



TOWN OF PRESCOTT VALLEY

Improvement District Administration Regulations

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1.0 DEFINITIONS

- 1.1 "*Building*" and "*Sewage System*." shall be defined as set forth in Section 202 of the International Plumbing Code (IPC), 2006 Edition (or subsequent editions), as adopted by the Town.
- 1.2 "*Certified Funds*." Cash, money order, cashier's check, or similar instrument.
- 1.3 "*Customer*." The (i) record owner(s) of real property receiving Utility Service, and (ii) any Tenant of real property receiving Utility Service.
- 1.4 "*Improvement District Assessment*" is synonymous with "*Special Assessment*" and "*Assessment*" as defined in ARS §48-571(A)(1). Furthermore, "*Assessment*" may mean either the exaction upon individual lots, parcels or properties, or the list of all such exactions recorded in the office of the Street Superintendent, depending on the context. However, "*Record of Assessment*" (in connection with the "*Assessment Diagram*") shall refer to the list of all Assessments on individual lots, parcels, or properties recorded with the "Warrant" in the office of the Superintendent of Streets.
- 1.5 "*Improvement District Bonds*" is synonymous with "*Improvement Bonds*" or (where the context so indicates) "*Bonds*" found in ARS §48-595.
- 1.6 "*Payment Demand Period*" and "*Cash Collection Period*" are synonymous with the phrase "*demands for payment of the several Assessments*" found in ARS §48-590(A).
- 1.7 "*Person*." shall be defined as set forth in ARS §13-105(23) (as amended).
- 1.8 "*Real Property*" or "*Property*." The building, unit, structure, designated turf area, or water storage area (including adjacent areas and appurtenances) to which domestic water service, wastewater service, and/or reclaimed water service is provided.
- 1.9 "*Town Council*" or "*Council*." The governing body of the Town, comprised of its duly elected or appointed members.
- 1.10 "*Town Manager*" or "*Manager*." The Manager of the Town as appointed from time to time by the Town Council, and/or related staff designees.
- 1.11 "*Town of Prescott Valley*", "*Prescott Valley*" and "*Town*" are synonymous.
- 1.12 "*Utilities*" or "*Utilities Service*." Domestic water service, wastewater service, and/or reclaimed water service.
- 1.13 "*Utility System*." The Domestic Water System, the Wastewater Treatment System, and the Reclaimed Water System of the Town, or any portion thereof.
- 1.14 "*Wastewater Treatment System*" and "*Wastewater System*" are synonymous with "*Wastewater Collection and Treatment System*." Furthermore, "*public sanitary sewer lines*" and "*lift stations*" may be designated collectively as the "*Wastewater Collection System*." Finally, "*treatment facilities*" may be designated as the "*Wastewater Treatment Facility*", or the "WWTF."

2.0 IMPROVEMENT DISTRICT ADMINISTRATION

- 2.1 Engineer to Determine Assessments. If construction of a phase or portion of the Utility System is financed through the creation of an improvement district pursuant to ARS §48-576 et seq., then the engineer hired by the Town to design that phase or portion of the Utility System shall also determine the Improvement District Assessments related thereto for particular lots, parcels or properties in the district. In the case of already-platted lots or parcels, the engineer shall also determine whether such lots or parcels should be combined or split for purposes of the Assessments.
- 2.2 Factors for Combining Lots for Assessment Purposes. While combinations of lots or parcels in the Office of the Yavapai County Assessor for ad valorem tax purposes may be a preliminary indicator of whether already-platted lots or parcels should be combined for Improvement District Assessment purposes, it is not solely determinative. Rather, the determining factor is whether the lots or parcels will or are likely to receive i) a single benefit, or ii) multiple benefits from the improvement.
- 2.3 Factors for Not Applying Assessments. In determining the benefits that already-platted lots or parcels will receive from an improvement, the assumption shall be that each lot or parcel shall be separately benefited and, therefore, shall be separately assessed unless it meets one of the following tests:
- 2.3.1 It has been combined with another lot or parcel and is intended to be used as a single living space or home site as evidenced by the construction of one (1) or more substantial improvements on each of the combined lots or parcels, which represent a substantial investment and thereby indicate that the lots or parcels will not be split in the future;
- 2.3.2 It has been combined with another lot or parcel and is intended to be used as one (1) lot or parcel as evidenced by the construction of a substantial building across the common lot line;
- 2.3.3 It has been combined with another lot or parcel such that if they are divided in the future, the result will be that one (1) or more of the lots or parcels will be unbuildable in accordance with the Town's current codes; or
- 2.3.4 It is a remnant lot or parcel, or is otherwise unbuildable in accordance with the Town's current codes.
- 2.4 Application of In-Lieu-Of-Assessment Fee. In the event that already-platted lots or parcels combined for Improvement District Assessment purposes are later "split" so that one (1) or more may be separately sold or developed, then such separated lots or parcels shall have an in-lieu of Assessment charge imposed thereon as described hereinabove, prior to a building permit or other permit being issued for development.
- 2.5 Engineer to Determine If Lots in Floodplains are Buildable. Inasmuch as there are significant limitations on the ability to build structures and install Utilities in designated floodplains [particularly where federal loans and grants are part of the financing for a phase or portion of the Utility System (e.g. RD loans and grants)], the engineer hired to design a phase or portion of the Utility System, to help create an improvement district to finance the same, and to establish the Improvement District Assessment related thereto, shall also determine whether particular lots, parcels or properties impacted by a designated floodplain are "buildable" and therefore will receive a benefit from the improvement.

- 2.6 Methodology for Determining if Floodplain Lots are Buildable. In determining whether lots, parcels or properties are "buildable" for Improvement District Assessment purposes, the engineer shall -
- 2.6.1 Refer to the Town Zoning Code to determine for each zoning district the minimum square footage for a structure or use permitted in the district (keeping in mind the possibility of multiple floors);
 - 2.6.2 Refer to the official Federal Emergency Management Authority (FEMA) floodplain maps to obtain the estimated floodplain impact by square footage on individual lots, parcels or properties in the improvement district (keeping in mind the FEMA regulations that permit certain types of encroachments so long as flood levels are not increased more than a certain amount);
 - 2.6.3 Establish an icon or icons for each of the zoning districts showing one (1) or more standard building footprints with the appropriate minimum square footage; and
 - 2.6.4 Apply the icon or icons to the floodplain maps (using the same scale) in order to arrive at a solid estimation as to whether impacted lots, parcels or properties are "buildable" and therefore susceptible to an Assessment.
- 2.7 Notice to Owners of Whether Lots are Buildable. Upon making a determination that particular lots, parcels or properties are either buildable or non-buildable, the engineer shall notify the owners of record in writing by first-class mail, postage prepaid, as to the determination. Such notice shall be provided in sufficient time to permit the owners to reasonably seek informal administrative review of such determination with the Town Manager. The determination of the Town Manager after such review shall be final.
- 2.8 Assessments in Addition to Rates, Fees, Charges, Penalties and Taxes. The fact that Improvement District Assessments may be applied to lots, parcels or properties to finance initial construction of phases or portions of the Utility System, does not preclude a requirement that Customers pay utility rates, fees, charges, penalties and taxes for utility services to said lots, parcels or properties.
- 2.8.1 *Assessments are Lien.* Improvement District Assessments, when recorded in the Office of the Superintendent of Streets, are a first (1st) lien on the lots, parcels or properties assessed (subject only to the lien for general property taxes and prior Special Assessments) for a period terminating on the date the Assessment is paid in full. Such recording of the Assessment shall be notice to all interested Persons of the contents of the record.
 - 2.8.2 *Vesting of Assessment Lien.* Note that, in the event of a Property sale because of a delinquent installment payment on an Assessment (per ARS §48-603, as amended), and upon filing a copy of the Certificate of Sale in the office of the Superintendent of Streets, the lien of the Assessment shall vest in the purchaser and will only be divested by a redemption of the Property.
 - 2.8.3 *Cash Collection Period.* Improvement District Assessments may be paid in cash in an "initial amount" during the 30-day Payment Demand Period (Cash Collection Period). Assessments not paid during the Cash Collection Period are shown as "unpaid" in the Town Treasurer's "return" to the Superintendent of Streets.
 - 2.8.4 *Collection of Assessment.* If Bonds are not to be sold to provide the remaining financing for an improvement, then the Superintendent of Streets shall record the return in the "Record of

Assessment" and shall take whatever steps are necessary (including bringing a civil action) to collect the remaining Assessments in the initial amounts. However, if Bonds are to be sold, then the Superintendent of Streets shall record the return in the Record of Assessment, then shall certify a list of unpaid Assessments over twenty-five dollars (\$25.00) to the Town Clerk. At the same time, the Superintendent of Streets shall mark each unpaid Assessment as "certified" on the Record of Assessment. Thereupon, all such Assessments officially cease to be payable in cash at the initial amount.

- 2.8.5 *Authorization to Sell Bonds.* The Town Clerk presents the certified list to the Town Council at its next meeting (regular or special). At any time thereafter, the Council may direct by resolution that Improvement District Bonds be issued in an amount not to exceed the amount of the unpaid Assessments as shown on the certified list (which Assessments may include capitalized interest). The due date of such Bonds shall be January 1 of each year, and they shall bear interest at a rate no higher than that specified in the earlier Resolution of Intention (with semi-annual interest coupons payable January 1 and July 1 each year). All certified, unpaid Assessments then become payable in equal annual installments on December 1 each year, with semi-annual interest payments at the bond interest rate on June 1 and December 1 of each year.
- 2.8.6 *Redemption Premium.* Nothing precludes the Town from providing in the form of bond for "redemption" prior to maturity upon the giving of such notice as is reasonable, and for payment of a "premium at redemption" if the Town determines it to be advisable for purposes of lower interest rates, etc. Thus, after the sale of Bonds, Assessments may still be paid in a lump sum but only upon payment of a proportionate share of the "premium" required for early redemption of Bonds.
- 2.8.7 *Interim Acceptance of Estimated Lump-Sum Payments.* During the period of time between certification of unpaid Assessments and actual issuance of Bonds, some flexibility remains for accepting lump-sum payments of Assessments. For example, if Bonds can be preliminarily advertised in the bond market at a higher amount than will actually be sold (without penalizing the Town as to interest rates or other terms of sale), then lump-sum Assessment payments at the initial amount may reasonably continue to be accepted for a period. However, at some point prior to sale the exact amount of Bonds to be sold must be established. At that point, it is unreasonable to accept lump-sum Assessment payments at the initial amount. Still, for an additional short period the exact amount of any redemption premium might be unknown. Therefore, nothing should preclude the Town from entering into agreements with individual owners of lots, parcels or properties who insist on paying off their Assessments during such a period to pay an "estimated" amount that is provided to the Town by bond counsel. In that event the lien would be released as provided by law, without regard to whether the amount paid is more or less than the amount that will subsequently be established. No refund should be granted in such case, nor should any deficiency be sought from the owner.
- 2.9 Deficiency Made Good by Town. If there is a deficiency in the funds collected from Special Assessments, the Town may make good the deficiency by a temporary loan from some other fund, then reimburse itself from the installments when they are received. It should be noted that making good such deficiencies is not required by statute, but it is often required per contract as set forth in improvement bond resolutions.
- 2.9.1 *New Levy if Assessments Adjudged Void.* If some or all Improvement District Assessments are adjudged void for any reason, the Town Council shall cause to be levied and assessed

upon the particular lots involved a new Assessment sufficient to provide for the payment of principal and interest on all Bonds then unpaid. The reassessment shall be made as nearly as practicable in the same manner, and with like effect, as the original Assessment.

- 2.9.2 *Town Payment of Partial Deficit.* However, nothing precludes the Town Council from paying a partial deficit in any special fund from which Improvement District Bonds are paid, from the general fund.
- 2.10 Amendments of Record of Assessment and Diagram. Events such as subsequent Property transactions, redistribution of Assessment liens between multiple lots held by a single owner, discovered errors, etc. may require that the Record of Assessment (and possibly the underlying diagram) be amended. Any such amendments shall be ordered by resolution of the Town Council, and carried out by the Superintendent of Streets.
- 2.11 Plan to Collect Installments in Partial Payments. The Town shall have the option of establishing by resolution a plan whereby the annual installments on an Assessment may be collected in partial payments prior to the time the installment is due.
- 2.12 Procedure for Collecting Installments. The Superintendent of Streets shall promptly collect all installments of principal and interest on Assessments certified as unpaid to the Town Clerk and for which Bonds have been sold. The procedure shall be essentially as follows:
- 2.12.1 *Newspaper Notice.* Before any installment of principal or interest becomes due, the Superintendent of Streets shall publish a notice twice in the "Daily Courier". Said notice shall be in substantially the form set out in ARS §48-600(B) (as amended), although the Superintendent has the option of publishing a more detailed notice. In any event, the notice heading shall not be in smaller than 18-point type. The first publication of the notice shall be at least thirty (30) days before the installment is payable.
- 2.12.2 *Mailed Notice.* In addition, the Superintendent of Streets shall mail the notice by first-class mail, postage prepaid, to every interested Person who has filed his/her name and address with the Superintendent. Nothing herein precludes the Superintendent from mailing additional notices in an effort to increase voluntary payment of installments.
- 2.12.3 *Record of Installment Payments.* When an installment of principal or interest is paid, the Superintendent of Streets shall so note in the Record of Assessment (showing the date and the name of the Person by whom or for whom paid). The Superintendent shall give a receipt therefor upon request.
- 2.12.4 *Delinquent Installment Payments.* Any installments remaining unpaid the day following the due date become "delinquent". This shall be so marked and certified on the Record of Assessment and a five percent (5%) penalty shall be added to the installment. [Note that payments are "unpaid" if full payments are not received at the Civic Center on or before the due date, or do not arrive having been post-marked by Post Office stamp on or before the due date. Note also that uncollected installments of either principal or interest may be added to succeeding installments and, together with interest, penalties and costs, are payable therewith. However, nothing herein precludes vigorous collection of installments (principal or interest), penalties and costs when due as set forth hereinafter.]
- 2.12.5 *Newspaper Publication of Delinquency List.* No later than twenty (20) days after an installment of principal or interest becomes delinquent, the Superintendent of Streets shall

publish a list of the Assessments on which any installments are delinquent. The list shall contain a description of each parcel opposite the name of the owner as shown on the Record of Assessment (usually the word "unknown" shall be used), along with the amount of the delinquent installment (including the penalty, a proportionate share of the cost of advertising and any other applicable costs).

- 2.12.6 *Notice Appended to List.* Appended to the list shall be a notice that unless the delinquent installments (including the penalties and costs) are paid, the whole amount of the Assessments will be declared due and the properties on which the Assessments are a lien will be sold at public auction at a specified date and place. The specified date of sale shall not be less than five (5) days nor more than ten (10) days after the last publication (see infra). The place of sale shall be the Magistrate Court in the Civic Center. [Note: if the Town has so provided by ordinance, the notice shall also explain that the Town is willing to sell properties to purchasers for just the amount of delinquent installments (plus penalties and costs), rather than for entire Assessments (plus penalties and costs) as would normally be the case. In such case, the properties will be sold subject to a continuing lien for payment of the Assessments (leaving the properties subject to sale if installments again become delinquent).]
- 2.12.7 *Timing of List and Notice Publication.* This list (with its notice) shall be published in two (2) issues of the "Daily Courier", with eight (8) calendar days intervening between the first and the last publication.
- 2.12.8 *Mailing Additional Notices and Recouping Costs.* Before the date fixed for the public auction (or before the date to which the public auction may have been postponed), the Superintendent of Streets shall obtain a record search that shows the names and addresses of record of all lien claimants on, and other Persons with an interest in, all lots, parcels or properties on which an installment of the Assessment is delinquent. The costs of a record search may be added to the Assessment and is deemed to be a portion of the delinquent installment. At least ten (10) days before the public auction date (or before the date to which the public auction may have been postponed), the Superintendent shall serve by first class mail a notice of the date and place of the public auction to the owner and to each of the lien claimants and other Persons with an interest as shown by the search of records. The notice shall state the date of the public auction, the amount of the delinquent installments including penalties, costs of advertisement and costs of the record search, shall state either that the whole amount of the Assessment and costs and penalties or, if the Town has provided for the sale of the amount of the delinquent Assessment, that the amount then delinquent and costs and penalties are due at the time of the sale and shall state that, unless redeemed within the time allowed by law, a Superintendent's deed will be delivered to the purchaser and the Superintendent's deed shall convey title to the lands described therein free and clear of all interests and liens, except for the lien for general property taxes and prior Special Assessments. In addition to the published notice and these mailed notices, the Superintendent may provide additional notices in an effort to encourage voluntary payment of delinquent installments, penalties and costs. Said additional notices may establish payment deadlines and indicate which costs will be added to delinquent Assessment accounts if payments are not made as required. If the payment deadlines are missed, the specified costs shall be added to the Assessment account and must be paid with delinquent installments and penalties in order to avoid sale of the Property. [Note that nothing herein precludes the Superintendent from adding unpaid costs to future installments and not selling Property if all delinquent installments and penalties have been paid and unpaid costs are twenty-five dollars (\$25.00) or less prior to the sale date.]

- 2.12.9 *Delinquency Payments Prior to Sale.* Any time prior to the day and time of the sale, any Person may pay the delinquent installment, together with the penalty and costs. Thereupon, the Superintendent shall enter payment in the Record of Assessment (including the date, the name by or for whom the payment was made and the amount). [Note that payments received during the five (5) calendar days before the date of sale, and on the sale date (prior to 10:00 a.m.), must be in cash, by money order or by Certified Funds.]
- 2.12.10 *Application of Partial Payments.* Payments received shall be applied to the oldest delinquent account balances first, in the following order: i) principal, ii) interest, iii) penalties, and iv) costs (in order incurred).
- 2.12.11 *Providing Current Sales List for Review.* Approximately two (2) to three (3) weeks prior to the sale date, the Superintendent of Streets shall make available for review during regular business hours at the Civic Center a current sales list with sufficient Property information to allow bidders to research the Property with regard to location, ownership, encumbrances and the amount of the unpaid Assessment. The Superintendent shall endeavor to update said list from time to time (to the extent reasonably possible) up to the date of the sale. Copies may be made upon request, subject to copying charges established from time to time by Council resolution.
- 2.12.12 *Authorization to Postpone Initial Sale.* The Superintendent of Streets (or his/her designee) is hereby authorized to postpone the initial sale to a time certain. Normally such postponement will be announced at the time and place of the initial sale. Thereafter, the Superintendent may provide such additional notice of the postponed sale by publication and/or mail as he/she may deem appropriate. The reasonable cost of any additional notices and related administrative actions shall be added to each delinquent Assessment account and must be paid along with other costs in order to avoid sale of the Property. The final sale shall not be held until the Superintendent has at least provided notice by mail as prescribed in Subparagraph 10(h) hereinabove to all lien claimants discovered in the search of records. That mailing may occur either before the date originally set for the public auction or before the date of any postponed public auction, and only one mailing and one record search is required.
- 2.12.13 *Timing and Procedure of Sale.* The sale shall begin at 10:00 a.m. or at any time thereafter to which the sale may be adjourned. Each Person wishing to actively bid shall be assigned a bidder's number, and all bids shall be made by calling out the assigned number. The Superintendent of Streets (or his/her designee) shall begin the sale commencing at the head of the list for each improvement district and continuing in numerical order until all lots, parcels or properties are sold. [Note that nothing herein precludes the Superintendent (or his/her designee) from moving particular lots, parcels or properties to the end of the list at his/her discretion.] The sale may be continued from day to day until all the Property is sold. All assessed lots, parcels or properties shall be offered for sale separately or in groups, depending upon whether they have a separate or group Assessment number.
- 2.12.14 *Bidding Off Lineal Feet if More Than One Bidder.* Sale shall be for the entire amount of the Assessment (including delinquent installments), plus penalties and costs (including \$0.50 for a Certificate of Sale). The lots, parcels or properties shall be sold to the purchaser willing to take the least quantity of land, who pays by 5:00 p.m. on the day of the sale. However, if the Town has so provided by ordinance (and there is no purchaser other than the Town who will pay the entire amount of the Assessment plus penalties, interest, and the \$0.50), the sale shall be to the Person who will take the least amount of land and pay by 5:00 p.m. on the day of

the sale the amount of the Assessment then delinquent (plus penalties and costs, including \$0.50 for the Certificate of Sale). Payment will only be accepted in cash, by money order or by Certified Funds. Personal or third-party checks will not be accepted. [Note that, in the event there is more than one (1) bid for the Property under a particular Assessment number, the Superintendent (or his/her designee) may ask if any bidders wish to withdraw their bid. If more than one (1) bid still remains, the Property may be moved to the end of the list. If more than one bid remains when the Property is called the second time, the Superintendent (or his/her designee) shall ask each bidder to indicate how many lineal feet off of either or both side lot, parcel or Property lines the bidder will bid off. The bid with the most lineal feet bid off shall be accepted (subject to the above payment requirements).]

- 2.12.15 *Striking Lot Off to Town if No Purchaser.* If there is no purchaser for a particular lot, parcel or Property (or if a bid has been accepted but payment is not received as set forth above by 5:00 p.m. on the day of sale) it shall be struck off to the Town as the purchaser. The Town Council shall then either appropriate from the general fund the amount needed to pay off the remainder of the Assessment, or shall direct the Town Treasurer to pay only the sum required for the installment then due. If the Council chooses the latter course, the Town shall become obligated to pay from the general fund the succeeding installments and interest on the Bonds related to each Assessment. [Note: if the Town chooses to pay the bond installments and interest as they become due on a lot, parcel or Property, then the lien of the Assessment shall not be extinguished for nonpayment of general taxes or prior Special Assessments, and the annual installments of principal and interest of the Assessment shall constitute a first lien on the respective lot, parcel or Property, coequal with the lien for general taxes. If the Assessment lien has not been extinguished prior to the Property being struck off to the State on a tax sale, it shall be extinguished upon sale of the Property pursuant to ARS §42-471 (sale under tax deed held by the State). However, the Town shall then share pro rata in the proceeds of such sale to the extent of the delinquent Assessment.]
- 2.12.16 *Contents of Certificate of Sale.* Upon payment of the sale price as set forth above, the Superintendent of Streets shall execute (in duplicate) a Certificate of Sale which includes i) a description of the Property sold, ii) the name of the owner as listed in the Record of Assessment, iii) a statement that the Property was sold for a delinquent Assessment, iv) a description of the improvement for which the Assessment was imposed, v) the amount for which the Property was sold, vi) the date of sale, vii) the name of the purchaser, and viii) the time when the purchaser will be entitled to apply for a deed. The Superintendent shall then file one (1) copy of the Certificate in his office, and shall deliver the other copy to the purchaser (or, if the Town is the purchaser, shall deliver the other copy to the Town Clerk).
- 2.12.17 *Record of Certificate of Sale.* Upon issuance of the Certificate of Sale, the Superintendent of Streets shall also enter on the Record of Assessment a description of the portion of each lot sold, the amount for which it was sold, the date of sale and the name of the purchaser.
- 2.12.18 *Redemption Schedule and Terms.* Any party having an interest in a lot, parcel or Property may redeem the same at any time before the execution and delivery of a deed therefor, by paying to the Superintendent of Streets the amount for which the Property was sold and an additional i) five percent (5%) if paid within three (3) months from the date of sale, ii) ten percent (10%) if paid within six (6) months of sale, iii) twelve percent (12%) if paid within nine (9) months of sale, iv) fifteen percent (15%) if paid within twelve (12) months of sale, or v) twenty percent (20%) if paid after twelve (12) months from sale.

- 2.12.19 *Handling of Redemption Payments.* When redemption is made, the Superintendent of Streets shall note that fact on the duplicate Certificate of Sale in his/her office, and shall deposit the amount paid with the Town Treasurer. The Treasurer shall then credit the purchaser named in the Certificate of Sale with the amount, and shall pay that amount to the purchaser or his/her assignee upon the surrender of the Certificate of Sale.
- 2.12.20 *Redemption by Town.* If the Town is the purchaser, the Treasurer shall notify the Town Clerk of the redemption and the Clerk shall then cancel the copy of the Certificate of Sale in the Treasurer's office.
- 2.12.21 *Requirements for Purchaser to Apply for Superintendent's Deed.* If the Property has not been redeemed after twelve (12) months from the date of sale, a purchaser or his/her assignee may apply for a deed to the Property from the Superintendent of Streets, if he or she has complied with the following:
- 2.12.21.1 At least thirty (30) days before applying for a deed, the purchaser or his/her assignee has served by first-class mail to the owner or owners of record of the Property, all lien claimants of record, all Persons of record with an interest in the Property and, if occupied, the occupant of the Property, a written notice describing the Property and stating that it has been sold for a delinquent Assessment. The notice must specify the improvement for which the Assessment was imposed, the amount for which the Property was sold, the amount necessary to redeem the Property as of the date of the notice, the time when the purchaser (or assignee) will apply to the Superintendent for a deed to the Property, and that, on issuance of the deed, all interest in the Property, whether of record before or after the Assessment lien, will be extinguished, except for the lien for general property taxes and prior Special Assessments. If the owners, interest holders or occupants cannot be found after due diligence, the notice shall be posted in a conspicuous place upon the Property at least thirty (30) days before the time stated in the notice when a deed will be applied for; and
- 2.12.21.2 The purchaser or his/her assignee has filed with the Superintendent of Streets an affidavit showing that such notice of the application has been given (and, if the owners, interest holders or occupants could not be found, that due diligence was used to find such owners, interest holders or occupants).
- 2.12.22 *Contents of Superintendent's Deed.* Any deed to the Property shall recite substantially the matters contained in the Certificate of Sale, any assignment thereof and that no Person has redeemed the Property. Unless the Town is the purchaser, the purchaser or his/her assignee shall pay the Superintendent one dollar (\$1.00) for making the deed.
- 2.12.23 *Penalty for Redemption After Application for Superintendent's Deed.* [Note: if redemption of the Property is made after an affidavit is filed by the purchaser and more than eleven (11) months after the date of sale, the Person making redemption shall pay three dollars (\$3.00) for the service of notice and the making of the affidavit.]
- 2.12.24 *Superintendent's Deed is Prima Facie Evidence:* [Note also: the deed of the Superintendent of Streets shall be prima facie evidence of the truth of all matters recited therein, of the regularity of all proceedings prior to the execution thereof and of title in the grantee. The deed of the Superintendent shall convey to the purchaser fee title to the lands described

therein, free and clear of all interests, liens, claims and encumbrances, whether of record before or after the Assessment lien, except for the lien for general property taxes and prior Special Assessments.]

2.12.25 *Town's Ability to Sell if No Redemption.* If the Property has not been redeemed after twelve (12) months from the date of sale and the purchaser was the Town, the Town may sell any lot so purchased at public or private sale. However, if an owner of Property advertised for such sale has previously made partial payments on an installment of principal or interest (under a plan established by the Town), then such Property will still not be sold if the owner pays the balance due on the installment (plus penalties and costs) prior to sale. If such owner does not pay the balance of the installment, and the Property is sold for the full amount of the Assessment, the Superintendent shall refund to the owner all money received by way of partial payments.

2.12.26 *Town's Ability to Assign its Interest.* [Note: nothing appears to preclude the Town from assigning its interest as purchaser, and letting the assignee go through the process of applying for a deed after the time for redemption has passed.]

2.13 Appointment of Superintendent of Streets. A Superintendent of Streets shall be designated by resolution for each improvement district created by action of the Town Council. As a rule, the Town Manager is best suited to act as Superintendent of Streets, although other Town officials may be more suitable in particular circumstances. The designated Superintendent of Streets shall keep the records required by Article 2 "General Public Improvements and Improvement Bonds", Chapter 4 "Municipal Improvement Districts", Title 48 "Special Taxing Districts", Arizona Revised Statutes (ARS §48-571 et seq.) (as amended) in his/her office and such records shall be open to inspection during regular office hours.

3.0 SPECIAL IMPROVEMENT DISTRICT FUNDS

3.1 Requirements for Administering Improvement District Funds. In addition to the requirements of any improvement district bond resolutions related to expansion of the Utility System and the Town Financial Policy and other adopted policies and procedures, the following requirements shall apply to administration of any improvement district funds:

3.1.1 *Special Improvement District Funds.* All sums collected from Improvement District Assessments on individual lots, parcels or properties for purposes of constructing any phase or portion of the Utility System shall be placed in a special improvement district fund and shall be used for no other purpose than payment of the principal and interest of Improvement District Bonds issued to represent the cost and expense of the work or improvements constructed.

3.1.2 *Sums Include Town Payments.* These sums include amounts appropriated from the general fund to pay either full Assessments or delinquent installments when Property is struck off to the Town after a sale per ARS §48-603(C) [as amended].

3.1.3 *Sums Include Redemption of Property Struck Off to Town.* These sums also include amounts received from redemption or sale of Property struck off to the Town, less the amount theretofore paid for the Property from the general fund, per ARS §48-603(D) [as amended]. Such sums shall be paid into the special fund until the fund is sufficient to pay all outstanding Bonds.

- 3.1.4 *Town Ability to Make Good Any Deficiency.* If there is a deficiency in the sums collected from Improvement District Assessments needed to pay an installment of principal or interest to bondholders, the Town may make good the deficiency by a temporary loan from some other fund then reimburse itself from the installments when they are received. It is not obligated to do so by statute, but it has obligated itself to do so by Resolution with regard to specific bond issues.
- 3.1.5 *Town Option to Pay Deficit from General Fund.* If there is a partial deficit in a special fund from which Improvement District Bonds are paid because some or all Improvement District Assessments are adjudged void for any reason, rather than impose a new Assessment sufficient to provide for the payment of principal and interest on all Bonds then unpaid (pursuant to ARS §48-610), the Town Council is authorized to pay the deficit from the general fund.

4.0 GENERAL ENFORCEMENT OF REGULATIONS

- 4.1 Priority in Case of Conflicting Provisions. The provisions of Town Code Article 9-5 (as amended) are intended to be supplementary to other provisions of the Town Code. Where conflicts arise (or when additional requirements are in one provision and not in another), the stricter provision shall apply.
- 4.2 Enforcement Options Unlimited. Although not all provisions in Town Code Article 9-05 (and related provisions in the Town Code and the Arizona Revised Statutes) (as amended) are susceptible to all enforcement actions [e.g. non-payment of utility rates, fees, charges, penalties and taxes may not be enforced by criminal charges], nothing in those provisions or in these Regulations should be interpreted as limiting the ability of the Town to vigorously pursue one (1) or more enforcement options at the same time in order to remedy a violation (unless such a limitation is expressly set forth by statute or court ruling).
- 4.3 Wastewater Authority Includes Governmental Power. Because in Arizona the operation and maintenance of a Sewage System by a municipality is a governmental function (being an exception to the general rule that in the operation of a public utility a municipality acts in a proprietary capacity), contract law is not the only basis for analyzing the authority of the Town and the responsibility of Customers. It is therefore appropriate to require such things as mandatory connections, abandonment of septic tanks, private maintenance of the service line and service tap, payment by developers to extend the Wastewater Treatment System and limited discharges into the system.
- 4.4 Authority to Refrain from Enforcement. Except as otherwise expressly limited by contract, resolution, ordinance, statute, code, rule or regulation, nothing shall preclude the Town (in the sole discretion of its Town Council) from refraining to enforce specific violations of these Regulations and related provisions of the Town Code and Arizona Revised Statutes (as amended), or from establishing a policy of refraining to enforce such violations for charitable or other articulated public policy reasons.