

CITY OF WILLCOX, COCHISE COUNTY, ARIZONA

RESOLUTION 2016-19

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF WILLCOX, COCHISE COUNTY, ARIZONA, APPROVING THE SETTLEMENT AGREEMENT AND RELEASE PURSUANT TO LITIGATION, CITY OF WILLCOX VS. KLUMP RANCHES, L.L.C., CASE NO. CV201500571, COCHISE COUNTY SUPERIOR COURT, BISBEE, ARIZONA

WHEREAS, the City of Willcox entered into a waterline “Easement Agreement” referred to as the Goodwin Easement Agreement on July 8, 1987; and

WHEREAS, on October 16, 2015, the City of Willcox received a letter from Matt Klump on behalf of Klump Ranches, L.L.C., notifying the City of terminating said Easement Agreement; and

WHEREAS, on November 5, 2015, the City of Willcox, by Resolution 2015-29, authorized the City Attorney to proceed with eminent domain proceedings to take immediate possession and control of the “Easement Agreement” property containing the City’s waterline and sole source of potable water; and

WHEREAS, on November 6, 2015, the City of Willcox filed a Condemnation Complaint in the Superior Court of Cochise County, Arizona, seeking condemnation of a perpetual easement covering the area of land containing the City’s waterline and sole source of potable water; and

WHEREAS, on December 9, 2015, Judge Wallace R. Hoggatt, found that the City of Willcox was entitled to the immediate possession of said easement property and on December 11, 2015, an Order for Immediate Possession was executed and filed in the Cochise County Superior Court and recorded at Fee No. 2015-22137, Records of Cochise County, Arizona; and

WHEREAS, on November 4, 2016, the City of Willcox and Matt Klump on behalf of Klump Ranches, L.L.C., agreed to the following terms and conditions of settlement as stated on the “Settlement Agreement and Release” attached hereto as Exhibit “A” and by reference incorporated herein.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WILLCOX, ARIZONA, as follows:

SECTION 1: The “Settlement Agreement and Release” attached hereto as Exhibit “A” is formally approved; and

SECTION 2: The Mayor is authorized and empowered to execute this Resolution and the “Settlement Agreement and Release”; and

SECTION 3: The immediate operation of the provisions of this Resolution is necessary for the preservation of the public peace, health and safety, and as such, an emergency is hereby declared to exist and this Resolution shall be in full force and effect immediately after its passage by the City Council and execution by the Mayor.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WILLCOX, ARIZONA, this 10th day of November, 2016.

APPROVED/EXECUTED:

ROBERT A. IRVIN, Mayor

APPROVED AS TO FORM:

ATTEST:

VIRGINIA A. MEFFORD, City Clerk

ANN P. ROBERTS, City Attorney

**Exhibit
“A”**

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made and entered into freely and voluntarily this 10th day of November, 2016, by and between Klump Ranches LLC, of Willcox, AZ, by and through MATTHEW KLUMP, its Managing Member, (collectively referred to as “Klump Ranches” also referred to as “Grantor” as Klump Ranches is the Grantor of the Easement) and CITY OF WILLCOX and ITS CITY COUNCIL (collectively referred to as “WILLCOX”), and all parties are collectively referred to as the “Parties.”

RECITALS

A. On November 6, 2015, Willcox filed a Complaint in Cochise County Superior Court for condemnation of an easement against Klump Ranches.

B. In order to avoid the further costs, time delays, distraction, and the expense and inconvenience of litigation, the Parties desire to permanently settle and resolve this dispute in a manner that is satisfactory to them.

THEREFORE, in consideration of the foregoing recitals, and the mutual covenants, obligations, and general release contained herein, the Parties agree as follows:

AGREEMENT

1. Easement. Klump Ranches agrees to dedicate an Easement for the purposes set forth in the Condemnation Complaint to cross its land to the City of Willcox. The Easement is attached hereto as **Exhibit A**.

2. Consideration.

A. WILLCOX agrees to pay Klump Ranches LLC, Ten Thousand Dollars (\$10,000.00) (the “Settlement Amount”) in full and final settlement of and consideration for the permanent Easement.

Payment of the Settlement Amount is to be made by WILLCOX to Klump Ranches LLC within seven (7) days of the execution of this Agreement.

B. Willcox shall make water available, from its pipeline installed in the Easement, to the real property of Klump Ranches, its successors or

assigns, in Section 36, Township 12 South, Range 24 East, for twelve (12) metered Three-Quarter inch (3/4") individual water connections which shall be installed to Grantee specifications at such time as Grantor may elect and at Grantor's expense for (a) all hook up costs, (b) individual pipelines from the main pipeline, (c) service charges, and (d) monthly billings for water use and availability charges and (e) any other expense incurred by the Grantee in connection with furnishing water to Grantor's real property, provided that charges to Grantor, its successors or assigns shall never exceed those charges which would be paid by persons residing within the municipal boundaries of the City of Willcox for the same or similar services.

3. Attorney Fees. Each party is to be responsible for his or her or its own attorney's fees and costs incurred in this matter.

4. Release of All Parties. Pursuant to this Agreement, the Parties hereto, for themselves and their respective heirs, devisees, personal representatives, agents, servants, attorneys, insurers, assigns, predecessors-in-interest and successors-in-interest, hereby release and forever discharge each of the Parties, each Party to all other Parties, and their respective heirs, devisees, personal representatives, agents, servants, attorneys, insurers, assigns, predecessors-in-interest and successors-in-interest, from any and all known and unknown claims and causes of action which any Party has, or may have in the future, arising out of or connected with the issues raised by the Condemnation Complaint.

5. Severability. The provisions of this Agreement are severable, and if any of the provisions shall be held by any court of competent jurisdiction to be unenforceable, such holdings shall not affect or impair any other provision hereof.

6. Governing Law/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, including, without limitation, all matters of formation, interpretation, construction, validity, performance and enforcement. Further, the venue for any actions brought to enforce any portion of this Agreement shall be in Cochise County, State of Arizona.

7. Remedy for Breach of Agreement. A breach of any provision of this Agreement may give rise to a separate legal action. The Parties agree that the successful party will pay the unsuccessful party's costs and reasonable attorneys' fees in any action before any agency, tribunal, court, or forum, to enforce any of this Agreement's terms or provisions. The Parties agree and acknowledge that they each

shall have any and all available remedies in the event that any Party breaches the provisions of this Agreement.

8. Entire Agreement. The Parties agree that this Agreement sets forth the Parties' complete and final agreement and fully supersedes any and all prior agreements or understandings between the Parties pertaining to the Lawsuit. Further, this Agreement may not be altered or amended except by a writing executed by the Parties.

9. Headings; Interpretations. The headings used herein are for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any provisions of this Agreement. When used in this Agreement, the term "including" shall mean without limitation by reason of enumeration.

10. Counterparts and Facsimile Signatures. This Agreement may be executed in counterparts and if so executed, shall constitute one agreement. Delivery of an executed counterpart of this Agreement by facsimile or e-mail shall be equally as effective as delivery of an original executed counterpart of this Agreement.

11. Warranty. The Parties hereby represent and warrant that (i) they are authorized to execute, deliver and perform this Agreement; (ii) they have not sold, assigned, transferred or in any other manner conveyed to any other person or entity any rights or interests in the Lawsuit; and (iii) this Agreement constitutes a legal, valid, and binding obligation of such party enforceable against such party in accordance with the terms herein.

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

Dated this ____ day of _____ 2016.

MATTHEW KLUMP, as Manager of
Klump Ranches LLC

Paul W. Melo as Attorney for
Klump Ranches LLC
Approved as to Form

Dated this ____ day of _____ 2016

ROBERT A. IRVIN, Mayor
CITY OF WILLCOX

Ann P. Roberts, Attorney for
CITY OF WILLCOX
Approved as to Form

ATTEST:

VIRGINIA A. MEFFORD, City Clerk

STATE OF ARIZONA) Affidavit Fee Exempt: A.R.S. § 11-1134.A(2)
) ss:
COUNTY OF COCHISE)
When recorded, mail to:)
Ann P. Roberts, Esq.)
City of Willcox)
P.O. Box 2315)
Benson, Arizona 85602)

DEED OF EASEMENT

I, **MATTHEW W. KLUMP**, acting in my capacity as Manager of **KLUMP RANCHES, LLC**, an Arizona limited liability company, hereinafter referred to as Grantor, for good and valuable consideration, does now hereby grant to the City of Willcox, an Arizona body politic, hereinafter referred to as Grantee, a permanent easement for ingress, egress, construction and underground water utility purposes and any associated devices such as wires, meters or valves, which includes the right to enter upon said easement to install, maintain and repair said facilities provided only that the Grantee restore the surface of said easement to its original condition so far as reasonably possible except as to native vegetation which need not be restored. The easement being granted hereby, which shall run with the affected lands, is specifically described as:

See **Exhibit "A"** attached hereto and by reference incorporated herein.

The parcel affected by this easement was conveyed to the Grantor by a Special Warranty Deed recorded in the official Records of Cochise County, State of Arizona, at Fee No. 201217468.

DATED this _____ day of November, 2016.

KLUMP RANCHES, L.L.C.

MATTHEW W. KLUMP, Manager

STATE OF ARIZONA)
) ss:
COUNTY OF COCHISE)

This instrument was subscribed, sworn to and acknowledged before me this _____ day of November, 2016, by **MATTHEW W. KLUMP**, Manager of Klump Ranches, L.L.C.

My Commission Expires:

Notary Public

GOODWIN EASEMENT LEGAL DESCRIPTION

A strip of land as an easement for the purpose of ingress, egress, construction and utilities located within Section 36, Township 12 South, Range 24 East of the Gila and Salt River Meridian, Cochise County, Arizona, said easement being 30.00 feet in width and 15.00 feet on each side of the following described centerline:

Commencing at the Southwest corner of said Section 36, thence along the South line thereof, North 89°56'15" East, 1328.42 feet to the **True Point of Beginning**;

Thence North 00°02'06" West, 1300.18 feet along the centerline of said easement, parallel with and 15.00 feet distant from the West line of the Southeast quarter of the Southwest quarter of said Section 36;

Thence North 89°51'02" East, 1298.10 feet along said centerline, parallel with and 15.00 feet distant from the North line of said Southeast quarter of the Southwest quarter of Section 36;

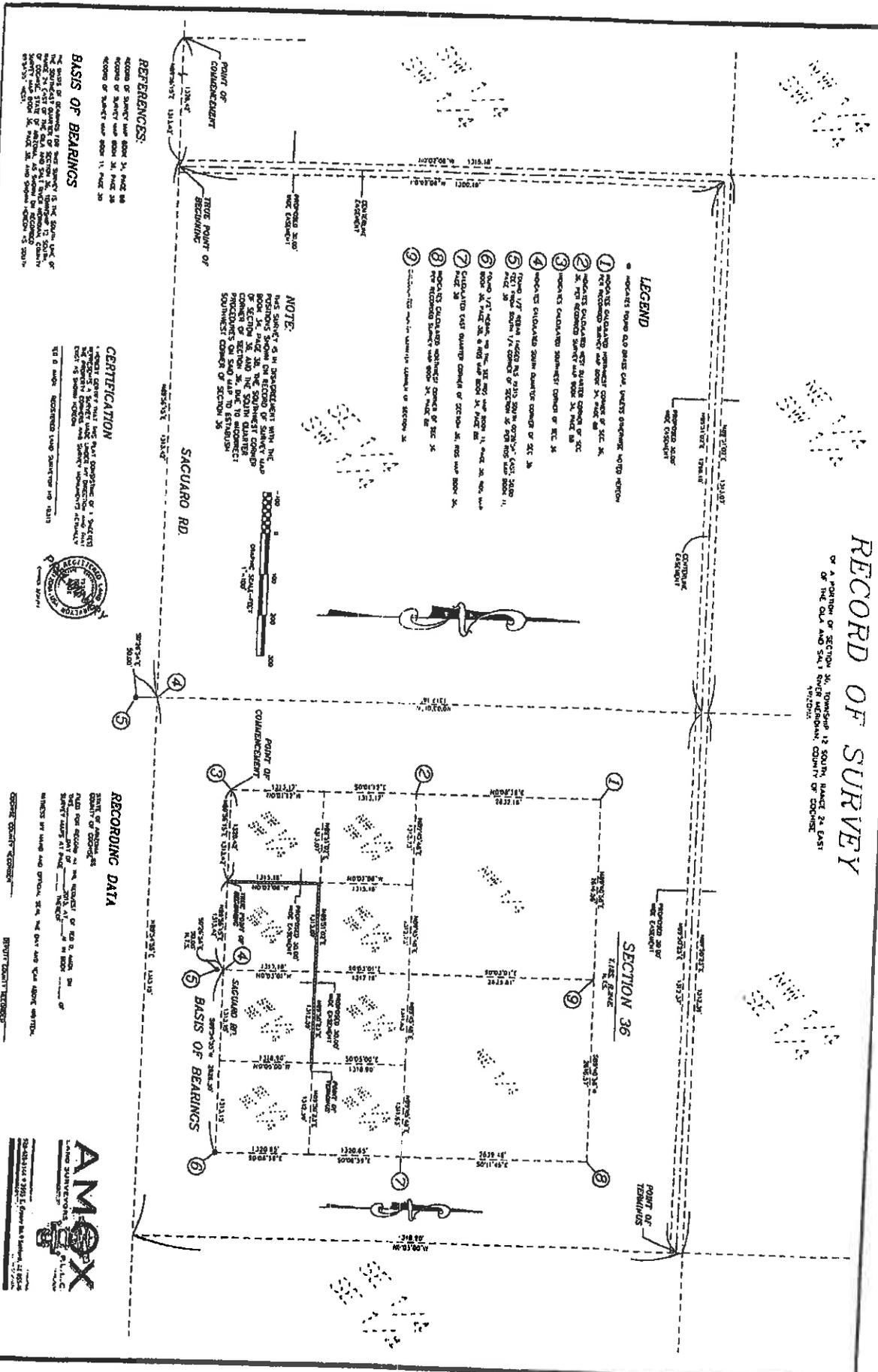
Thence North 89°50'23" East, 1312.37 feet along said centerline, parallel with and 15.00 feet distant from the North line of the Southwest quarter of the Southeast quarter of said Section 36, to a point on the East line thereof, being the **Point of Terminus**.

The sidelines of said easement shall be extended or shortened to meet at angle points, and at the **True Point of Beginning** on the said South line of Section 36, and at the **Point of Terminus** on the East line of the Southwest quarter of the Southeast quarter of Section 36.



RECORD OF SURVEY

of PART OF SECTION 36, TOWNSHIP 12 SOUTH, RANGE 24 EAST
OF THE SIXTH AND SEVENTH RANGE MERIDIAN, COUNTY OF COCONINO,
ARIZONA.



LEGEND

- ① BEARINGS TO CALCULATED QUARTER CORNER OF SEC. 36 NOT RECORDED SURVEY AND NOT RECORDED
- ② BEARINGS TO CALCULATED QUARTER CORNER OF SEC. 36 NOT RECORDED SURVEY AND NOT RECORDED
- ③ BEARINGS TO CALCULATED QUARTER CORNER OF SEC. 36 NOT RECORDED SURVEY AND NOT RECORDED
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- ⑧ BEARINGS TO CALCULATED QUARTER CORNER OF SEC. 36 NOT RECORDED SURVEY AND NOT RECORDED
- ⑨ BEARINGS TO CALCULATED QUARTER CORNER OF SEC. 36 NOT RECORDED SURVEY AND NOT RECORDED

NOTE:

HAS SURVEY 9 M. DISTANCE WITH THE POSITIONS SHOWN ON RECORD OF SURVEY MAP OF SECTION 36, TOWNSHIP 12 SOUTH, RANGE 24 EAST, COUNTY OF COCONINO, ARIZONA, BEING THE QUARTER CORNER OF SECTION 36, MADE TO ESTABLISH PROCEDURES ON SAID MAP TO ESTABLISH QUARTER CORNER OF SECTION 36.

REFERENCES:

RECORD OF SURVEY MAP SHOWING THE POSITIONS OF SURVEY AND BEARINGS TO THE QUARTER CORNER OF SECTION 36, MADE TO ESTABLISH PROCEDURES ON SAID MAP TO ESTABLISH QUARTER CORNER OF SECTION 36.

BASIS OF BEARINGS

THE BASIS OF BEARINGS FOR THIS SURVEY IS THE TRUE POINT OF BEGINNING OF SECTION 36, TOWNSHIP 12 SOUTH, RANGE 24 EAST, COUNTY OF COCONINO, ARIZONA, BEING THE QUARTER CORNER OF SECTION 36, MADE TO ESTABLISH PROCEDURES ON SAID MAP TO ESTABLISH QUARTER CORNER OF SECTION 36.

CERTIFICATION

I, _____, COUNTY CLERK OF COCONINO COUNTY, ARIZONA, DO HEREBY CERTIFY THAT THE RECORD OF SURVEY MAP OF SECTION 36, TOWNSHIP 12 SOUTH, RANGE 24 EAST, COUNTY OF COCONINO, ARIZONA, BEING THE QUARTER CORNER OF SECTION 36, MADE TO ESTABLISH PROCEDURES ON SAID MAP TO ESTABLISH QUARTER CORNER OF SECTION 36, IS A TRUE AND CORRECT COPY OF THE ORIGINAL RECORD OF SURVEY MAP.



RECORDING DATA

DATE OF RECORDING: _____
 NAME OF PARTY: _____
 NAME OF RECORD: _____
 COUNTY OF RECORD: _____
 RANGE OF RECORD: _____
 TOWNSHIP OF RECORD: _____
 SECTION OF RECORD: _____
 BEARING BY HAND AND OFFICIAL, SIGN THE DAY AND YOUR HOME ADDRESS.

AMOX
 AMERICAN MAPPING & SURVEYING COMPANY
 1000 N. GILBERT AVENUE, SUITE 100
 CHANDLER, ARIZONA 85226
 PHONE: (480) 948-2300
 FAX: (480) 948-2301
 WWW.AMOCX.COM

ACCEPTANCE OF DEED OF EASEMENT

After review of the foregoing Deed of Easement, the Mayor and City Council of the City of Willcox, Arizona, hereby approves and accepts the foregoing Deed of Easement from the Grantor, Klump Ranches, L.L.C., a Arizona Limited Liability Company.

Approved this ____ day of November, 2016.

CITY OF WILLCOX

ROBERT A. IRVIN, Mayor

ATTEST:

VIRGINIA A. MEFFORD, City Clerk