

ORIGINAL NEW APPLICATION



0000111308

WINCHESTER WATER COMPANY LLC

**7635 N. La Cholla Blvd., #136
Tucson, AZ 85741**

April 12, 2010

Docket Control
Arizona Corporation Commission
1200 W Washington St
Phoenix, AZ 85007

W-04081A-10-0145

Gentlemen:

Attached is an application by Winchester Water Company LLC for Approval of Sale of Assets and/or Transfer of Certificate of Convenience and Necessity. The purpose of this application is to transfer the assets and certificate of Winchester Water Company LLC from Managing Partner Charles D Cardinal and partner Penny Cardinal to new Managing Partner Phil Auernheimer and partner Phyllis Auernheimer.

If you have any questions, we can be contacted at telephone numbers (623) 939-7223 or (602) 578-5220, fax number (623) 435-9057, or at the above referenced address.

Sincerely,



Phil Auernheimer

Arizona Corporation Commission
DOCKETED
APR 15 2010

DOCKETED BY	NR
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ARIZONA CORPORATION
COMMISSION
DOCKET CONTROL

2010 APR 15 P 4:55

RECEIVED

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:

Winchester Water Company LLC

7608 N La Cholla Blvd

Tucson, AZ 85741 - Phone: (520) 575-0600

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

N/A

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 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)	

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:

1. List the names of general partners:

Phil Auernheimer

Phyllis Auernheimer

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

Phil Auernheimer

5625 W Frier Dr

Glendale, AZ 85301

Phone # (602) 939-7273

◆ 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 X. 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).

Q. Are there any refunds due on Main Extension Agreements? Yes X 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).

R. (WATER ONLY) Are there any refunds due on meter and service line installations?

Yes X 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).

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) N/A
3. By-Laws (if corporation) N/A
4. Certificate of Good Standing (if corporation) N/A
5. Articles of Partnership (if partnership) N/A
6. Articles of Organization (if limited liability company)
7. Corporate Resolution if required by Articles of Incorporation N/A
8. Attach a copy of the transfer of City or County Franchise from the Transferor to Transferee. N/A

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

1. None
2. _____

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

April 12, 2010. Also a note was sent in customers' bills on January 10, 2010.

DATED the 13th day of January, 2010

[Signature]

(Signature of Authorized Representative of Transferor)

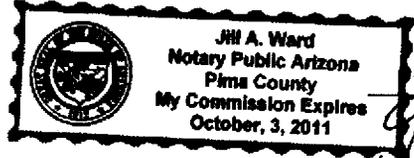
Charles D Cardinal

(Type Name Here)

Managing Partner

(Title)

SUBSCRIBED AND SWORN to before me on this 13th day of January 2010



[Signature]
NOTARY PUBLIC

My Commission Expires 10/3/11

[Signature]

(Signature of Authorized Representative of Transferee)

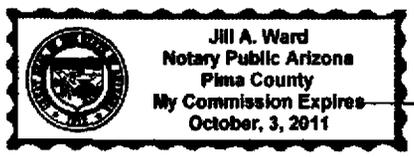
Phil Auernheimer

(Type Name Here)

Managing Partner

(Title)

SUBSCRIBED AND SWORN to before me on this 13th day of January 2010



[Signature]
NOTARY PUBLIC

My Commission Expires 10/3/11

EXHIBIT A

(Insert the text of the amendment)

Articles of Organization

- 1) The name of the limited liability company is
Winchester Water ^{company} L.L.C.

(This is the only change)

Paul Quinn

LL002
Rev. 10/2008

Page 2 of 2

Arizona Corporation Commission
Corporation Division

AZ CORPORATION COMMISSION
FILED



MAR 26 2010

ARTICLES OF AMENDMENT
Pursuant to A.R.S. 29-633 (F)

FILE NO. 1-15790437

1. The name of the limited liability company is:

Phil and Phyllis LLC

2. Attached hereto as Exhibit A is the text of the amendment.

Dated this 26 day of MARCH, 2010

Signature: *Phil Acornheimer*

Print Name: Phil Acornheimer

Check One: Member Manager

DO NOT PUBLISH THIS SECTION
The amendment must be executed by a manager if management of the limited liability company is vested in a manager or by a member if management is reserved to the members.

LL 5002
Rev 10/2009

Page 2 of 2

Arizona Corporation Commission
Corporation Division

JAN 25 2010
FILE NO. L1579043-9

ARTICLES OF ORGANIZATION
OF
PHIL AND PHYLLIS, LLC.

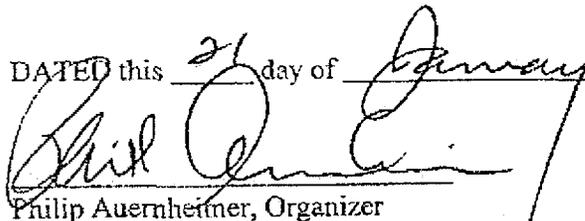
Pursuant to A.R.S. § 29-632, the undersigned states as follows:

1. The name of the limited liability company is PHIL AND PHYLLIS, LLC.
2. The address of the registered office in Arizona is 5625 West Frier, Glendale, Arizona 85301, located in the County of Maricopa.
3. The Statutory Agent's name and address pursuant to A.R.S. § 29-604 is, STEVEN D. KEIST, 7508 N. 59th Ave., P.O. Box 1734, Glendale Arizona 85311-1734.
4. There will be two members at the time the limited liability company is formed.
5. The latest date on which the limited liability company is to dissolve is December 31, 2055.
6. The management of the limited liability company is reserved to the members. The names and addresses of each person who is a member at the time of formation of the limited liability company are:

Philip Auernheimer
5625 West Frier
Glendale, AZ 85301

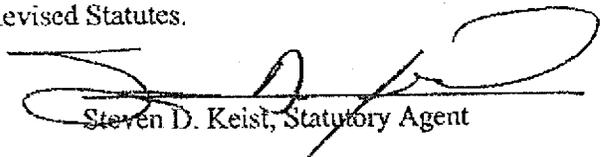
Phyllis Auernheimer
5625 West Frier
Glendale, AZ 85301

DATED this 21 day of January, 2010.


Philip Auernheimer, Organizer

I, Steven D. Keist, having been designated to act as Statutory Agent, hereby consent to act in that capacity until removed or a resignation is submitted in accordance with the Arizona Revised Statutes.

Dated: 1/20/10


Steven D. Keist, Statutory Agent

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT dated as of January 13, 2010 (this "Agreement") is made and entered into by and between CHARLES D. CARDINAL and PENNY CARDINAL, husband and wife (collectively, "Cardinal"), Winchester Water Company, L.L.C., an Arizona limited liability company that is owned by Cardinal (the "Company" and, together with Cardinal, "Seller"), and PHILIP AUERNHEIMER and PHYLLIS AUERNHEIMER, husband and wife (collectively, "Purchaser").

RECITALS

Cardinal, through the Company, owns and operates a private water utility company (the "Business"). The Company desires to sell, transfer and assign to Purchaser, and Purchaser desires to accept and assume from Seller, the Acquired Assets and the Assumed Liabilities (each as hereinafter defined) and the existing business operations, on the terms and subject to the conditions set forth herein.

It was the intention of Cardinal, upon formation of the Company, to transfer all assets and liabilities of the Business to the Company and, to the extent that any assets or liabilities of the Business continue to be held by Cardinal individually and not by the Company, Cardinal hereby joins, as a Seller hereunder, in the foregoing transfer, assignment, acceptance and assumption by the Company to Purchaser.

STATEMENT OF AGREEMENT

Now, therefore, in consideration of the premises and the mutual representations, warranties, covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I

DEFINITIONS; CONSTRUCTION

1.1 *Definitions.* Capitalized terms used in this Agreement have the meanings given to them in Appendix I to this Agreement.

1.2 *Construction.* Each Party acknowledges that it and its attorneys have been given an equal opportunity to negotiate the terms and conditions of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party or any similar rule operating against the drafter of an agreement shall not be applicable to the construction or interpretation of this Agreement.

PH
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OK

ARTICLE II

PURCHASE AND SALE

2.1 Purchase and Sale. In consideration of the assumption by Purchaser of the Assumed Liabilities, on the terms and subject to the conditions set forth in this Agreement, at the Closing (but effective as of the Effective Time), Seller shall sell, assign, convey, transfer and deliver to Purchaser, and Purchaser shall accept and acquire from Seller, free and clear of all Liens (except for Permitted Liens), all of Seller's right, title and interest in, to and under the personal property, tangible or intangible, constituting the Acquired Assets.

2.2 Excluded Assets. Notwithstanding any provision herein to the contrary, the Acquired Assets shall not include the following (collectively, the "Excluded Assets"):

(a) any refund, adjustment or reconciliation related to Taxes paid prior to the Effective Time in respect of the Acquired Assets or relating to the Business, whether such refund, adjustment or reconciliation is received as a payment or as a credit against future Taxes payable;

(b) the rights under any insurance policy arising out of and relating to events or periods prior to the Closing or which is not related to the Business or the Acquired Assets, except to the extent such policy insures for events or occurrences that are included in the Assumed Liabilities;

(c) all books and records of Seller or any other Person other than the Books and Records (provided, however, that Purchaser hereby agrees to provide Seller, upon reasonable request, access to the Books and Records for a period of five years following the Closing, including the right to make copies thereof for a reasonable purpose);

(d) the rights of Seller under this Agreement and the Ancillary Agreements;

(e) those parcels of real property located in Cochise County, Arizona and identified as Winchester Heights Lots #235, 243 and 244 (Parcel Nos. 201-07-235, 201-07-243 and 201-07-244) and Winchester Ranch Estates No. 5 Lots 41, 42, 79 and 80 (Parcel Nos. 201-05-041, 201-05-042, 201-05-079 and 201-05-080); and

(f) all other assets of Seller that do not constitute Acquired Assets.

2.3 Assumed Liabilities. On the Closing Date, Purchaser shall execute and deliver in favor of Seller the Assumption Agreement, pursuant to which Purchaser shall assume and agree to pay, perform and discharge when due the following Liabilities of Seller, whether direct or indirect, known or unknown, absolute or contingent, accrued, fixed or otherwise, or whether due or to become due, whether such Liabilities accrue or arise or are to be performed before or after the Closing, other than Excluded Liabilities (as defined below), in accordance with the respective terms and subject to the respective conditions thereof (collectively, but excluding the Excluded Liabilities, the "Assumed Liabilities"):

(a) any and all Liabilities relating to the Acquired Assets or under Contracts relating to the Business, including, without limitation, any remaining customer credits for the cost of service line and meter installation;

(b) any Liabilities in respect of Taxes to the extent of the proration provided in Section 3.2(a);

(c) any payment obligations of Seller relating to the Acquired Assets or the Business, including accounts or notes payable, arising prior to or after the Effective Time;

(d) any fines and penalties imposed by any Governmental Authority resulting from any act or omission by Seller or its Affiliates relating to the Acquired Assets or the Business that occurred prior to the Closing Date; and

(e) any Liability relating to the Acquired Assets or the Business arising out of (A) any Claim pending or threatened as of, or arising out of any event, circumstance or condition occurring or existing prior to, on or after the Effective Time or (B) any actual or alleged violation of Law prior to, on or after the Effective Time.

2.4 Excluded Liabilities. Purchaser shall not assume by virtue of this Agreement, the Assumption Agreement or any other Ancillary Agreement, or the transactions contemplated hereby or thereby, or otherwise, and shall have no liability for, any Liabilities of Seller other than the Assumed Liabilities (the "*Excluded Liabilities*"), which Excluded Liabilities shall include, without limitation, the following:

(a) any Liabilities of Seller in respect of any Excluded Assets or other assets of Seller that are not Acquired Assets;

(b) any income Taxes attributable to income received by Seller;

(c) any Liabilities in respect of Taxes attributable to the Acquired Assets for taxable periods or any portion of any taxable period ending on or before the Effective Time, except to the extent of the proration provided for in Section 3.2(a);

(d) any Liability of Seller arising as a result of its execution and delivery of this Agreement or any Ancillary Agreement, the performance of its obligations hereunder or thereunder, or the consummation by Seller of the transactions contemplated hereby or thereby; and

(e) any Liability of Seller based on Seller's acts or omissions after the Closing.

ARTICLE III

PURCHASE PRICE; CLOSING

3.1 Purchase Price. The purchase price for the Acquired Assets (the "*Purchase Price*") shall be Five Thousand Dollars and No/100 (\$5,000.00), which amount shall be payable.

by the Purchaser to Seller in immediately available funds shall be paid to Seller (by cashier's check or wire transfer to Seller's account) at the Closing.

3.2 Proration.

(a) Purchaser and Seller agree that all of the items normally prorated, including Taxes and fees for services rendered in respect of the Acquired Assets shall be prorated as of the Effective Time, with Seller liable or entitled to receive payment, as applicable, to the extent such items relate to any time period through the Effective Time, and Purchaser liable or entitled to receive payment, as applicable, to the extent such items relate to any time period subsequent to the Effective Time; *provided, however*, that Purchaser shall be entitled to receive payments from customers in respect of December 2009 billings of utility services and will pay all associated sales or income Taxes in respect thereof and all utility bills and other costs (such as electric bills for the operation of water well pumps) relating to the delivery of services for the month of December 2009.

(b) In connection with such proration, the proration shall be based upon the actual amount of such Taxes or fees for the preceding year or month (or other appropriate period) for which actual Taxes or fees are available and such Taxes or fees shall be re prorated upon request of either Seller or Purchaser made within 60 days of the date that the actual amounts become available. Seller and Purchaser agree to furnish each other with such documents and other records as may be reasonably requested in order to confirm all adjustment and proration calculations made pursuant to this Section 3.2.

3.3 *Closing.* The Closing shall take place at the offices of Feulner Dorris & Giordano PLC at 10:00 a.m., Arizona time, on January 13, 2010, or on such other date and at such other time and place as Purchaser and Seller mutually agree in writing. Failure to consummate the purchase and sale provided for in this Agreement on the date determined pursuant to this Section 3.3 will not result in the termination of this Agreement and will not relieve any Party of any obligation under this Agreement.

3.4 *Effective Time.* Seller and Purchaser agree that, notwithstanding the actual date of the Closing pursuant to this Agreement, the intent of the parties is that for economic, accounting and Tax purposes the sale of the Business and the Acquired Assets and the assumption of the Assumed Liabilities shall be deemed to have occurred at 11:59 p.m., Arizona time on December 31, 2009.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF SELLER

Effective as of the date of this Agreement, each Seller hereby, jointly and severally, represents and warrants to Purchaser that:

4.1 *Authority.* Each Seller has the legal capacity and limited liability company power and authority, as applicable, to execute and deliver this Agreement and each of the Ancillary Agreements to which he, she or it is a party, to perform their respective obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. This

Agreement and each of the Ancillary Agreements to which Seller is a party have been duly and validly executed and delivered by each of them and constitute the legal, valid and binding obligation of Seller, enforceable against each of them in accordance with their respective terms, except as the same may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar Laws relating to or affecting the rights of creditors generally, or by general equitable principles.

4.2 *Brokers.* Seller has no liability or obligation to pay fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Purchaser could become liable or obligated.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Effective as of the date of this Agreement, Purchaser hereby, jointly and severally, represents and warrants to Seller that:

5.1 *Authority.* Purchaser has the legal capacity to execute and deliver this Agreement and each of the Ancillary Agreements to which he or she is a party, to perform their respective obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. This Agreement and each of the Ancillary Agreements to which Purchaser is a party have been duly and validly executed and delivered by Purchaser and constitute the legal, valid and binding obligation of Purchaser, enforceable against each of them in accordance with their respective terms, except as the same may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar Laws relating to or affecting the rights of creditors generally, or by general equitable principles.

5.2 *Brokers.* Purchaser does not have any liability or obligation to pay fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Seller could become liable or obligated.

ARTICLE VI

COVENANTS

6.1 *Further Assurances.* Subject to the terms and conditions of this Agreement, each Party shall, upon request by the other Party at any time, or from time to time, after the Closing Date, and without further consideration, execute and deliver to such other Party such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information and take such other actions as such other Party may reasonably request in order to consummate the transactions contemplated by this Agreement (including, without limitation, IRS Form 8594).

6.2 *Access.* Seller shall provide Purchaser with reasonable access, upon reasonable prior notice and during normal business hours, to the Acquired Assets, including all Books and Records, at the office locations of the Company, but only to the extent that such access does not

unreasonably interfere with the Business of Seller and that such access is reasonably related to the Purchaser's obligations and rights hereunder.

ARTICLE VII

INDEMNIFICATION, LIMITATIONS OF LIABILITY, WAIVERS AND ARBITRATION

7.1 Indemnification.

(a) Subject to the limitations set forth elsewhere in this Article VII, Seller, jointly and severally, hereby agrees to indemnify, defend and hold harmless Purchaser and its Representatives and Affiliates (collectively, the "*Purchaser Indemnified Parties*") from and against any and all Losses, whether or not involving a third-party claim, resulting from or arising out of from or in connection with:

(i) any breach of a representation or warranty made by Seller in this Agreement, any Ancillary Agreement or in any other certificate, document, writing or instrument delivered by Seller pursuant to this Agreement;

(ii) the breach by Seller of, or default in the performance by Seller or the Seller Party of, any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement, any Ancillary Agreement or in any other certificate, document, writing or instrument delivered by Seller pursuant to this Agreement; and

(iii) any Excluded Liability.

(b) From and after the Closing Date, each Purchaser hereby agrees to indemnify, defend and hold harmless Seller and its Representatives and Affiliates (collectively, the "*Seller Indemnified Parties*") from and against any and all Losses, whether or not involving a third-party claim, resulting from or arising out of or in connection with:

(i) any breach of a representation or warranty made by Purchaser in this Agreement, any Ancillary Agreement or in any other certificate, document, writing or instrument delivered by Purchaser pursuant to this Agreement; and

(ii) the breach by Purchaser of, or default in the performance by Purchaser of, any covenant, agreement or obligation to be performed by Purchaser pursuant to this Agreement, any Ancillary Agreement or in any other certificate, document, writing or instrument delivered by Purchaser pursuant to this Agreement; and

(iii) any Assumed Liability.

7.2 *Survival and Time Limitation.* The terms and provisions of this Agreement shall survive the Closing. Notwithstanding the foregoing, after the Closing, any assertion by Purchaser or any Purchaser Indemnified Party that Seller is liable to Purchaser or any Purchaser

Indemnified Party for indemnification under the terms of this Agreement or otherwise in connection with the transactions contemplated in this Agreement must be made in writing and must be given to Seller (or not at all) on or prior to the date that is twelve (12) months after the Closing Date.

7.3 Waiver of Remedies. The Parties hereby agree to limit their recourse for all matters, and not make any Claim for any Loss or other matter, under, relating to or arising out of this Agreement or any other document, agreement, certificate or other matter delivered pursuant hereto, whether based on contract, tort, strict liability, other Laws or otherwise, except (i) for Claims for indemnification pursuant to Article VII, (ii) as permitted under Section 8.13 (Attorneys' Fees), or (iii) for Claims arising under the Ancillary Agreements, which shall be governed by the applicable terms thereof. From and after the date of this Agreement, the indemnification provisions of this Article VII, shall be the sole and exclusive remedy of each Party (including the Seller Indemnified Parties and Purchaser Indemnified Parties) (i) for any breach of the other Party's representations or warranties contained in this Agreement or (ii) otherwise with respect to this Agreement or the transactions contemplated hereby (except as provided in clauses (ii) and (iii) of this Section 7.4).

7.4 Limitations – As Is Sale. Purchaser or its Representatives have fully examined and inspected the Acquired Assets and Assumed Liabilities prior to the execution of this Agreement, and subject to the provisions of this Article VII, each Purchaser agrees to accept the Acquired Assets and Assumed Liabilities in an "AS IS" condition as of the Closing. Notwithstanding anything to the contrary contained herein, Purchaser agrees that, except as provided in Article IV hereof, Purchaser is not relying upon any representations, statements, or warranties (oral or written, implied or express) of any officer, employee, agent, Affiliate or Representative of Seller, including, but not limited to: (a) any representation, statements or warranties as to the physical condition of the Acquired Assets; (b) the fitness and/or suitability of the Acquired Assets for use as a water utility; (c) the past, current or future financial performance of the Business; (d) the compliance of the Acquired Assets or the Business with applicable Laws, including building, zoning, subdivision, environmental, or land use Laws, codes, ordinances, rules or regulations; (e) the state of repair of the Acquired Assets, including, without limitation, any well sites or other improvements on the real property constituting the Acquired Assets or any service lines or meters used in the Business to deliver service to customers; (f) the value of the Acquired Assets or the Assumed Liabilities; (g) the manner or quality of construction of the Acquired Assets; or (h) the income derived or to be derived from the Acquired Assets or the Business. Purchaser, for itself and its successors and assigns, waives any right to assert any claim against Seller, at Law or in equity, relating to any such matter, whether latent or patent, disclosed or undisclosed, known or unknown, in contract or tort, now existing or hereafter arising, except with respect to the representations and warranties in Article IV hereof.

7.5 Procedure for Indemnification – Third-Party Claims.

(a) If a claim by a third party is made against a Seller Indemnified Party or a Purchaser Indemnified Party (each, an "Indemnified Party"), and if such Indemnified Party intends to seek indemnity with respect thereto hereunder, such Indemnified Party shall promptly furnish written notice to the other Party (the "Indemnifying Party") of such claim, setting forth

the basis for such Claim and the nature of the Claim in reasonable detail. The failure of the Indemnified Party to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any indemnification obligation hereunder except to the extent that the defense of such Claim is materially prejudiced by the failure to give such notice.

(b) If any proceeding is brought by a third party against an Indemnified Party and the Indemnified Party gives notice to the Indemnifying Party pursuant to Section 7.5(a), the Indemnifying Party shall be entitled to participate in such proceeding and, to the extent that it wishes, to assume the defense of such proceeding, if (i) the Indemnifying Party provides written notice to the Indemnified Party that the Indemnifying Party intends to undertake such defense, (ii) the Indemnifying Party conducts the defense of the third-party Claim actively and diligently with counsel reasonably satisfactory to the Indemnified Party and (iii) if the Indemnifying Party is a party to the proceeding, the Indemnifying Party has not determined in good faith that joint representation would be inappropriate because of a conflict in interest. The Indemnified Party shall, in its sole discretion, have the right to employ separate counsel (who may be selected by the Indemnified Party in its sole discretion) in any such action and to participate in the defense thereof, and the fees and expenses of such counsel shall be paid by such Indemnified Party. The Indemnified Party shall fully cooperate with the Indemnifying Party and its counsel in the defense or compromise of such Claim. If the Indemnifying Party assumes the defense of a proceeding, no compromise or settlement of such Claims may be effected by the Indemnifying Party without the Indemnified Party's consent unless (A) there is no finding or admission of any violation of Law or any violation of the rights of any Person and no effect on any other Claims that may be made against the Indemnified Party and (B) the sole relief provided is monetary damages that are paid in full by the Indemnifying Party.

(c) If (i) notice is given by the Indemnified Party to the Indemnifying Party of the commencement of any third-party legal proceeding and the Indemnifying Party does not, within ten (10) days after such notice is given, notify the Indemnified Party of the Indemnifying Party's election to assume the defense of such legal proceeding, (ii) any of the conditions set forth in clauses (i) through (iii) of Section 7.5(b) above cease to be satisfied or (iii) the Indemnified Party reasonably and in good faith determines that there is a reasonable probability that such third-party legal proceeding may adversely affect it other than as a result of monetary damages for which it would be entitled to indemnification from the Indemnifying Party under this Agreement, the Indemnified Party shall (upon notice to the Indemnifying Party) have the right to undertake the defense, compromise or settlement of such third-party claim, and the Indemnifying Party shall reimburse the Indemnified Party for the reasonable costs and expenses of defending against such third-party claim (including reasonable attorneys' fees and expenses) and the Indemnifying Party shall be and remain liable for any Losses arising from or related to such third-party claim to the fullest extent provided in this Article VII. The Indemnifying Party may elect to participate in such legal proceedings, negotiations or defense at any time at its own cost and expense.

ARTICLE VIII
MISCELLANEOUS

8.1 Notices.

(a) Unless this Agreement specifically requires otherwise, any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by facsimile equipment providing confirmation of successful transmission or sent by registered or certified mail, postage prepaid, or by a nationally recognized overnight courier service that provides a receipt of delivery, in each case, to the applicable Party at the applicable addresses or number specified below:

If to Purchaser, to:

Philip & Phyllis Aurnheimer *AURNHEIMER* *PA PW P*
5625 W. Frier Drive
Glendale, Arizona 85301
Facsimile No.: (623) ~~939-2089~~ *435-9057*

With a copy to:

Steven D. Keist, P.C.
7508 N. 59th Avenue
Glendale, Arizona 85301
Facsimile No.: (623) 435-9057

If to Seller:

Charles & Penny Cardinal
7608 N. La Cholla Blvd. *CP*
~~Glendale, Arizona 85301~~
Tucson, Arizona 85741
Facsimile No.: (520) 575-0607

With a copy to:

Feulner Dorris & Giordano PLC
2 East Congress St., Suite 1000
Tucson, Arizona 85701
Facsimile No.: (520) 624-7034
Attn: John W. Dorris, Esq.

(b) Notice given by personal delivery, mail or overnight courier pursuant to this Section 8.1 shall be effective upon physical receipt. Notice given by facsimile pursuant to this Section 8.1 shall be effective as of the date of confirmed delivery if delivered before 5:00

p.m. PST on any Business Day or on the next succeeding Business Day if confirmed delivery is after 5:00 p.m. PST time on any Business Day or during any non-Business Day.

8.2 Entire Agreement. This Agreement and the Ancillary Agreements supersede all prior discussions and agreements between the Parties with respect to the subject matter hereof and thereof and contain the sole and entire agreement between the Parties with respect to the subject matter hereof and thereof.

8.3 Expenses. Except as otherwise expressly provided in this Agreement, whether or not the transactions contemplated hereby are consummated, each Party will be responsible for, and will pay, its own costs and expenses incurred in anticipation of, relating to and in connection with the negotiation and execution of this Agreement and the transactions contemplated hereby; *provided, however,* that all accountants' and attorneys' fees of Seller in connection with the transactions contemplated hereby shall be paid by the Company.

8.4 Public Announcements. Except as may be required by Law or any applicable stock exchange rules, neither Party will issue or make any press releases or other public disclosures concerning this Agreement or the transactions contemplated hereby without first obtaining consent from the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

8.5 Waiver. Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by Law or otherwise afforded, will be cumulative and not alternative.

8.6 Amendment. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party.

8.7 No Third Party Beneficiary. The terms and provisions of this Agreement are intended solely for the benefit of the Parties and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary or similar rights upon any other Person or Governmental Authority.

8.8 Assignment; Binding Effect. Purchaser may assign its rights and obligations hereunder to an Affiliate; *provided, however,* that no such assignment shall release Purchaser from its obligations hereunder. Except as provided in the preceding sentence, neither this Agreement nor any right, interest or obligation hereunder may be assigned by any Party without the prior written consent of the other Party, and any attempt to do so will be null and void, except for assignments and transfers by operation of Law. Subject to this Section 8.8, this Agreement is binding upon, inures to the benefit of and is enforceable by the Parties and their respective successors and permitted assigns.

8.9 Headings. The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

8.10 Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party under this Agreement will not be materially and adversely affected thereby, then (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (d) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

8.11 Counterparts; Facsimile. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Any facsimile copies hereof or signature hereon shall, for all purposes, be deemed originals.

8.12 Governing Law; Venue; and Jurisdiction.

(a) This Agreement shall be governed by and construed in accordance with the Laws of the State of Arizona, without giving effect to any conflict or choice of law provision that would result in the imposition of another state's Law.

(b) THE PARTIES HEREBY IRREVOCABLY SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT IN TUCSON, ARIZONA.

(c) EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY.

8.13 Attorneys' Fees. If either of the Parties shall bring an action to enforce the provisions of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and expenses incurred in such action from the unsuccessful Party.

[signature page follows]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officer of each Party as of the date first above written.

SELLER:

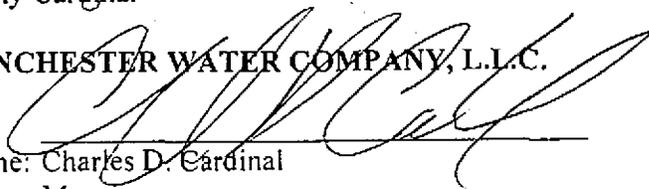


Charles D. Cardinal



Penny Cardinal

WINCHESTER WATER COMPANY, L.L.C.

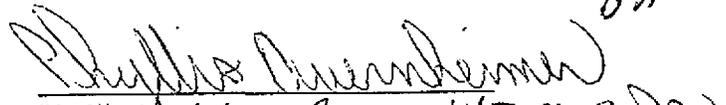
By: 

Name: Charles D. Cardinal
Title: Manager

PURCHASER:



Philip Auerheimer AUERNHEIMER PA



Phyllis Auerheimer AUERNHEIMER PA

APPENDIX I
DEFINITIONS

"Acquired Assets" means, subject to the Permitted Liens, all of the right, title and interest in, to and under all assets owned or used by Seller in connection with the operation of the Business, including, without limitation: (i) two half acre parcels on which the water wells are located (which parcels are located in Cochise County, Arizona and identified as Winchester Heights Lots #14 and 245 (Parcel Nos. 201-07-14 and 201-07-245), together with all rights, privileges, easements and rights-of-way appurtenant thereto and improvements thereon (which real property shall be conveyed to Purchaser by quitclaim deed), (ii) all Contracts relating to the Business, including service agreements with customers, (iii) all Books and Records, (iv) all accounts receivable, rights, privileges, claims, causes of action and options against any third parties (including indemnification, contribution and insurance claims) relating to any Acquired Assets or Assumed Liabilities, and (v) all Permits.

"Affiliate" means any Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Person specified. For purposes of this definition, control of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether through ownership of voting securities or ownership interests, by contract or otherwise, and specifically with respect to a corporation, partnership or limited liability company, means direct or indirect ownership of more than 50% of the voting securities in such corporation or of the voting interests in a partnership or limited liability company.

"Agreement" has the meaning given to it in the recitals.

"Ancillary Agreements" means the Assumption Agreement, the Bill of Sale and Assignment of Rights, and such other documents, instruments, certificates or agreements as may be executed and delivered in connection with this Agreement or the foregoing.

"Assumed Liabilities" has the meaning given to it in Section 2.3.

"Assumption Agreement" means the Assumption Agreement in the form attached hereto as Exhibit A evidencing the assumption by Purchaser of the Assumed Liabilities, duly executed by Purchaser.

"Bill of Sale and Assignment of Rights" means the form of Bill of Sale and Assignment of Rights from Seller to Purchaser attached hereto as Exhibit B.

"Books and Records" means all books, records, and files relating specifically to the Acquired Assets.

"Business" has the meaning given to it in the recitals.

"Business Day" means a day other than Saturday, Sunday or any day on which banks located in the State of Arizona are authorized or obligated to close.

“*Claim*” means any demand, claim, action, investigation, legal proceeding (whether at law or in equity) or arbitration.

“*Closing*” means the closing of the transactions contemplated by this Agreement, as provided for in Section 3.3.

“*Closing Date*” means the date on which Closing occurs.

“*Code*” means the Internal Revenue Code of 1986, as amended.

“*Contract*” means any written contract, lease, license, evidence of indebtedness, mortgage, indenture, purchase order, binding bid, letter of credit, security agreement or other legally binding arrangement.

“*Effective Time*” has the meaning given to it in Section 3.4.

“*Excluded Assets*” has the meaning given to it in Section 2.2.

“*Excluded Liabilities*” has the meaning given to it in Section 2.4.

“*Governmental Authority*” means any court, tribunal, authority, agency, commission, official or other instrumentality of the United States, or any domestic state, province, county, city or other political subdivision or similar governing entity, and including any governmental, quasi-governmental or non-governmental body administering, regulating or having general oversight over gas, electricity, power or other markets.

“*Indemnified Party*” has the meaning given to it in Section 7.5(a).

“*Indemnifying Party*” has the meaning given to it in Section 7.5(a).

“*Laws*” means all laws, statutes, rules, regulations, ordinances, judgments, orders, decrees and other pronouncements having the effect of law of any Governmental Authority.

“*Liability*” with respect to any Person, any liability, indebtedness or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

“*Lien*” means any mortgage; deed of trust; pledge; security interest; adverse possessory right; mechanic’s, materialmen’s or other lien; covenant, condition or restriction; charge or assessment; lease; easement; license; option; first refusal; or any other matter affecting title of any nature whatsoever.

“*Loss*” means any and all judgments, impairment in value, Liabilities, amounts paid in settlement, damages, fines, penalties, deficiencies, losses and expenses (including interest, court

costs, reasonable fees and expenses of attorneys, accountants and other experts or other reasonable expenses of litigation or other proceedings or of any claim, default or assessment).

“*Party*” means each of Purchaser and Seller, individually; and “*Parties*” means Purchaser and Seller, collectively.

“*Permit*” all material licenses, franchises, permits and authorizations necessary for the lawful ownership and use of the Acquired Assets and the conduct of the Business.

“*Permitted Lien*” means (a) any Lien for Taxes; (b) imperfections or irregularities of title and other Liens that would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the operation of the Business; (c) any Lien to be released on or prior to Closing; and (d) any statutory Lien arising in the ordinary course of business by operation of Law.

“*Person*” means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, other business organization, trust, union, joint venture, association, whether or not a legal entity, and any Governmental Authority.

“*Purchase Price*” has the meaning given to it in Section 3.2.

“*Purchaser*” has the meaning given to it in the introduction to this Agreement.

“*Purchaser Indemnified Parties*” has the meaning given to it in Section 7.1(a).

“*Representatives*” means officers, directors, employees, counsel, accountants, financial advisers, consultants and other advisers of a Person.

“*Seller*” has the meaning given to it in the introduction to this Agreement.

“*Seller Indemnified Parties*” has the meaning given to it in Section 7.1(b).

“*Tax*” or “*Taxes*” means any federal, state, local or foreign income, gross receipts, ad valorem, sales, transaction privilege or use, employment, social security, disability, occupation, rent, property, severance, value added, transfer, capital stock, excise or other taxes, charges, fees, levies or other assessments imposed by or on behalf of any Taxing Authority, including any interest or penalty thereon, or any addition thereto.

“*Taxing Authority*” means, with respect to any Tax, the Governmental Authority that imposes such Tax, and the Governmental Authority (if any) charged with the collection of such Tax for the Governmental Authority which imposes such Tax.

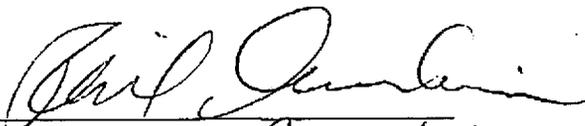
EXHIBIT A

FORM OF ASSUMPTION
OF CERTAIN LIABILITIES

ASSUMPTION OF CERTAIN LIABILITIES

Pursuant to that certain Asset Purchase Agreement dated as of January 13, 2010 (the "Agreement"), by and between CHARLES D. CARDINAL and PENNY CARDINAL, husband and wife (collectively, "Cardinal"), WINCHESTER WATER COMPANY, L.L.C., an Arizona limited liability company that is owned by Seller (the "Company" and, together with Cardinal, "Seller"), and PHILIP AURNHEIMER and PHYLLIS AURNHEIMER, husband and wife (collectively, "Purchaser"), for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Purchaser does hereby assume the Assumed Liabilities as such term is defined in the Agreement by and subject to the terms and conditions of the Agreement. Except as expressly assumed herein, Purchaser does not assume and shall not in any manner be responsible for any other liability, obligation, lien or encumbrance of Seller, including the Excluded Liabilities (as defined in the Agreement).

Dated this 13th day of January, 2010.


Philip Aurnheimer *Aurnheimer APA*


Phyllis Aurnheimer *Aurnheimer APA*

EXHIBIT B

FORM OF BILL OF SALE AND ASSIGNMENT OF CONTRACT RIGHTS

Bill of Sale and Assignment of Contract Rights

1. *Sale and Transfer of Assets and Contract Rights.* For good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, and as contemplated by that certain Asset Purchase Agreement dated as of January 13, 2009 (the "Purchase Agreement"), to which CHARLES D. CARDINAL and PENNY CARDINAL, husband and wife (collectively, "Cardinal"), WINCHESTER WATER COMPANY, L.L.C., an Arizona limited liability company that is owned by Seller (the "Company" and, together with Cardinal, "Seller"), and PHILIP AURNHEIMER and PHYLLIS AURNHEIMER, husband and wife (collectively, "Purchaser"), are parties, Seller hereby sells, transfers, assigns, conveys, grants and delivers to Purchaser, effective as of the Effective Time (as defined in the Purchase Agreement), all of Seller's right, title and interest in and to all of the Acquired Assets (as defined in the Purchase Agreement).

2. *Further Actions.* Seller covenants and agrees to warrant and defend the sale, transfer, assignment, conveyance, grant and delivery of the Acquired Assets hereby made against all persons whomsoever, to take all steps reasonably necessary to establish the record of Purchaser's title to the Acquired Assets and, at the request of Purchaser, to execute and deliver further instruments of transfer and assignment and take such other action as Purchaser may reasonably request to more effectively transfer and assign to and vest in Purchaser each of the Acquired Assets, all at the sole cost and expense of Seller.

3. *Power of Attorney.* Without limiting Section 2 hereof, Seller hereby constitutes and appoints Purchaser the true and lawful agent and attorney in fact of Seller, with full power of substitution and resubstitution, in whole or in part, in the name and stead of Seller but on behalf and for the benefit of Purchaser and its successors and assigns, from time to time:

(a) to demand, receive and collect any and all of the Acquired Assets and to give receipts and releases for and with respect to the same, or any part thereof;

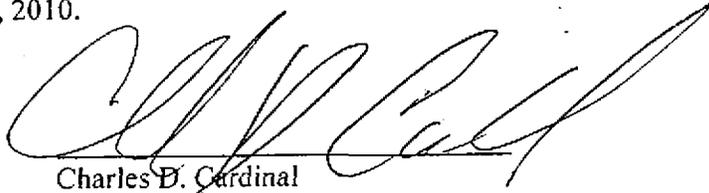
(b) to institute and prosecute, in the name of Seller or otherwise, any and all proceedings at law, in equity or otherwise, that Purchaser or its successors and assigns may deem proper in order to collect or reduce to possession any kind of the Acquired Assets and in order to collect or enforce any claim or right of any kind hereby assigned or transferred, or intended so to be; and

(c) to do all things legally permissible, required or reasonably deemed by Purchaser to be required to recover and collect the Acquired Assets and to use Seller's name in such manner as Purchaser may reasonably deem necessary for the collection and recovery of same.

Seller hereby declaring that the foregoing powers are coupled with an interest and are and shall be irrevocable by Seller.

4. *Terms of the Purchase Agreement.* The terms of the Purchase Agreement, including Seller's representations, warranties, covenants, agreements and indemnities relating to the Acquired Assets, are incorporated herein by this reference. Seller acknowledges and agrees that the representations, warranties, covenants, agreements and indemnities contained in the Purchase Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms hereof, the terms of the Purchase Agreement shall govern.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale and Assignment of Contract Rights as of January 13, 2010.

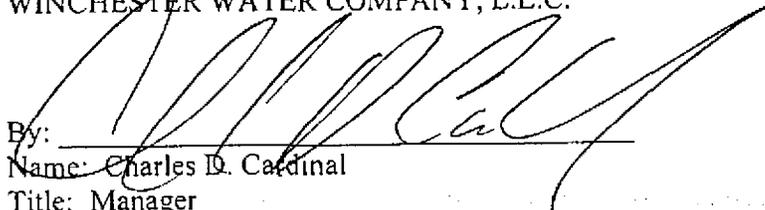


Charles D. Cardinal



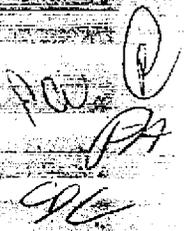
Penny Cardinal

WINCHESTER WATER COMPANY, L.L.C.

By: 

Name: Charles D. Cardinal

Title: Manager

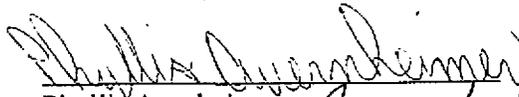


ASSUMPTION OF CERTAIN LIABILITIES

Pursuant to that certain Asset Purchase Agreement dated as of January 13, 2010 (the "Agreement"), by and between CHARLES D. CARDINAL and PENNY CARDINAL, husband and wife (collectively, "Cardinal"), WINCHESTER WATER COMPANY, L.L.C., an Arizona limited liability company that is owned by Seller (the "Company" and, together with Cardinal, "Seller"), and PHILIP AURNHEIMER and PHYLLIS AURNHEIMER, husband and wife (collectively, "Purchaser"), for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Purchaser does hereby assume the Assumed Liabilities as such term is defined in the Agreement by and subject to the terms and conditions of the Agreement. Except as expressly assumed herein, Purchaser does not assume and shall not in any manner be responsible for any other liability, obligation, lien or encumbrance of Seller, including the Excluded Liabilities (as defined in the Agreement). PA

Dated this 13th day of January, 2010.


Philip Aurnheimer Aurnheimer PA


Phyllis Aurnheimer Aurnheimer PA

PA

**Bill of Sale and Assignment
of Contract Rights**

1. *Sale and Transfer of Assets and Contract Rights.* For good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, and as contemplated by that certain Asset Purchase Agreement dated as of January 13, 2009 (the "Purchase Agreement"), to which CHARLES D. CARDINAL and PENNY CARDINAL, husband and wife (collectively, "Cardinal"), WINCHESTER WATER COMPANY, L.L.C., an Arizona limited liability company that is owned by Seller (the "Company" and, together with Cardinal, "Seller"), and PHILIP AUERNHEIMER and PHYLLIS AUERNHEIMER, husband and wife (collectively, "Purchaser"), ^{PHILIP AUERNHEIMER} ^{PHYLLIS AUERNHEIMER} are parties, Seller hereby sells, transfers, assigns, conveys, grants and delivers to Purchaser, effective as of the Effective Time (as defined in the Purchase Agreement), all of Seller's right, title and interest in and to all of the Acquired Assets (as defined in the Purchase Agreement). PA

2. *Further Actions.* Seller covenants and agrees to warrant and defend the sale, transfer, assignment, conveyance, grant and delivery of the Acquired Assets hereby made against all persons whomsoever, to take all steps reasonably necessary to establish the record of Purchaser's title to the Acquired Assets and, at the request of Purchaser, to execute and deliver further instruments of transfer and assignment and take such other action as Purchaser may reasonably request to more effectively transfer and assign to and vest in Purchaser each of the Acquired Assets, all at the sole cost and expense of Seller.

3. *Power of Attorney.* Without limiting Section 2 hereof, Seller hereby constitutes and appoints Purchaser the true and lawful agent and attorney in fact of Seller, with full power of substitution and resubstitution, in whole or in part, in the name and stead of Seller but on behalf and for the benefit of Purchaser and its successors and assigns, from time to time:

(a) to demand, receive and collect any and all of the Acquired Assets and to give receipts and releases for and with respect to the same, or any part thereof;

(b) to institute and prosecute, in the name of Seller or otherwise, any and all proceedings at law, in equity or otherwise, that Purchaser or its successors and assigns may deem proper in order to collect or reduce to possession any kind of the Acquired Assets and in order to collect or enforce any claim or right of any kind hereby assigned or transferred, or intended so to be; and

(c) to do all things legally permissible, required or reasonably deemed by Purchaser to be required to recover and collect the Acquired Assets and to use Seller's name in such manner as Purchaser may reasonably deem necessary for the collection and recovery of same.

Seller hereby declaring that the foregoing powers are coupled with an interest and are and shall be irrevocable by Seller.

4. *Terms of the Purchase Agreement.* The terms of the Purchase Agreement, including Seller's representations, warranties, covenants, agreements and indemnities relating to the Acquired Assets, are incorporated herein by this reference. Seller acknowledges and agrees

C. C.

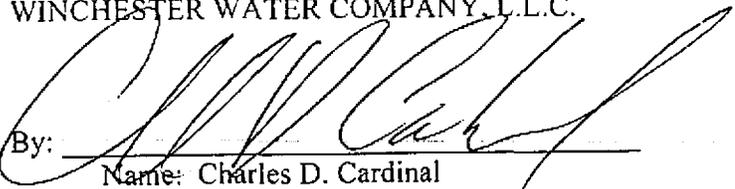
that the representations, warranties, covenants, agreements and indemnities contained in the Purchase Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms hereof, the terms of the Purchase Agreement shall govern.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale and Assignment of Contract Rights as of January 13, 2010.


Charles D. Cardinal


Penny Cardinal

WINCHESTER WATER COMPANY, L.L.C.

By: 
Name: Charles D. Cardinal
Title: Manager



One State Of Mind

2672

PHIL AUERNHEIMER
PHYLLIS AUERNHEIMER

623-939-7223

5625 W FRIER DR
GLENDALE, AZ 85301

Pay to the

Order of

11/3/10
Date

91-37493271
10

Charles Cardinal \$ 500.00
Five Hundred Dollars and no/100 Dollars

Arizona
STATE
4701 W. Thunderbird Road
Glendale, AZ 85306
azstate.org



For _____
13221724961 45013009291 02672

Standard Check