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Admitted in: Arizona, District of Columbia

Our File Number: 43045-00001

May 9, 2006

VIA DHL

Arizona Corporation Commission  
Docket Control - Utilities Division  
1200 W. Washington Street  
Phoenix, AZ 85007

W-01898A-06-0326

W-20460A-06-0326

Re: Acquisition of F & F Water Company  
W-01898A -

RECEIVED  
2006 MAY 10 A 11:28  
AZ CORP COMMISSION  
DOCUMENT CONTROL

Attached is an original application (plus 13 copies) executed by Harold and Mary Frerer seeking to transfer the assets and CC&N of the F & F Water Company to St. David Springs, L.L.C.

Sincerely,

Michael F. McNulty  
Counsel for St. David Springs, L.L.C., Transferee

MFM/hib

Attachment

cc: St. David Springs, L.L.C. w/ attachments

**ARIZONA CORPORATION COMMISSION**  
**APPLICATION FOR APPROVAL OF THE SALE OF ASSETS AND/OR TRANSFER OF**  
**CERTIFICATE OF CONVENIENCE AND NECESSITY**  
**WATER AND/OR SEWER**

A. The name, address and telephone number of the Transferor (Company) is:

F & F WATER CO 520-720-4310  
HAROLD W FRAREK  
3692 S. CURTIS FLATS RD  
ST. DAVID, AZ 85630

B. If doing business under a name other than the Transferor (Company) name, specify:

\_\_\_\_\_

C. The Transferor is a:

<input type="checkbox"/> Corporation: <input type="checkbox"/> "C", <input type="checkbox"/> "S", <input type="checkbox"/> Non-Profit <input type="checkbox"/> Arizona, <input type="checkbox"/> Foreign	<input checked="" type="checkbox"/> Partnership <input type="checkbox"/> Limited, <input type="checkbox"/> General <input type="checkbox"/> Arizona, <input type="checkbox"/> Foreign
<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Limited Liability Company
<input type="checkbox"/> Other (Specify)	

D. List the name, address and telephone number of the attorney for the Transferor.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

E. List the name, address and telephone number of management contact:

HAROLD W FRARER  
520-720-4310  
\_\_\_\_\_

F. The name, address and telephone number of the Transferee (Company) is:

ST. DAVID SPRINGS, L.L.C.  
1600 N. KOLB ROAD, SUITE 118  
TULSON, ARIZONA 85715 520-886-1226

G. If doing business under a name other than the Transferee (Company) name, specify:

—  
\_\_\_\_\_

H. List the name, address and telephone number of the attorney for the Transferee.

MICHAEL McNULTY  
LEWIS AND ROCA  
ONE SOUTH CHURCH AVE, SUITE 700  
TULSON, ARIZONA 85701 520-629-4453

I. List the name, address and telephone number of management contact:

ST. DAVID SPRINGS, L.L.C.  
1600 N. KOLB ROAD, SUITE 118  
TULSON, ARIZONA 85715 520-886-1226

J. (Transferee) List the name, address and telephone number of the on-site manager of the utility:

HAROLD W. FRARER 520-720-4310

3692 S. CURTIS FLATS RD.

ST. DAVID, ARIZONA 85630

K.(Transferee) List the name, address and telephone number of the certified operator as authorized by the Arizona Department of Environmental Quality:

HAROLD W. FRARER 520-720-4310

3692 S. CURTIS FLATS RD.

ST. DAVID, ARIZONA 85630

L. The Transferee is a:

<input type="checkbox"/> Corporation: <input type="checkbox"/> "C", <input type="checkbox"/> "S", <input type="checkbox"/> Non-Profit <input type="checkbox"/> Arizona, <input type="checkbox"/> Foreign	<input type="checkbox"/> Partnership <input type="checkbox"/> Limited, <input type="checkbox"/> General <input type="checkbox"/> Arizona, <input type="checkbox"/> Foreign
<input type="checkbox"/> Sole Proprietorship	<input checked="" type="checkbox"/> Limited Liability Company
<input type="checkbox"/> Other (Specify)	

M. If Transferee is a corporation: - N/A

1. List names of Officers and Directors:

Officers

Directors

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2. Indicate the number of shares of stock authorized to issue:

N/A  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. If stock has been issued, indicate the number of shares issued and the date of issue:

N/A  
\_\_\_\_\_  
\_\_\_\_\_

N. If Transferee is a partnership: N/A

1. List the names of general partners:

\_\_\_\_\_  
\_\_\_\_\_

2. List name, address and telephone number of managing partner:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

◆ If Applicant is a foreign limited partnership, provide a copy of the Partnership's "Certificate of Registration" with the Arizona Secretary of State

O. If Transferee is a sole proprietor, list name, address and telephone number of individual: N/A

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

P. Have all customer security deposits been refunded? Yes  No . If no, mark the block below which describes the proposed disposition of security deposits.

All security deposits will be refunded at time of closing.

All security deposits will be transferred to the Transferee.

Other (explain).

THERE WERE NO SECURITY DEPOSITS.

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Q. Are there any refunds due on Main Extension Agreements? Yes  No . If Yes, mark the block below which describes the proposed disposition of the refunds.

Transferor will continue to refund after the transfer.

Transferee will assume the refunding obligations.

A full refund will be made at closing by Transferor.

Other (explain).

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R. (WATER ONLY) Are there any refunds due on meter and service line installations?  
Yes  No . If Yes, mark the block below that describes the proposed disposition of refunds.

Transferor will continue to refund after the transfer.

Transferee will assume the refunding obligations.

A full refund will be made at closing by Transferor.

Other (explain).

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S. (Transferee) Attach the following exhibit(s):

1. Copy of bill of sale, purchase contract or other instrument, which conveys the assets to the transferee.
2. Articles of Incorporation (if corporation)
3. By-Laws (if corporation)
4. Certificate of Good Standing (if corporation)
5. Articles of Partnership (if partnership)
6. Articles of Organization (if limited liability company)
7. Corporate Resolution if required by Articles of Incorporation
8. Attach a copy of the transfer of City or County Franchise from the Transferor to Transferee.

T. List names and addresses of any other public utility interest Transferee has:

1. N/A
2. \_\_\_\_\_

U. Indicate the date that notice of the application was sent, or will be sent to the customers.

May 19, 2006.

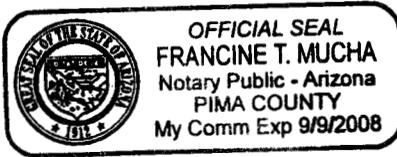
DATED the 24<sup>th</sup> day of MARCH, 2006

Harold W. Frarer      Mary E. Frarer

(Signature of Authorized Representative of Transferor)

Harold W. Frarer,      Mary E. Frarer

(Type Name Here)



(Title)

SUBSCRIBED AND SWORN to before me on this 24<sup>th</sup> day of MARCH 2006

Francine T. Mucha

NOTARY PUBLIC

My Commission Expires 9-9-08

Rodger Ford

(Signature of Authorized Representative of Transferee)

Rodger Ford

(Type Name Here)

Manager

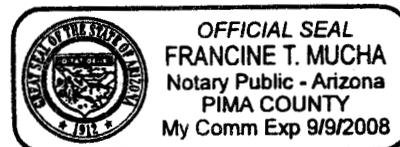
(Title)

SUBSCRIBED AND SWORN to before me on this 17<sup>th</sup> day of APRIL 2006

Francine T. Mucha

NOTARY PUBLIC

My Commission Expires 9-9-08



**Attachment No. 1**

Bill of Sale, together with  
Real Estate And Asset Sale and Purchase Agreement

(follows this page)

**BILL OF SALE AND ASSIGNMENT**

**F&F Water Company/St. David, Arizona**

FOR GOOD AND VALUABLE CONSIDERATION RECEIVED, the undersigned Enclave St. David, LLC, an Arizona limited liability company ("Seller"), hereby transfers, assigns, and conveys to St. David Springs, L.L.C., an Arizona limited liability company ("Buyer"), all of Seller's right, title, and interest in and to those Water Company Assets as set for in Section 1.1 of that certain "Real Estate and Asset Sale and Purchase Agreement And Escrow Instructions" dated as of August 9, 2005 (the "Sales Agreement"), together with those items listed on Exhibit A attached hereto and incorporated herein by reference, being the items described as "Inventory" in the Sales Agreement, together with all rights and appurtenances pertaining thereto (collectively, the "Assets").

To have and to hold all of the Assets hereby transferred, assigned and conveyed to Buyer, its successors and assigns, to their own use and behalf forever.

Seller hereby assigns the benefits received by Seller under the Sales Agreement, including the obligations of Harold W. Frarer and Mary E. Frarer to execute and deliver to Buyer all reasonable other and further instruments necessary to vest in Buyer full right, title, and interest in and to the Assets.

This Bill of Sale and covenants and agreements herein contained shall inure to the benefit of Buyer, its successors and assigns, and shall be binding upon Seller, and its successors and assigns.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale as of the 5th day of May, 2006.

**SELLER:**

Enclave St. David, LLC,  
an Arizona limited liability company

By: Startender, L.L.C., Member

By: Rodger Ford  
Name: RODGER FORD  
Title: MANAGER

## **EXHIBIT A**

### **ASSETS**

- 10,000 gallon Water Storage Tank
- One Water Expansion Tank
- One Gas Engine Ford 300 6 cylinder
- One Electric Expansion Tank Motor Attached to Water Tank
- One Water Gear head Pump attached to Well and Ford engine
- Four water meters, and three customers: three meters connected to homes: M2, M3, and M4, and a 4<sup>th</sup> Meter, M1, which serves potential RV spaces

**REAL ESTATE AND ASSET SALE AND PURCHASE AGREEMENT**  
**AND ESCROW INSTRUCTIONS**  
**Approximately 27 Acres Saint David Farm Land and Water Company Assets**

This Real Estate and Asset Sale and Purchase Agreement and Escrow Instructions (this "Agreement") is made and entered into by and between Harold W. Frarer and Mary E. Frarer, husband and wife (collectively, "Seller") and Enclave St. David, LLC, an Arizona limited liability company ("Purchaser").

WITNESSETH:

FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, Seller hereby agrees to sell and Purchaser hereby agrees to purchase and pay for all that certain property hereinafter described in accordance with the following terms and conditions.

**1. PROPERTY.**

1.1 Water Company Assets. Seller is (a) the owner and holder of a Certificate of Convenience and Necessity to operate a public service corporation pursuant to Arizona Corporation Commission Revision No. 46638 for the sale and distribution of water ("Water Company Franchise"); (b) the owner of a water well (Arizona Department of Water Resources registration No. W01-Water Use MU001) ("Well"); (c) the owner of a 12-inch well casing, a water tank of 10,000 to 15,000 gallons, an approximately 600-gallon pressure tank, a bowl pump, gear head, a Ford 300 engine, 6-water meters, miscellaneous distribution water pipe and connections in place (collectively, "Well Facilities"); (d) the owner of a well site comprised of approximately 1,711 square feet of land within which the Well is located as legally described on **Exhibit A** attached hereto and hereby incorporated by reference ("Well Site"); and (e) a party to certain contracts, such as maintenance, inspection, service or utility contracts relating to the water company business conducted by Seller (collectively, "Contracts"). All of the foregoing including without limitation the Water Company Franchise, the Well, the Well Facilities, Well Site and any of the contracts Purchaser elects to assume may be referred to herein collectively as the Water Company Assets.

1.2 Land, Improvements and Personal Property. The real property situated in the town of Saint David, Cochise County, Arizona, consisting of approximately 27 acres and legally described on **Exhibit B** attached hereto and hereby incorporated by reference ("Land"), together with (a) any right, title, and interest, if any, of Seller in and to any and all roads, easements, streets, and ways bounding the Land, and rights of ingress and egress thereto; (b) any mineral, water and irrigation rights running with or pertaining to the Land; (c) any rights or interests that may accrue to the benefit of Seller or the Land as a result of the abandonment of any road, street or alleyway adjoining the Land; (d) any improvements of any kind whatsoever situated upon the Land ("Improvements"); and (e) any personal property, tangible or intangible, installed, located and/or used in or about the Land and/or Improvements ("Personal Property").

**2. PURCHASE PRICE**

2.1 Payment. The "Purchase Price" for the Water Company Assets, the Land, the Improvements and the Personal Property shall be Four Hundred and Eighty Thousand Dollars (\$480,000.00).

(a) An Initial Earnest Money check to be delivered to Escrow Agent (as provided in Paragraph 4.2 below): Twenty Five Thousand Dollars (\$25,000)

**6. PRE-CLOSING OBLIGATIONS AND CONDITIONS**

6.1 Deliveries of Existing Items. Seller shall, within ten (10) days after Opening of Escrow, make available to Purchaser for review and copying, all items pertaining to the Water Company Assets, the Land, the Improvements and the Personal Property, but only to the extent that such information or items are in Seller's possession or under Seller's control (the "Existing Items"), including without limitation the following items:

- (a) any surveys of the Wells Site and/or the Land;
- (b) a Phase I environmental site assessment and other environmental reports or notices pertaining to the Well Site and/or the Land; provided that Purchaser acknowledges that a Phase I Report has been completed on the property and is in Purchaser's possession thereby satisfying this requirement;
- (c) all utility bills for the past three (3) years relating to the Water Company Assets and/or the Improvements;
- (d) copies of any contracts pertaining to the operation of the Water Company Assets;
- (e) copies of the books and records reflecting the income generated by and expense incurred with respect to the Water Company Assets for calendar years 2002, 2003, 2004 and year-to-date 2005;
- (f) copies of all orders and invoices reflecting repairs or replacements made to any of the Well Facilities or the Improvements and all inspection reports pertaining to the Well and the Well Facilities for calendar years 2002, 2003, 2004 and year-to-date 2005;
- (g) copies of all maintenance records relating to the Water Company Assets and the Improvements;
- (h) copies of all notices issued by the Arizona Corporation Commission, State or County Department of Health and/or the State Department of Water Resources and/or the State Department of Environmental Quality pertaining to the Water Company Assets;
- (i) copies of all policies of casualty and liability insurance maintained by Seller with respect to the Water Company Assets, the Land, the Improvements and the Personal Property;
- (j) a copy of the layout of the water distribution system comprising a portion of the Well Facilities, together with written confirmation that such system is within public rights-of-ways pursuant to a valid franchise and, if portions thereof are outside of a public right-of-way, valid and recorded easements pertaining thereto;
- (k) copies of all contracts for water service and a schedule identifying all water customers by names and addresses with complete billings for calendar years 2002, 2003, 2004 and year-to-date 2005;
- (l) an inventory of any and all personal property to be conveyed to Purchaser at Closing containing a description sufficient to identify the item, including without limitation the serial or identification number; and
- (m) a copy of the registration of the Well and all filings made in connection therewith with any governmental authority and any inspections thereof, and/or the well casing, pump and distribution system, any pump tests or servicings made thereof and copies of all water quality test results made with respect thereto and including a determination of the level at which ground water is being pumped.
- (j) *All of the contracts pertaining to the Water Company Assets, the Land, the Improvements and the Personal Property (other than water delivery service contracts) entered into by Seller shall be cancelled by Seller prior to the Closing without liability of Purchaser except to the extent that Purchaser shall have given Seller written notice prior to Closing that Purchaser elects to assume such contracts or some of them.*

Purchaser acknowledges, represents, warrants and agrees that: (i) it is purchasing the Water Company Assets, the Land, the Improvements and the Personal Property in an "AS IS, WHERE IS, WITH ALL FAULTS" condition with no representation or warranty of any type or nature being made by Seller;

(ii) that Purchaser has made, or will make, prior to Closing its own independent inspection, environmental audit and investigation of the Water Company Assets, the Land, the Improvements and the Personal Property, its atmospheric, surficial, subterranean, aquatic, engineering and other conditions, characteristics and requirements, including all zoning, American Disability Act compliance, and regulatory matters pertinent to the Water Company Assets, the Land, the Improvements and the Personal Property; (iii) that Purchaser is entering into this Agreement and purchasing the Water Company Assets, the Land, the Improvements and the Personal Property based upon its own inspection, environmental audit and investigation and not in reliance on any statement, representation, inducement or agreement of Seller; and (iv) that any engineering data, soils reports, environmental risk assessment or other information that Seller or any other party may have delivered to Purchaser was furnished without any representation or warranty whatsoever by Seller. Purchaser further acknowledges, represents, warrants and agrees that Seller shall have no responsibility, liability or obligation respecting the Water Company Assets, the Land, the Improvements and the Personal Property subsequent to Closing except to the extent of the falsity of any representation or warranty set forth herein.

## 11. CLOSING

(e) *Evidence that each of the contracts affecting the Water Company Assets, the Land, the Improvements and/or the Personal Property, if any, has been duly cancelled as of the Closing without liability to the Purchaser, unless otherwise instructed by Purchaser;*

11.6 Possession. *Possession of the Well Site and the Land shall be delivered to Purchaser by Seller at Closing except that Seller shall have the right to continue to reside on the Land and have continued use of all improvements associated therewith on a rent-free basis after the Closing. Seller shall have the right to sublease buildings and shall retain all proceeds from such rent, if any. Possession is subject to the following conditions (all of which shall survive the Closing):*

(a) *At Seller's sole expense, Seller shall operate, maintain and repair the Water Company Assets and the Land (except for individual items of maintenance and repair that cost more than \$500.00, for which Purchaser shall be responsible), and be entitled to collect and retain all net profits from the operation of the Water Company Assets during such time that Seller shall so operate, maintain and repair the Water Company Assets and the Land.*

(b) *Seller shall remove from the Well Site and the Land at no expense to Purchaser and at such time as Seller shall vacate the Land all of Seller's personal belongings and all debris. Purchaser shall have the right to exercise self-help to remove Seller's personal belongings and all debris from the Land in the event that Seller shall fail to do so within thirty (30) days after written notice by Purchaser that Seller do so.*

(c) *Purchaser shall be entitled to terminate Seller's occupation of the Land on at least twelve (12) months prior written notice if Purchaser shall require Seller to so vacate before the third anniversary of the Closing, and on at least thirty (30) days prior written notice if Purchaser shall require Seller to so vacate after the third anniversary of the Closing, and Seller shall so vacate the Land as required by Purchaser. Seller may terminate occupation of the Land on at least twelve (12) months prior written notice to Purchaser should the Seller desire to vacate before the third anniversary of the Closing.*

IN WITNESS WHEREOF, the parties to this Agreement have duly executed as of the dates below indicated.

SELLER:

By: \_\_\_\_\_

Harold W. Frarer

Date: \_\_\_\_\_, 2005

By: \_\_\_\_\_

Mary E. Frarer

Date: \_\_\_\_\_, 2005

**Attachment No. 2**  
Articles of Organization of St. David Springs, L.L.C.

(follows this page)



**AZ CORPORATION COMMISSION**  
FILED

**ARTICLES OF ORGANIZATION  
OF  
ST. DAVID SPRINGS, L.L.C.**

**MAR 30 2006**

**FILE NO. 1-1273984-3**

**I. NAME**

The name of the limited liability company (the "Company") is "St. David Springs, L.L.C."

**II. ADDRESS OF REGISTERED OFFICE:  
STATUTORY AGENT**

The address of the Company's registered office is 1600 N. Kolb Road, Suite 118, Tucson, Arizona 85715, and the name and business address of the Company's agent for service of process is:

Rodger G. Ford  
1600 N. Kolb Road, Suite 118  
Tucson, AZ 85715

**III. NUMBER OF MEMBERS**

At the time the company is formed, there will be one (1) Member of the Company.

**IV. DURATION**

The latest date the Company can dissolve is December 31, 2051.

**V. MANAGEMENT**

Management of the Company is reserved to the Members.

**VI. NAMES AND ADDRESSES OF THE MEMBERS**

The following member of the Company owns a twenty percent (20%) or greater interest in the capital or profits of the Company:

Enclave St. David, L.L.C.  
1600 N. Kolb Road, #118  
Tucson, AZ 85715

IN WITNESS WHEREOF, for the purpose of forming this Company under the laws of the State of Arizona, I, the undersigned, have executed these Articles of Organization on March 27<sup>th</sup>, 2006.

Rodger Ford  
Rodger G. Ford

CONSENT OF STATUTORY AGENT

I, Rodger Ford, hereby consent to act in the capacity of statutory agent of St. David Springs, L.L.C. until removed or resignation is submitted in accordance with the laws of the State of Arizona.

Rodger Ford  
Rodger G. Ford

3-27-06  
Date

**Attachment No. 3**  
Operating Agreement of St. David Springs, L.L.C.

(follows this page)

**OPERATING AGREEMENT OF  
ST. DAVID SPRINGS, L.L.C.**

Enclave St. David, L.L.C., an Arizona limited liability company, adopts this Operating Agreement (the "Operating Agreement") of St. David Springs, L.L.C., an Arizona limited liability company (the "Company"), and agrees as follows:

1. **Name.** The name of the Company is St. David Springs, L.L.C.
2. **Term.** The duration of the Company shall be perpetual.
3. **Business.** The business of the Company is to provide water and wastewater utilities services and any other activities permitted by law.
4. **Manager.** The name and address of the manager (the "Manager") is as follows:

Enclave St. David, L.L.C.  
1600 N. Kolb Road, Suite 118  
Tucson, Arizona 85715

5. **Member.** The name and the business address of the sole member (the "Member") is as follows:

Enclave St. David, L.L.C.  
1600 N. Kolb Road, Suite 118  
Tucson, Arizona 85715

6. The business and affairs of the Company shall be conducted or managed by the Manager. The Manager shall have the power to do any and all acts necessary or convenient to or for the furtherance of the business of the Company, including all powers, statutory or otherwise, possessed by managers of limited liability companies under the laws of the State of Arizona. The Manager has the authority to bind the Company and execute all documents and instruments on its behalf. The Manager may appoint and remove, with or without cause, such officers or agents of the Company as the Manager determines in its discretion.

7. **Capital Contributions.** The Member has made the capital contributions reflected on the books of the Company.

8. **Additional Contribution.** The Member is not required to make any additional contribution to the Company.

9. **Allocations of Profits and Losses.** The Company's profits and losses shall be allocated to the Member.

10. **Distributions.** Distributions shall be made to the Member at the times determined by the Manager.

11. **Assignments.** The Member may assign in whole or in part such Member's interests in the Company only with the written consent of the Manager, which consent will not be unreasonably withheld.

12. **Admission of Additional Members.** Additional members may be admitted to the Company upon the written consent of the Manager and the Member. As a condition to the admission of an additional member or members, the Manager, the Member and the additional members shall enter into an amended and restated operating agreement that reflects their agreement with respect to the operation of the Company.

13. **Liability of Manager and Member.** Except to the extent the Manager and the Member on behalf of the Company execute a written guarantee in which they specifically agree to be liable, the Manager and Member shall have no liability for the obligations or liabilities of the Company. The Company shall indemnify the Manager and Member for their actions on behalf of the Company to the extent permitted by law.

14. **Governing Law.** This Operating Agreement shall be governed by and construed under the laws of the State of Arizona.

15. **Amendment** This Operating Agreement may be amended in a writing signed by the Manager and the Member.

**[Signatures on following page]**

***IN WITNESS WHEREOF***, the undersigned, intending to be legally bound hereby, have duly executed this Operating Agreement as of March 31, 2006.

**Manager and Member:**

Enclave St. David, L.L.C..  
an Arizona limited liability company

By: Startender, L.L.C.,  
an Arizona limited liability company

Its: Member

By:   
\_\_\_\_\_

Rodger Ford

Its: Manager

**Attachment No. 4**  
Cochise County Franchise Transfer  
(pending)