;

WHEREAS, LOT OWNER has purchased a Designated Lot;

WHEREAS, the Restrictive Covenants provide that this Agreement be executed by LOT OWNER as a condition to escrow;

NOW THEREFORE, FOR AND IN CONSIDERATION of the premises and the terms of this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. PURPOSE. The purpose of this Agreement is to manage the distribution of non-potable irrigation water to the Designated Lots and to manage the construction, operation and maintenance of the Water System.
2. PARTIES TO THIS AGREEMENT. All LOT OWNERS who have purchased a Designated Lot shall automatically become members of the ASSOCIATION and shall automatically become parties to this Agreement, and are required to sign this Agreement as a condition of escrow.
3. WATER QUALITY, QUANTITY AND DELIVERY. LOT OWNER understands and agrees that:
 - a. The Decreed Water Rights consist of non-potable irrigation water that shall be used for irrigation purposes only. LOT OWNER shall not use the Decreed Water Rights for domestic purposes or for any other purpose other than irrigation of the Decreed Acres associated with his Designated Lot. LOT OWNER has reviewed the map attached as Exhibit “A” and acknowledges and confirms that he understands that his Designated Lot, which is Lot No. _____, includes ____ Decreed Acres.
 - b. Irrigation shall take place only during the irrigation season and in such quantities as are described and permitted under the Norviel Decree. Under no circumstances may LOT OWNER use his Decreed Water Rights to irrigate acreage that exceeds the number of Decreed Acres associated with his Designated Lot.
 - c. LOT OWNER understands that the ASSOCIATION and DECLARANT make no guaranty concerning the availability of the Decreed Water Rights

and further understands that neither the ASSOCIATION nor DECLARANT is obligated to provide water.

- d. LOT OWNER agrees that water delivered to his Designated Lot shall be provided by a turnout from Water System's irrigation ditches and further agrees that LOT OWNER's turnoffs and other installations necessary to deliver water to the Decreed Acreage are subject to prior approval and inspection by the ASSOCIATION.
- e. LOT OWNER acknowledges that pursuant to Section 5 of the Restrictive Covenants, the ASSOCIATION may require LOT OWNER to install, at his own expense, a water meter.
- f. The Parties acknowledge and agree that the Water System is owned by the ASSOCIATION and/or DECLARANT. No individual LOT OWNER shall claim title or property interest in and to the Water System or any part thereof.

4. WATER RIGHTS; POOLING AGREEMENT; STIPULATION AND FORBEARANCE AGREEMENT; AUTHORIZED WATER USES; INDEMNIFICATIONS.

- a. Pooling Agreement. The Parties hereto acknowledge that the Decreed Water Rights provided to all Designated Lots have different priority dates under the Norviel Decree. The Parties agree to pool the Decreed Rights and distribute them to the Designated Lots without regard to priority dates. For and in consideration of the equal payment by all of the Parties of the Assessments (described below), LOT OWNER agrees that he will not call his water right priority and further agrees that he hereby subordinates the priority of his Decreed Water Rights to the pooling agreement described in this section.
- b. Assignment of Decreed Water Rights. Contemporaneously with the execution of this Agreement, DECLARANT shall sign a Little Colorado River Water Right Transfer Request form which transfers the Decreed Water Rights associated with the Designated Lot to LOT OWNER, with the name of the transferee stated as follows:

Transferee: [Insert Name of Designated Lot Owner]
c/o EC BAR RANCH ESTATES PROPERTY OWNERS
ASSOCIATION, INC.
Post Office Box 44
Nutrioso, Arizona 85932

ASSOCIATION shall file said transfer request with the Superior Court in and for Apache County, Arizona, which administers and enforces the

Norviel Decree (“the Decree Court”),. To the extent required by the Decree Court, DECLARANT shall assist ASSOCIATION with obtaining approval of the transfer request. The assignment of Decreed Water Rights shall be subject to an Individual Lot Owner Assessment, as defined in Section 6 of this Agreement.

- c. Compliance with the Decree Court and Administration of the Decreed Water Rights. ASSOCIATION shall be responsible for all communications, administrative activities, enforcement compliance, and payment of assessments charged by the Decree Court (“Decree Assessments”) for the Designated Lots. Decree Assessments shall be reimbursed to ASSOCIATION as part of the Regular Assessments described in Section 6 of this Agreement.
- d. Supplemental Groundwater Wells. ASSOCIATION may but is not obligated to provide supplemental non-potable irrigation water to the Parties with groundwater furnished by wells owned and operated by ASSOCIATION (“the Supplemental Groundwater Wells”). Costs associated with the acquisition, operation, and maintenance of such Supplemental Groundwater Wells shall be assessed in the manner set forth in Section 6 of this Agreement.
- e. Other Water Rights and Claims. DECLARANT and/or the ASSOCIATION shall retain all water rights and claims described in Section 5 of the Restrictive Covenants that have not been transferred to LOT OWNER and the other Parties to this Agreement, and LOT OWNER shall not challenge said rights and claims.
- f. Stipulation and Forbearance Agreement. DECLARANT and/or the ASSOCIATION and their respective successors and assigns shall file and maintain a “blanket claim” that covers all the Decreed Rights and Supplemental Groundwater Wells serving the Subdivision in the *General Adjudication of All Rights to Use Water in the Little Colorado River System and Source*, Civil Case No. 6417, Superior Court of the State of Arizona in and for the County of Apache (“the Adjudication”), and shall be responsible for filing and defending in the Adjudication the Decreed Water Rights and Supplemental Groundwater Wells held by the ASSOCIATION, DECLARANT (to the extent DECLARANT’s Decreed Water Rights are appurtenant to the Subdivision) and all of the Parties who own Dedicated Lots within the Subdivision. The Parties stipulate and agree that they recognize the pooling agreement described herein, and they further stipulate and agree that they shall forbear challenging the rights of the Parties to this Agreement (including other LOT OWNERS, the ASSOCIATION and DECLARANT) in the Adjudication or any other legal proceeding before a court or administrative agency having jurisdiction over this matter.

- g. Ownership of the Water System. The Parties stipulate and agree that the ASSOCIATION and/or DECLARANT own(s) the common irrigation ditch, storage tanks, Supplemental Groundwater Wells, and other facilities described in the Restrictive Covenants that comprise the Water System and further acknowledge and agree that the payment of regular or special assessments as provided herein is given for the use of the Water System. Each Party shall indemnify, defend and hold harmless the ASSOCIATION and/or DECLARANT, and their respective employees, agents, and invitees from all losses, damages, claims, liabilities and expenses (including without limitation reasonable attorneys' fees) for damages to property or injury to persons associated with any act, omission or negligence associated with the ownership and operation of the Water System and any action related to the maintenance thereof.
 - h. Water Quality and Environmental Standards; Indemnification. The Parties indemnify and hold harmless the ASSOCIATION and DECLARANT from any losses, damages, claims, liabilities and expenses (including without limitation reasonable attorneys' fees) for damages to property, losses of available Decreed Water Rights supplies, or injury to persons that are caused by or associated with any substandard water quality level or supply delivered by the Water System and Supplemental Groundwater Wells, or for any environmental contaminant that may be found in the water any time.
 - i. Compliance with Applicable Laws; Non-Interference. Each Party shall comply with all the applicable statutes, regulations, ordinances, the Norviel Decree, or other laws pertaining to the operation, maintenance and repair of the Water System including, but not limited to, those laws pertaining to the protection of the environment. No Party shall interfere with the use of water by any Party.
5. WATER SYSTEM MAINTENANCE AND MANAGEMENT. In furtherance of its purposes, which are set forth above, the ASSOCIATION shall provide necessary and appropriate action for the maintenance, repair, replacement and management of the commonly used portions of the Water System, including without limitation, the Supplemental Groundwater Wells, the irrigation ditches and storage tanks, and shall have the right to enter upon a Dedicated Lot, if reasonably necessary, in order to accomplish its purpose.
6. PAYMENT AND DETERMINATION OF ASSESSMENTS.
- a. The ASSOCIATION shall establish a fund that is exclusively for the operation, legal, and maintenance costs of the Water System. With respect to this fund, each Party is obligated to pay:

- (1) Regular assessments which include costs of normal maintenance and repair, water quality testing that may become necessary, reporting, reserves, insurance, Decree Assessments, Management Agent Fees (described in Section 8 of this Agreement) or other regular operating costs; and
 - (2) Special assessments which include assessments for capital improvements, acquisition of Supplemental Groundwater Wells, replacement of the existing irrigation ditches with a pipeline, legal fees associated with the Water System, and such other expenses to be established by the ASSOCIATION in accordance with the Restrictive Covenants; and
 - (3) Individual Lot Owner Assessments include legal fees, filing fees, and costs associated with the transfer of Decreed Rights to each respective LOT OWNER pursuant to Section 4.b of this Agreement.
- b. Regular and special assessments shall be based on LOT OWNER's Decreed Acres. For illustrative purposes only, if a LOT OWNER has two (2) Decreed Acres and the regular assessment per acre is \$10 per year, then the LOT OWNER's regular assessment would be \$20 per year. Assessments will be due and payable on the due date determined by the ASSOCIATION regardless of whether or not LOT OWNER has used his Decreed Water Rights.
 - c. Regular and special assessments that are associated with the Water System shall be set by the ASSOCIATION in accordance with the Restrictive Covenants.
 - d. Individual Lot Owner Assessments are a one-time special assessment billed to individual LOT OWNERS. The Individual Lot Owner Assessments are not allocated amongst all Parties. After a Decreed Right is transferred to a LOT OWNER, then ASSOCIATION shall bill the LOT OWNER for the cost associated with the approval of the transfer by the Decree Court. Individual Lot Owner Assessments are due and payable upon receipt.
 - e. Failure to pay any assessments described herein shall result in a lien, as provided in Section 6 the Restrictive Covenants. A LOT OWNER shall not be entitled to divert any water if an assessment has not been paid.
 - f. Should the LOT OWNERS elect to replace the existing irrigation ditches with pipelines, payable by a special assessment as provided herein and in the Restrictive Covenants, LOT OWNERS expressly understand and agree that any pipeline installation is first subject to the approval of

DECLARANT, who is not obligated to approve of the replacement of the irrigation ditches with pipelines.

7. ANNUAL REVIEW. Pursuant to the Restrictive Covenants, the ASSOCIATION may appoint a committee for any purpose, including the management of the Water System. Either the ASSOCIATION or its Water System committee shall convene on an annual basis to review this Agreement and to amend it as necessary. At such annual review meeting, any regular or special assessments described in Section 6 above shall be established.
8. MANAGEMENT AGENT. The ASSOCIATION may appoint a Management Agent (herein so called) for the day-to-day management and administration of the Water System. The Management Agent will report to the Water System committee, if such a committee has been created pursuant to Section 7 of this Agreement or if no such committee has been created, to the ASSOCIATION. Fees for the Management Agent's time and expenses shall be paid as a regular assessment.
9. GENERAL PROVISIONS.
 - a. Covenants; Successors and Assigns. The covenants, restrictions, reservations, conditions and servitudes contained in this Agreement shall run with the land and shall be binding upon all persons owning, leasing, subleasing, or occupying any Dedicated Lot described in the Restrictive Covenants, in the Norviel Decree, or on the map attached as **Exhibit "A"**.
 - b. Invalidity and Conflicts. Invalidation of any of these covenants, restrictions, reservations, conditions and servitudes by judgment, court order or otherwise shall in no way affect the validity of any of the other provisions of this Agreement, all of which shall remain in full force and effect. In the event of a conflict between this Agreement and the Restrictive Covenants, the Restrictive Covenants shall apply.
 - c. Term. This Agreement shall remain in full force and effect in perpetuity unless terminated by an instrument of termination executed and acknowledged by all Parties, and recorded in the office of the Apache County Recorder.
 - d. Multiple Counterparts. This Agreement may be executed in multiple counterparts, with each counterpart deemed the same as the original.
 - e. Notices. Notices shall be given pursuant to the Restrictive Covenants.
 - f. Authority to Enter Agreement. The Parties each represent and warrant that they are duly authorized to enter this Agreement.

- g. Construction. Nothing in this Agreement shall be construed as to create any rights for or on behalf of any person or entity not a party to this Agreement.
- h. Interpretation. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement. Capitalized terms shall have the meanings defined herein or in the Restrictive Covenants. For convenience, the terms “he” and “his” refer to all genders or genderless parties such as corporations. This Agreement and its exhibits constitute the entire agreement between the Parties with respect to the subject matter hereof and shall not be changed or added to except as provided herein.
- i. Choice of Law; Venue; Dispute Resolution. This Agreement is entered into in the State of Arizona and shall be governed by and interpreted under the laws of the State of Arizona. All disputes between the Parties arising under this Agreement shall be filed in the Superior Court of Apache County, Arizona. The prevailing Party in such a dispute heard before the Apache County Superior Court or any appellate court shall be entitled to reimbursement of attorneys’ fees.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective the date stated in the first paragraph of this Agreement.

[INSERT ONE OF THE FOLLOWING SIGNATURE BLOCKS & NOTARIES
Single Person Signature Block and Notaries
Two Person Signature Block and Notaries
Business Entity Signature Block and Notaries]

Exhibit A - Water Rights Map



