

# PHOENIX-MESA GATEWAY AIRPORT AUTHORITY

## AMENDED AND RESTATED JOINT POWERS AIRPORT AUTHORITY AGREEMENT

This Amended and Restated Joint Powers Airport Authority Agreement (the "Agreement") establishing and continuing the Phoenix-Mesa Gateway Airport Authority (the "Airport Authority"), is made and entered into as of 19 day of July, 2013, pursuant to Arizona Revised Statutes Section 28-8521, et seq., by and among the Town of Gilbert, an Arizona municipal corporation ("Gilbert"), the City of Mesa, an Arizona municipal corporation ("Mesa"), the Town of Queen Creek, an Arizona municipal corporation ("Queen Creek"), the Gila River Indian Community, a federally recognized Indian tribe ("Community"), the City of Phoenix, an Arizona municipal corporation ("Phoenix"), and the City of Apache Junction, an Arizona municipal corporation ("Apache Junction") (collectively and individually, "Members" or "Member").

The parties to this Agreement agree as follows:

### **Section 1**     **Recitals.**

1.1. The United States closed Williams Air Force Base ("Williams") as an operating location of the United States Air Force ("USAF").

1.2 Williams had existing aviation facilities that are suited to be operated and developed as an airport facility pursuant to the joint powers airport authority powers found in Arizona Revised Statutes ("A.R.S.") Section 28-8521, *et seq.*

1.3 The original joint powers airport authority agreement was made and entered into as of 19th day of May, 1994, by and among the Gilbert, Mesa, and Queen Creek and recorded on May 19, 1994, as Instrument No. 94-0400695, official records of Maricopa County, Arizona.

1.4 Through the original joint powers airport authority agreement, it was the desire of Gilbert, Mesa, and Queen Creek that the joint powers airport authority agreement take the place of and cancel the Intergovernmental Agreement (Williams Air Force Base- Management and Operation) that was recorded on December 14, 1992 at Recorder's No. 92-0712408 in the records of Maricopa County, Arizona, the substance of which was incorporated in the original joint powers airport authority agreement.

1.5 By entering into the original joint powers airport authority agreement, the parties to that agreement desired to establish a joint powers airport authority to develop, reuse, operate, and maintain the existing Williams aviation facilities. Upon establishment of the joint powers airport authority, the new facilities were known as the Williams Gateway Airport Authority.

1.5.1 Via 1995 and 2006 Amendments to the original joint powers airport authority agreement, the Community and Phoenix were added as Members of the Airport Authority, respectively.

1.5.2 Via 2009 Amendment, the legal name of the entity was changed to the Phoenix-Mesa Gateway Airport Authority.

1.6 Apache Junction desires to become a Member of the Airport Authority.

1.7 The parties agree, pursuant to the adoption of this Agreement, that Apache Junction shall be a Member of the Airport Authority, effective as of July 1, 2013.

**Section 2 Formation of Authority.**

2.1. Upon approval and execution of this Agreement by all the parties, a joint powers airport authority called the Phoenix-Mesa Gateway Airport Authority is formed with all parties as Members pursuant to A.R.S. Section 28-8521, with all powers granted to it under Arizona law.

**Section 3 Board of Directors and Officers.**

3.1. Upon execution of this Agreement, each Member shall appoint one representative to act with the authority of the appointing Member for the purpose of implementing this Agreement. Each Member shall also designate at least one alternate representative to act with the authority of the appointing Member in the absence of the representative. The appointed representative and all alternates shall be duly elected or appointed members of the governing body of the appointing Member. Notice of such appointment and of any subsequent replacement appointment shall be delivered in writing to the other Members of the Airport Authority.

3.2 The appointing authority as to each Member shall be each Member's respective governing body.

3.3 Each representative so appointed shall be a Director on the Board of Directors of the Airport Authority. The Board of Directors shall consist of only the representatives appointed by the Members of the Airport Authority. In the absence of the representative or alternate representatives, any representative of the Member governing body attending Board meetings or otherwise implementing this Agreement is presumed to act with the authority of the Member governing body.

3.4 The Board of Directors may establish a fixed time, date and place for regularly scheduled meetings. Special meetings of the Board may be called by the Chairman on no less than 24-hours' notice to the public, and each Director, either personally or by mail or by facsimile or by telephone. Notice of meetings of the Board shall be provided and meetings shall be conducted in accordance with the Arizona open meeting law, A.R.S. Section 38-431, *et seq.* Nothing herein shall prohibit the holding of an emergency session on less than 24-hours' notice in accordance with the provisions of the Arizona open meeting law. A Board Member may attend a Board meeting via electronic means, including telephonic conference. The Board may conduct a telephonic Board meeting so long as such telephonic meeting is conducted in accordance with the provisions of the Arizona open meeting law.

3.5 A majority of the membership of the Board of Directors shall constitute a quorum. A quorum shall be necessary to conduct the business of the Board. If a quorum is lost at

any meeting of the Board of Directors, the remaining Directors present at the meeting may recess the meeting from time to time, without notice other than an announcement at the meeting, until a quorum shall be present.

3.6 The Board of Directors shall annually choose from its Directors a Chairman, a Vice Chairman and a Secretary, each of whom shall serve at the pleasure of the Board of Directors. The Board of Directors at any time may appoint such other officers and agents as it shall deem necessary who shall hold their offices at the pleasure of the Board of Directors and who shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

3.7 The Chairman, or in the Chairman's absence, the Vice Chairman, shall preside at all meetings of the Board of Directors. In the absence of the Chairman and Vice Chairman, the Secretary shall preside at the meeting of the Board of Directors.

3.8 The Secretary shall see that the minutes of all meetings of the Board of Directors are kept.

#### **Section 4 Airport Authority Staff.**

4.1 The Board of Directors shall employ an Executive Director and approve an annual budget for such other managers and staff as the Executive Director shall deem necessary to manage and conduct the operations, maintenance and development of the airport facilities in accordance with the provisions of this Agreement and policies and procedures approved by the Board of Directors. The Executive Director shall report directly to the Board of Directors and shall supervise the Airport Authority Staff.

#### **Section 5 Ownership of Airport Facilities.**

5.1 Upon conveyance by the USAF to the Airport Authority, title to all or a portion of the certain aviation facilities, both real and personal property, formerly owned and operated by the USAF at Williams situated in the County of Maricopa, State of Arizona ("Airport Facilities"), shall be held by the Airport Authority.

5.2 The Airport Authority may acquire or convey real and personal property from time to time.

5.3 Development, reuse, operation, and maintenance of the Airport Facilities shall be overseen by the Board of Directors and shall be conducted in accordance with the provisions of this Agreement and policies and procedures developed hereunder.

5.4 Each Member agrees that should said Member withdraw from the Airport Authority pursuant to Section 10, effective upon such withdrawal, any ownership rights of said Member in the Airport Facilities shall also terminate. A Member shall not be deemed to have withdrawn from the Airport Authority simply by virtue of the termination of this Agreement pursuant to Section 13. Each Member hereto also agrees to execute upon withdrawal any and all documents necessary to evidence and effectuate such withdrawal.

**Section 6     Repayment of Funds Advanced by Members of the Airport Authority.**

6.1.     The Airport Authority recognizes that payments previously made by Members of the Airport Authority shall be considered loans and shall be reimbursed to such Members by the Airport Authority at such time as the Airport Authority's Board of Directors deems appropriate. In addition, the Airport Authority recognizes that any future payments made to the Airport Authority by the Members shall be considered loans and shall be reimbursed to the Members by the Airport Authority at such time as the Airport Authority's Board of Directors deems appropriate.

**Section 7     Powers of the Phoenix-Mesa Gateway Airport Authority.**

The Phoenix-Mesa Gateway Airport Authority, acting through the Board of Directors, may:

7.1     Own, operate, and maintain property and facilities related to aviation, air navigation, and aerospace.

7.2     Own and lease property and facilities that are not related to aviation, air navigation, and aerospace.

7.3     Prescribe user fees and charges.

7.4     Operate facilities and construct improvements.

7.5     If authorized by the Members, exercise the right of eminent domain in the names of the Members.

7.6     Engage employees and consultants.

7.7     Enter into contracts, leases, and development agreements.

7.8     Enter into agreements with the State of Arizona, any political subdivision of the State, or the federal government.

7.9     Prepare and receive annual operating budgets.

7.10    Borrow money and issue revenue bonds, and issue other financial obligations incurred for the purposes of this Section and authorized under A.R.S. Section 28-8521, *et seq.*

7.11    Sue and be sued.

7.12    Exercise incidental powers as may be necessary to the exercise of the powers prescribed in this Section and under A.R.S. Sections 28-8527 and 28-8529, and to implement the responsibilities, goals, and purpose of the Airport Authority.

**Section 8      Voting Rights.**

8.1      Each Member of the Board of Directors is entitled to one vote, and a motion will carry if supported by a majority of the quorum unless a Member requests that a weighted vote be taken. If a weighted vote is requested, then the following shall apply:

8.1.1    Each Member of the Board of Directors is entitled to a weighted vote equal to that Member's cumulative investment as a percentage of the total investment made by all current Members beginning in 1993 when the initial Intergovernmental Agreement Group was formed.

8.1.2    If any Member's weighted vote calculated under this Section 8 exceeds 50%, then the weighted vote for that Member shall be deemed equal to the sum of the weighted vote of all the other Members combined. In the event of such a weighted vote calculation, each Member's weighted vote shall be proportionately adjusted in order to provide that the weighted vote of all Members equals 100% combined.

8.1.2.1 By way of example and not limitation, if a Member's weighted vote is calculated at 68% under Section 8.1.1, that Member's weighted vote would then be deemed to be 50%, with the remaining Members holding a proportionate share of the remaining 50% of the total weighted vote.

8.1.3    A two-thirds majority is required for a motion to carry.

8.2.      Weighted voting may not be invoked for votes being taken regarding modifications to the approved airport layout plan and airport master plan, or for adjustments to the percentage contributions or the amounts of each Member contribution to the annual budget.

**Section 9      Operating Budget.**

9.1      The fiscal year of the Airport Authority shall run from July 1 to June 30.

9.2      The Board of Directors shall, by April 1 of each fiscal year, recommend to the Members of the Airport Authority an annual operating budget for the Airport Authority for the next fiscal year and shall state the amounts of each Member contribution or proportion of the Airport Authority's annual operating budget to be provided by each Member. At least thirty (30) days before the annual budget is recommended to the Members of the Airport Authority by the Board of Directors, the Board may consider adjustments to the amounts of each Member contribution or percentage contributions of each Member. Adjustments to the amounts of each Member contribution or percentage contributions of any Member must be approved by a unanimous vote.

9.3      By June 15 of each year, the Board of Directors shall, if necessary due to the addition or withdrawal of Members, have decided by a unanimous vote on the amounts of each Member contribution or a reallocation of the percentage contributions among the Members or have assigned each Member its pro rata increase or decrease in contribution.

9.4 The governing bodies of the Airport Authority's Members, including any new Members admitted pursuant to Section 11 shall approve and adopt the operating budget recommended by the Board, as may be revised pursuant to Section 9.3, by June 30 of each year or withdraw from the Airport Authority pursuant to Section 10.

9.5 The Board of Directors may from time to time recommend to the Members of the Airport Authority amendments to the approved and adopted operating budget. The governing bodies of the Members shall approve amendments to the operating budget or withdraw from the Airport Authority pursuant to Section 10.

9.6 The Airport Authority shall adopt and periodically amend a reuse and development plan and a capital improvements plan. Expenditures for or by the Airport Authority shall be consistent with these plans. In addition, expenditures by the Airport Authority shall be limited to those items that directly relate to or benefit the operation and development of the Airport Facilities and the Airport Authority.

**Section 10 Withdrawal From Airport Authority.**

10.1. No Member shall have the right to withdraw from the Airport Authority during the term of this Agreement except as provided in this Section.

10.2 At least one hundred twenty (120) days prior to the withdrawal deadline, a Member that intends to withdraw from the Airport Authority must provide a written notice of intent to withdraw to the Members of the Airport Authority, but if a Member provides a notice of intent to withdraw between one hundred twenty (120) and one hundred fifty (150) days prior to the withdrawal deadline, then other Members may submit notices of intent to withdraw up to thirty (30) days prior to the withdrawal deadline. The withdrawal deadline shall be February 28 of each fiscal year.

10.3 The withdrawing Member shall pay its pro rata annual budget allocation for the current fiscal year and its pro rata share of any outstanding obligations to which the withdrawing Member has obligated itself. Any obligations of the withdrawing Member shall remain outstanding until fully paid and satisfied.

**Section 11 Admission To Airport Authority.**

11.1. A city, town, county or American Indian Community may be admitted to the Airport Authority upon: (1) written request to the existing Members of the Airport Authority prior to February 1 of each fiscal year; (2) the unanimous approval of the existing Members of the Airport Authority no later than June 30 of each fiscal year but after recommendation of the annual budget to the Members of the Airport Authority; and (3) execution, acknowledgement, and deliverance to the Airport Authority of such instruments as the Members may deem necessary or advisable to effect the admission of such city, town, or county as an additional Member, including (without limitation) the written acceptance and adoption by such city, town, county or American Indian Community of the provisions of this Agreement.

11.2 The fiscal obligations of a new Member are not effective until the beginning of the new fiscal year.

11.3 The parties acknowledge that Gilbert, Mesa, and Queen Creek waived all notice and procedural requirements for admission of the Community when it became a Member of the Airport Authority, effective July 1, 1995.

11.4 The parties hereby waive all notice and procedural requirements in this Agreement for admission that may apply to the admission of Apache Junction when it becomes a Member effective July 1, 2013.

**Section 12 Effective Date.**

12.1. This Agreement shall become effective (the "Effective Date") on the later of its filing with the Arizona Secretary of State and the Maricopa County Recorder in accordance with Section 19 hereof.

**Section 13 Termination of Airport Authority.**

13.1. This Agreement shall remain in full force and effect unless modified or terminated by written agreement of a majority of the Members of the Airport Authority. This Agreement shall also be deemed terminated should all parties hereto have exercised their right to withdraw from the Airport Authority in accordance with Section 10 of this Agreement.

13.2 Notwithstanding the right to withdraw set forth in Section 10, each party hereto agrees to remain a Member of the Airport Authority and to be bound by this Agreement for at least one year after the Effective Date.

13.3 Unless otherwise agreed to by a majority of the Members of the Airport Authority, upon termination of this Agreement:

13.3.1 If one Member agrees to assume ownership of the Airport Facilities and agrees to assume the financial obligations of all Members, then the Airport Authority shall transfer title of the Airport Facilities to such Member.

13.3.2 If no Member agrees to assume ownership of the Airport Facilities and the financial obligations of all Members, and if the State of Arizona agrees to assume such ownership and financial obligations, then the Airport Facilities shall be transferred to the State of Arizona.

13.3.3 If the State of Arizona refuses to assume ownership of the Airport Facilities, then the Airport Facilities shall revert to the United States of America.

**Section 14 Annual Report to Legislature.**

The Chairperson of the Board of Directors of the Airport Authority shall annually present a report of the activities of the Airport Authority to the State House of Representatives, Ways and Means Committee, and the State Senate Finance Committee.

**Section 15     Governing Law.**

This Agreement and the obligations of the Members hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of Arizona. The court with the original jurisdiction for causes of action arising under this Agreement is the United States District Court for the State of Arizona. The Community agrees to, and does hereby waive its sovereign immunity from the jurisdiction of the United States District Court for the State of Arizona in any action arising under this Agreement brought by or against the Community. The Community further agrees to accept and be bound by, thereby waiving its sovereign immunity from, a judgment or order which is final (because either the time for appeal thereof has expired or the judgment or order is issued by a court or other entity having final appellate jurisdiction over the matter is not subject to collateral attack) by any such court or any court or entity having appellate jurisdiction over any such court in any such action. The Community waives its sovereign immunity to the enforcement of any such final judgment against it without limitation. The Community hereby designates the Community's Governor as the appropriate party for the purposes of service of process. If the United States District Court for the State of Arizona finds that it does not have jurisdiction in any action arising under this Agreement brought by or against the Community, then the Parties agree that the action shall be adjudicated through arbitration in the State of Arizona as follows:

i.)     the parties shall attempt to agree upon one arbitrator with expertise on the subject matter of the dispute;

ii.)    if the parties are unable to agree on an arbitrator, each party shall select an arbitrator within ten (10) days of the commencement of the arbitration and the two (2) arbitrators shall mutually appoint a third arbitrator within twenty (20) days of their appointment. If the two arbitrators are unable to agree on the appointment of a third arbitrator within twenty (20) days, the third arbitrator shall be appointed by the American Arbitration Association; and

iii.)   the arbitrator(s) shall confer with the parties immediately after appointment to determine an arbitration schedule including whether and to what extent discovery is required. The arbitrator(s) may set the matter for an evidentiary hearing or oral argument, or may dispose of the dispute based upon written submissions only. The decision of the majority of the arbitrator(s) shall be final, binding, and unappealable. Such decision shall be enforceable in United States District Court for the State of Arizona. The cost of arbitration shall be borne equally by the parties. The parties shall bear their own costs and attorney's fees associated with their participation in the arbitration unless the decision of the arbitrator shall specify otherwise.

**Section 16     Amendments.**

This Agreement may be amended only by an instrument in writing approved and signed by all of the Members.

**Section 17     Legal Counsel Review.**

This Agreement shall be submitted to the legal counsel for each party hereto prior to its execution by said party, in order to determine whether this Agreement is in proper form and is

within the powers and authority granted under the laws applicable to said party. Attached hereto and incorporated herein by reference is a copy of said written determination of each party's legal counsel.

**Section 18     Notices.**

All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail as follows:

Town of Gilbert  
50 East Civic Center Drive  
Gilbert, Arizona 85296  
Attention: Town Manager

City of Mesa  
20 E. Main Street  
Mesa, Arizona 85201  
Attention: City Manager

Town of Queen Creek  
22358 South Ellsworth Road  
Queen Creek, Arizona 85142  
Attention: Town Manager

Gila River Indian Community  
Administrative Offices  
P.O. Box 97  
Sacaton, Arizona 85147  
Attention: Lieutenant Governor

City of Phoenix  
3400 E. Sky Harbor Blvd., Suite 3300  
Phoenix, Arizona 85034  
Attention: Aviation Director

City of Apache Junction  
300 E. Superstition Blvd.  
Apache Junction, AZ 85119  
Attention: City Manager

**Section 19     Filing.**

A completely executed copy of this Agreement shall be filed with the Arizona Secretary of State, the Maricopa County Recorder, and the City Clerk, or the Town Clerk, as appropriate, of each other party hereto.

**Section 20 Remedies.**

In the event of any violation or threatened violation by any party to this Agreement, of any of the terms, restrictions, acknowledgements, covenants or conditions of this Agreement, the other parties hereto shall be entitled to full and adequate relief by injunction and all other legal and equitable remedies.

**Section 21 Cancellation.**

This Agreement may be canceled pursuant to Arizona Revised Statutes, Section 38-511.

**Section 22 Approving Action.**

Copies of appropriate action by ordinance, resolution or otherwise authorizing the respective parties to enter into this Agreement are attached hereto as Exhibit A. The Agreement may be signed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, but all of which taken together shall constitute one of the same instrument.

**Section 23 Federal Aviation Administration.**

The parties recognize that contributions by Phoenix will be obtained from its Aviation Department. Those contributions are subject to review by the Federal Aviation Administration. Nothing herein requires any Member to contribute funding contrary to the Federal Aviation Administration's policies and procedures.

**Section 24 Bond Ordinances.**

Notwithstanding any of the provisions in this Agreement, no Member assumes any obligation in connection with this Agreement that will have priority over or parity with any bond issued by each Member in its individual capacity.

**Section 25 Audit Records.**

The parties, the Federal Aviation Administration, the Comptroller of the United States, or any duly authorized representative reserves the right, at reasonable times, to audit and/or copy the Airport Authority's books and records directly pertinent to this Agreement. Nothing herein requires the Airport Authority to create or maintain any records that the Airport Authority does not maintain in the ordinary course of business or pursuant to a provision of law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as provided in Section 12.

Attest:

TOWN OF GILBERT

By *Christine A. Lempe*  
Town Clerk

By *John Lewis*  
John Lewis, Mayor

Attest:

CITY OF MESA

By *Dawn Mickelsen*  
City Clerk

By *Scott Smith*  
Scott Smith, Mayor



Attest:

TOWN OF QUEEN CREEK

By *Jennifer Robinson*  
Town Clerk

By *Gail Barney*  
Gail Barney, Mayor

Attest:

GILA RIVER INDIAN COMMUNITY

By *Gregory Mendoza*

By *Gregory Mendoza*  
Gregory Mendoza, Governor



Attest:

CITY OF PHOENIX

By *C. Meyer*  
City Clerk

By *David Cavazos* Aviation Director  
David Cavazos, City Manager

Attest:

CITY OF APACHE JUNCTION

By *Kathleen Connelly*  
City Clerk

By *John Insalaco*  
John Insalaco, Mayor



CITY CLERK DEPT.  
2013 JUN 25 AM 11:37

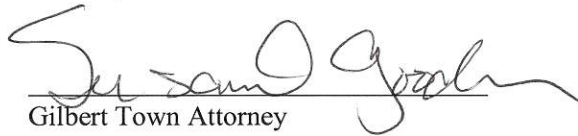
DETERMINATION OF LEGAL COUNSEL

The amended and restated Joint Powers Airport Authority Agreement has been reviewed by the undersigned attorneys who have determined that it is in proper form and within the power and authority granted under the applicable laws of each party.

7-19-13  
Date

  
Gila River Indian Community  
Attorney

6-27-13  
Date

  
Gilbert Town Attorney

7/11/13  
Date

  
Mesa City Attorney

6/24/13  
Date

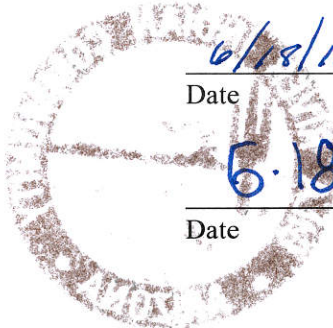
  
ACTING Phoenix City Attorney *CAP*

6/18/13  
Date

  
Queen Creek Town Attorney

6-18-13  
Date

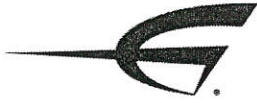
  
Apache Junction City Attorney



**EXHIBIT A**

**[Ordinance, Resolution or Minutes Approving JPAA Agreement]**

(Attached)



PhxMesa **Gateway** Airport

**RESOLUTION NO. 13-31**

WHEREAS, the Phoenix-Mesa Gateway Airport Authority ("Authority"), a joint powers airport authority, was formed pursuant to Arizona Revised Statutes § 28-8521 *et seq.* for the purpose of, among other things, redeveloping portions of the former Williams Air Force Base as a civilian airport known as the Phoenix-Mesa Gateway Airport ("Airport"); and

WHEREAS, the statutory provisions governing the Authority, and the current Amended and Restated Joint Powers Airport Authority Agreement, as amended, dated May 22, 2006, provide for the process by which cities and towns may request and be added as Members of the Authority; and

WHEREAS, the City of Apache Junction has formally requested that it be considered for addition as a Member of the Authority;

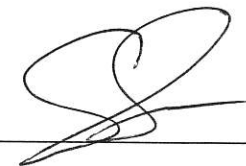
NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of Phoenix-Mesa Gateway Airport Authority as follows:

**The Phoenix-Mesa Gateway Airport Authority Board of Directors hereby recommends to its Members that the Phoenix-Mesa Gateway Airport Authority Amended and Restated Joint Powers Airport Authority Agreement, attached hereto as Exhibit A and incorporated as if fully set forth herein, be approved, and upon approval by the Members and the City of Apache Junction, the City of Apache Junction join the Phoenix-Mesa Gateway Airport Authority as its newest Member.**

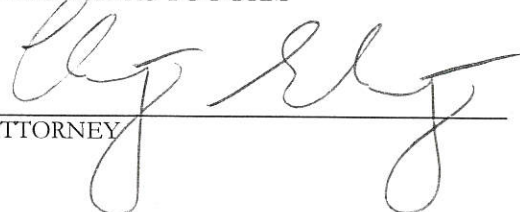
Passed and adopted by the Phoenix-Mesa Gateway Airport Authority this 17th day of June 2013.

ATTEST:

  
\_\_\_\_\_  
CLERK

  
\_\_\_\_\_  
CHAIR

APPROVED AS TO FORM

  
\_\_\_\_\_  
ATTORNEY