

## ASSIGNMENT OF RIGHT-OF-WAY

The State Land Commissioner hereby consents to the Assignment of Right-of-Way  
16-88092 which expires on Perpetual

(Date of expiration)

and hereby orders that the right-of-way and all rights therein are hereby assigned  
and transferred to:

**FLAGSTAFF HOLDINGS, LLC, an Arizona limited liability company**

4602 N. Royal View  
Phoenix, AZ 85018

This assignment is made pursuant to application to assign the right-of-way made by  
ASSIGNOR(S):

**BEA LEE, a single person**

and pursuant to application for the assumption of said right-of-way made by ASSIGNEE(S):

**FLAGSTAFF HOLDINGS, LLC, an Arizona limited liability company**

and in accordance with the laws of the State of Arizona and the rules of the State Land  
Department.

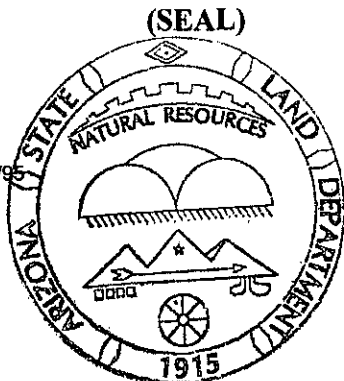
*This assignment is made without waiver or relinquishment of any rights of the State of Arizona which  
may exist under the Right of Way assigned and does not initiate any new rights to the assignee of this  
Right of Way other than the rights as are set forth in the existing Right of Way. The assignee(s) hereby  
assumes and agrees to perform all obligations of the grantee under the Right of Way and accepts the  
Right of Way subject to all existing terms and conditions.*

Dated this 21<sup>st</sup> day of November, 2005.

State of Arizona  
State Land Commissioner

By Sharon M. Baird

Assg RW -02/95



STATE LAND DEPARTMENT  
STATE OF ARIZONA

AMENDMENT TO RIGHT OF WAY

NO. 16-88092

The Right of Way between the State of Arizona, Grantor, and \_\_\_\_\_

BEE LEE, a single person  
Grantee, by mutual consent, has been amended as follows:

.19 acres described as the E 30FT OF NWSE; M&B THRU LOT 2; SENW; SWNE in  
Section 6, Township 21 North, Range 7 East have been added as requested.

This Right of Way Amendment, when executed by the State Land Commissioner (Grantor)  
and the above mentioned Grantee and is affixed to the original Right of Way, shall be in full  
force and effect. All other terms and conditions of the Right of Way shall remain in full force  
and effect.

IN WITNESS HEREOF, the parties hereto have signed this Document effective the day and year set forth below.

STATE OF ARIZONA, GRANTOR  
Arizona State Land Commissioner

By: [Signature]  
Date 4/9/01

[Signature] 4-3-01  
GRANTEE Date

\_\_\_\_\_  
GRANTEE Date

(SEAL)

11455 Concho Canyon  
Address

DEWEY AZ 86327  
City State Zip

STATE LAND DEPARTMENT  
STATE OF ARIZONA

RIGHT-OF-WAY  
SOLD AT PUBLIC AUCTION

R/W No. 16 - 88092

THIS INDENTURE, made this 6th day of November, 19 86,  
by and between the State of Arizona, hereinafter called the Grantor, and

BEA LEE, a single person  
hereinafter called the Grantee.

WITNESSETH, that in accordance with the provisions of A.R.S. §37-461, the  
Grantee herein has filed with the State Land Commissioner an application  
for a right-of-way for the purpose of constructing, operating, and  
maintaining

a public roadway

and

WHEREAS, the said map and field notes thereon have been adopted by the  
Grantee herein as the line of definite location of the aforesaid Right-  
of-Way, and which said right-of-way map is herein referred to and made a  
part hereof as fully as though set out herein, and

WHEREAS, it is understood and agreed by the Grantee herein that, as a  
condition precedent to the granting of the Right-of-Way applied for, the  
land covered by the said Right-of-Way shall be used for no purpose other  
than the location, construction and maintenance of said Right-of-Way over  
and across the following State lands, to-wit described in Appendix A.

TO HAVE AND TO HOLD the same for so long as it may be used for the  
purpose designated, and subject to the conditions and reservations set  
forth herein.

**IT IS UNDERSTOOD AND AGREED** that in case the necessity for the Right-of-Way shall no longer exist, or the Grantee should abandon or fail to use the same, then this grant shall become void, and the right to use the land and all the rights granted hereunder shall revert to the State of Arizona, whereupon the Grantee agrees to execute and deliver a complete release of all right, title and interest therein.

This grant is, and shall be binding upon the said Grantee, his successors and assigns.

**IT IS FURTHER UNDERSTOOD AND AGREED** that this Right-of-Way conveys no fee to the land described herein and no rights to any of the minerals, oil, gas, coal, natural products, etc., in said land and the State of Arizona reserves the right to grant mineral and/or oil and gas leases upon said land.

**IT IS FURTHER UNDERSTOOD AND AGREED** that the said Grantee shall not fence the said Right-of-Way, nor exclude from the use of the surface thereof the State of Arizona or its lessees or grantees.

**THE SAID GRANTOR** further reserves the right to grant to others, easements and rights-of-way over and across the lands described.

**NOW THEREFORE**, in accordance with the provisions of A.R.S. §37-461 and agreeable to the conditions heretofore set forth, the Grantee herein is hereby authorized to locate, construct, operate and maintain said Right-of-Way over and across the State land described herein.

Grantee agrees to indemnify, hold and save Grantor harmless against all loss, damage, liability, expense, costs and charges incident to or resulting in any way from any injuries to person or damage to property caused by or resulting from the use, condition or occupation of the land.

#### **EASEMENT CONDITIONS**

1. With regard to the location, construction and maintenance of the Right-of-way:
  - (a) Grantee shall ensure full compliance with the terms and conditions of this grant by its agents, employees and contractors (including sub-contractors of any tier), and the employees of each of them.
  - (b) Unless clearly inapplicable, the requirements and prohibitions imposed upon Grantee by these terms and conditions are also imposed upon Grantee's agents, employees, contractors, and sub-contractors, and the employees of each of them.

- (c) Failure or refusal of Grantee's agents, employees, contractors, sub-contractors, or their employees to comply with these terms and conditions shall be deemed to be the failure or refusal of Grantee.
  - (d) Grantee shall require its agents, contractors or sub-contractors to include these terms and conditions in all contracts and sub-contracts which are entered into by any of them, together with a provision that the other contracting party, together with its agents, employees, contractors and sub-contractors, and the employees of each of them, shall likewise be bound to comply with these terms and conditions.
2. All access roads over State land outside the Right-of-Way must be applied for and authorized in accordance with applicable regulations.
  3. No material may be removed by Grantee or its contractors without the written approval of the Commissioner.
  4. Grantee shall promptly notify the Commissioner of the amount of flora, if any, which will be cut, removed, or destroyed in the construction and maintenance of the project and shall pay the State Land Department such sum of money as the Commissioner may determine to be the full value of the flora to be so cut, removed or destroyed. Grantee shall notify the State Land Department and the Commission of Agriculture and Horticulture 30 days prior to any destruction or removal of native plants to allow salvage of those plants where possible.
  5. Grantee shall conduct all construction and maintenance activities in a manner that will minimize disturbance to all land values including, but not limited to vegetation, drainage channels, and streambanks. Construction methods shall be designed to prevent degradation of soil conditions in areas where such degradation would result in detrimental erosion or subsidence. Grantee shall take such other soil and resource conservation and protection measures on the land under grant as determined necessary by the State Land Department.
  6. Grantee shall be required, upon completion of right-of-way construction, to make such rehabilitation measures on the State lands, including, but not limited to, restoration of the surface, revegetation, and fencing as determined necessary by the State Land Department.

7. Upon revocation or termination of the Right-of-Way, the Grantee shall remove all equipment or facilities and, so far as is reasonably possible, restore and/or rehabilitate the land to its original condition, to the satisfaction of the Commissioner.
8. Costs incurred by the Grantee in complying with restoration and rehabilitation requirements as determined by the State Land Department on State trust lands shall be borne by the Grantee.
9. Prior to surface disturbance, the Grantee hereof shall provide evidence of archaeological clearance to the Arizona State Land Department. Archaeological surveys and site mitigation must be conducted in accordance with rules and regulations promulgated by the Director, Arizona State Museum. In the event additional archaeological resources are detected by Grantee after receipt of archaeological clearance, all work shall cease and notification shall be given to the Director, Arizona State Museum.
10. **THIS DOCUMENT** is submitted for examination and shall have no binding effect on the parties unless and until executed by the Grantor (after execution by the Grantee), and a fully executed copy is delivered to the Grantee.
11. **IN THE EVENT OF A DISPUTE** between the parties to this Agreement, it is agreed to use arbitration to resolve the dispute but only to the extent required by A.R.S. §12-1518; and, in no event shall arbitration be employed to resolve a dispute which is otherwise subject to administrative review by the Department pursuant to statute or Department Administrative Rule.
12. Grantor reserves the right to relinquish to the United States pursuant to the U.S. Act of August 30, 1890, land needed for irrigation works in connection with a government reclamation project.
13. **Notice of State authority to cancel this contract:**
  - A. The State may cancel any contract, without penalty or further obligation, made after September 4, 1978, by the State or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the State or any of its departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party to the contract, in any capacity or a consultant to any other party of the contract, with respect to the subject matter of the contract.
  - B. The cancellation shall be effective when written notice from the Governor is received by any other parties to the contract unless the notice specifies a later time.

14. **Native Plant Law:**

If the removal of plants protected under the Arizona Native Plant Law is necessary to enjoy the privilege of this Document, the Grantee hereunder must previously acquire the written permission of the Arizona State Land Department and Arizona Commission of Agriculture and Horticulture to remove those plants.

**ENVIRONMENTAL INDEMNITY**

Grantee shall protect, defend, indemnify and hold harmless the Grantor from and against all liabilities, costs, charges and expenses, including attorneys' fees and court costs arising out of or related to the presence of or existence of any substance regulated under any applicable federal, state or local environmental laws, regulations, ordinances or amendments thereto because of: (a) any substance that came to be located on the Right-of-Way due to Grantee's use or occupancy of the lands by the Grantee before or after the issuance of the Right-of-Way; or (b) any release, threatened release or escape of any substance in, on, under or from said Right-of-Way that is caused, in whole or in part, by any conduct, actions or negligence of the Grantee, regardless of when such substance came to be located on the Right-of-Way.

For the purposes of this Right-of-Way, the term "regulated substances" shall include substances defined as "regulated substances", "hazardous waste", "hazardous substances", "hazardous materials", "toxic substances" or "pesticides" in the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Toxic Substance Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, the relevant local and state environmental laws, and the regulations, rules and ordinances adopted and publications promulgated pursuant to the local, state and federal laws. This indemnification shall include, without limitation, claims or damages arising out of any violations of applicable environmental laws, regulations, ordinances or subdivisions thereof, regardless of any real or alleged strict liability on the part of Grantor. This environmental indemnity shall survive the expiration or termination of this Right-of-Way and/or any transfer of all or any portion of the Premises and shall be governed by the laws of the State Of Arizona.

In the event any such action or claim is brought or asserted against the Grantor, the Grantee shall have the right, subject to the right of the Grantor to make all final decisions with respect to Grantor's liability for claims or damages, (i) to participate with Grantor in the conduct of any further required cleanup, removal or remedial actions and/or negotiation and defense of any claim indemnifiable under this environmental indemnity provision, having reasonable regard to the continuing conduct of the operation/business located on the Premises and (ii) to participate with the Grantor in negotiating and finalizing any agreement or settlement with respect to any such claim or cleanup.

#### ADDITIONAL EASEMENT CONDITIONS

The State of Arizona, through its State Land Department, retains ownership of the land. The use of this Right-of-Way is to be non-exclusive. This easement is sold SUBJECT to existing reservations, easements or rights-of-way heretofore legally obtained and now in full force and effect.

The Department does not represent or warrant that access exists over other State lands which intervene respectively between this Right-of-Way easement and the nearest public roadway.

SUBJECT to the express condition that when the lands cease to be put to the stated purpose, said easement shall cease and terminate. Said termination shall be effected through judicial proceedings instituted by or on behalf of any officer or employee of the State of Arizona in a court of general jurisdiction of the State.

ADDITIONAL CONDITIONS ATTACHED HERETO AND  
MADE A PART OF RIGHT-OF-WAY LEASE  
NO: 16-88092

Grantee agrees the alignment for this roadway must begin on the North Section Line of Section 6, Township 21 North, Range 7 East at the point of Hidden Hollow Road and along the West Line of Lot 3 of Tintagel-Flagstaff for Section 31, Township 22 North, Range 7 East.

**Grantee agrees prior to construction:**

1. An Engineering design delineating the proposed roadway alignment and highlighting road construction methods and materials will be submitted to State Land Department (SLD) Rights of Way Section for approval; upon approval a construction schedule will be submitted to SLD Rights of Way Section.
2. Notice to the Forestry Division of the Arizona State Land Department is required so they can remove the timber and assess this resource.
3. To obtain all Federal, State and City permits required by law, and submit copies to SLD Rights of Way Section.

Grantee agrees to submit an as built certified survey to SLD Rights of Way Section within 60 days of finished construction.

Grantee agrees to notify the Rights of Way Section to arrange for a final inspection.

STATE OF ARIZONA LAND DEPARTMENT  
1616 W. ADAMS  
PHOENIX, AZ 85007

RUN DATE: 23-FEB-2001  
RUN TIME: 08:52:46  
PAGE: 001

RELEASE 016-088092-00-000  
AMENDMENT NUMBER 0

| <u>LAND#</u>                 | <u>LEGAL DESCRIPTION</u>                   | <u>C.C.</u> | <u>ACREAGE</u> |
|------------------------------|--|-------------|----------------|
| 21.0-N-07.0-E-06-03-050-9008 | E 30FT OF NWSE M&B THRU LOT 2 SENW<br>SWNE | 0.00        | 3.520          |
|                              | Totals                                     | 0.00        | 3.520          |

STATE  
LAND DEPARTMENT

2001 APR -5 P 1:38