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SCHMITT SCHNEC
CASEY EVEN & WILLIAMS, P.C.

Timothy J. Casey
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602-354-8989

Client No. 8653.000

June 12, 2017

VIA REGULAR MAIL

Honorable Tom Forese
Chairman and Commissioner
ARIZONA CORPORATION COMMISSION
1300 West Washington
Phoenix Arizona 85007

Arizona Corporation Commission

DOCKETED

JUN 15 2017

DOCKETED BY
CB

RECEIVED
AZ CORP COMMISSION
DOCKET CONTROL
2017 JUN 15 A 11:58

Re: NOTICE TO COMMISSION: A business entity of Andrew W. Kunasek owns an Option Agreement to Buy 5% of Johnson Utilities, LLC

Dear Chairman Forese:

This law firm represents Mr. Andrew W. Kunasek and his businesses named Mercado Management, Inc. and Happy Tree Farm, LLC. My clients understand that the owner of a utility company located in Pinal County named Johnson Utilities, L.L.C. ("JU"), which is regulated by the Commission, is attempting to sell, or may attempt to sell, all or part of, its membership interest in JU. My clients, therefore, are concerned for a variety of reasons, including the fact that the *de facto* owner of JU is under federal indictment for allegedly bribing a former member of this body, that the owner of JU may not have disclosed to the Commission – which my clients understand must approve any sale or conveyance of JU – and/or to any prospective purchasers the fact of the existence of an Option Agreement between Mr. Kunasek's business and the owner of the JU.

In short, Mr. Kunasek's business entity purchased from the owner of JU in January 2006 an Option Agreement. That Option Agreement provides that Mr. Kunasek, through a business entity, has the exclusive right to acquire a five percent (5%) membership interest in JU at any time through and including January 1, 2026 for the set purchase price of \$1.25 million. See Option Agreement dated January 1, 2006 at ¶¶ 1-4, attached as Exhibit A.

Paragraph 7 of the Option Agreement provides that the JU owner is unable to sell 5% of the membership interest in JU because it is reserved for purchase solely by Mr. Kunasek's business entity. It also provides that the JU owner may not do anything that dilutes the value of the 5% membership interest.

Paragraph 12 provides Mr. Kunasek's business entity with certain rights and remedies in addition to those available under Arizona law in order to protect his Option Agreement and the value of the 5% membership interest. More specifically, Mr. Kunasek, through his business

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entity, is able to pursue money damages -- and seek *injunctive* relief barring a partial or full sale -
- if JU ownership tries to sell a membership interest in JU that harms Mr. Kunasek's rights under
the Option Agreement. The JU owners, again, must reserve 5% of JU's membership interest for
purchase by Mr. Kunasek's entity.

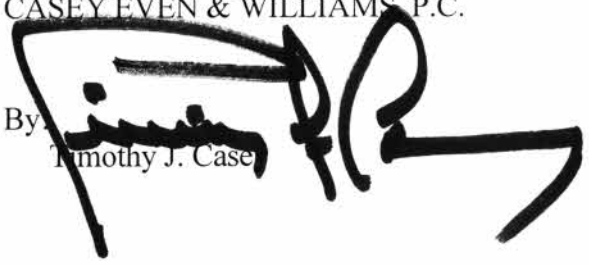
Mr. Kunasek, through his business entity, is respectfully placing the Commission on
notice of the fact and existence of the Option Agreement and providing a copy of the same so the
Commission is aware of the terms of the Option Agreement and may exercise its oversight and
approval duties consistent with law and protecting the rights of all interested persons.

If you would like any additional information, please do not hesitate to contact me. Thank
you.

Sincerely,

SCHMITT SCHNECK
CASEY EVEN & WILLIAMS, P.C.

By


Timothy J. Case

TJC:eh

Encls.

cc: Karrin Kunasek-Taylor, Esq. (via regular mail w/encls.)

EXHIBIT A TO:

NOTICE TO COMMISSION: A business entity of Andrew W. Kunasek owns an Option Agreement to Buy 5% of Johnson Utilities, LLC

OPTION AGREEMENT

THIS OPTION AGREEMENT (the "Agreement") is effective as of the 1st day of January, 2006, by and between George H. Johnson and Jana S. Johnson, Trustees of THE GEORGE H. JOHNSON REVOCABLE TRUST, dated July 9, 1987 ("Optionor"), and MERCADO MANAGEMENT, INC., an Arizona corporation, or its nominee ("Optionee").

RECITALS:

A. Optionor owns a ninety percent (90%) membership interest in JOHNSON UTILITIES, L.L.C., an Arizona limited liability company (the "Company").

B. Optionor desires to grant Optionee an option to acquire a five percent (5%) membership interest in the Company from Optionor, and Optionee desires to hold the option.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements herein contained, the parties agree as follows:

AGREEMENTS:

1. **Option.** In consideration of ten Dollars (\$10.00) and other good and valuable consideration paid by Optionee to Optionor, the receipt and sufficiency of which by Optionor is hereby acknowledged, Optionor hereby grants Optionee the right to acquire a five percent (5%) membership interest in the Company (the "Membership Interest") from Optionor (the "Option").

2. **Option Period.** The Option shall commence on the date of this Agreement and shall expire January 1, 2026 ("Option Period").

3. **Exercise of Option.** Optionee may exercise its Option at any time during the Option Period by written notice to Optionor pursuant to Paragraph 17 herein ("Notice of Exercise").

4. **Purchase Price.** The purchase price for the Membership Interest shall be One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) ("Purchase Price").

5. **Payment of Purchase Price.** The Purchase Price shall be paid to the Optionor in cash simultaneously with Optionee's delivery of the Notice of Exercise.

6. **Delivery of Membership Interest.** Upon receipt of the Notice of Exercise and Purchase Price, Optionor shall deliver to the Optionee his assignment of membership interest substantially in the form attached hereto as Exhibit "A" evidencing the transfer of the Membership Interest to Optionee.

7. **Reservation of Membership Interest.** Optionor hereby covenants and agrees, during the Option Period, that Optionor shall continue to own, free and clear of all liens and encumbrances, the Membership Interest and shall not effect or attempt to effect any conveyance, transfer, pledge, hypothecation or other assignment of any kind or character of the Membership Interest or any other security that would have the effect of diluting Optionor's membership in the Company below the Membership Interest. Optionor has not granted or assigned to any person or entity any portion of the Membership Interest and the Membership Interest is not subject to any option, right, warrant or similar obligation and is capable of being freely transferred without violating any agreement, trust, option, right, warrant or similar obligation.

8. **Representation Regarding Membership Interest.** The Membership Interest, upon exercise of the Option, shall be fully paid and nonassessable and shall be freely alienable by Optionor and, upon delivery to Optionee, shall be freely alienable and transferable by Optionee, subject only to limitations of applicable securities laws and any restrictions set forth in the Operating Agreement of the Company.

9. **Relinquishment of Option.** At any time during the Option Period, Optionee may relinquish its Option hereunder by written notice thereof to Optionor pursuant to Paragraph 17 hereof. In the event of such notice, this Agreement shall terminate immediately, and neither party shall be under any further obligation hereunder.

10. **Admission as a Member.** After the exercise of the Option, Optionor agrees to take all actions necessary under the Operating Agreement to cause Optionee to become admitted as a Member. Optionee agrees to be bound by the terms and conditions of the Operating Agreement then existing.

11. **Copy of Agreement to be Kept on File.** The Company shall keep on file at its principal office an executed copy of this Agreement and shall exhibit it upon request to Optionor and Optionee or their duly authorized representatives.

12. **Rights, Obligations and Remedies.** The rights and obligations under, and the remedies to enforce this Agreement are joint and several as to Optionor and Optionee, with each being free to enforce any or all of the rights or obligations hereunder. The Membership Interest is unique, and any violation of this Agreement could result in irreparable damages which are difficult to qualify. Therefore, the parties hereto shall each have the right and privilege to obtain, in addition to all of the other remedies which may be available under applicable law, equitable relief, including specific enforcement of this Agreement.

13. **Further Assurances.** The parties agree to execute such other documents and perform other acts as may be reasonably necessary to carry out the purpose and intent of this Agreement.

14. **Entire Agreement.** This Agreement contains the entire understanding between the parties hereto with respect to the subject matter hereof, and supersedes all prior and

contemporaneous agreements and understandings, inducements and conditions, express or implied, oral or written, except as herein contained.

15. **Modification.** This Agreement may only be modified by a writing signed by both parties.

16. **Assignment.** The parties acknowledge that either party may assign its rights under this Agreement to an affiliated entity without the written consent of the other party. Any other assignment will require the prior written consent of the other party.

17. **Notices.** All notices, requests or other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered or two (2) days after being deposited in the U.S. mail, registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Optionor: To Optionor's last address appearing on the Membership Interest records of the Company

If to Optionee: Mercado Management, Inc.
9131 N. 48th Place
Paradise Valley, AZ 85253

Notice of change of address may be sent by giving notice thereof in conformity with the provisions of this Paragraph 17.

18. **Provisions Severable.** The provisions of this Agreement are independent of and severable from each other, and no provisions shall be affected or rendered invalid or unenforceable if for any reason any other of them may be invalid in whole or in part.

19. **Paragraph Headings.** The paragraph headings in this Agreement are for convenience only; they form no part of this Agreement and shall not affect its interpretation.

20. **Gender.** Words used herein, regardless of number and gender, shall be construed to include any other number and gender as the context requires.

21. **Attorneys' Fees.** In the event suit is brought or an attorney is retained by any party to this Agreement to enforce its terms or to collect any monies due hereunder, or collect money damages for a breach hereof, the prevailing party shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in conjunction therewith, as determined by the court and not a jury.

22. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears hereon, and all of which shall together constitute one and the same

instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

23. **Governing Law.** This Agreement shall be construed in accordance with and be governed by the laws of the State of Arizona.

24. **Time.** Time is of the essence of each and every provision of this Agreement.

25. **Waiver of Conflict of Interest.** The parties hereby acknowledge that the law firm of Plattner, Schneidman & Schneider, P.C. has in the past represented the Optionee with respect to unrelated matters. The parties have jointly instructed the law firm of Plattner, Schneidman & Schneider, P.C. to prepare this Agreement. The parties acknowledge that they have been advised to seek separate legal counsel with respect to the matters contained herein. Upon consideration of the foregoing, the parties have either sought and received independent legal counsel with respect to the matters associated herewith, or have chosen not to do so. The parties waive any conflict of interest with respect to the law firm of Plattner, Schneidman & Schneider, P.C.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

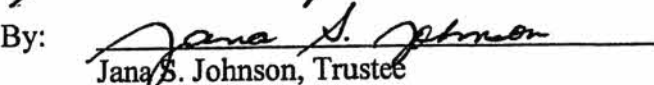
OPTIONOR:

THE GEORGE H. JOHNSON REVOCABLE TRUST, dated July 9, 1987

By:


George H. Johnson, Trustee

By:


Jana S. Johnson, Trustee

OPTIONEE:

MERCADO MANAGEMENT, INC., an Arizona corporation

By:


Andrew W. Kunasek

Its: President

EXHIBIT "A"
OPTION AGREEMENT

ASSIGNMENT AND ACCEPTANCE

In consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned, George H. Johnson and Jana S. Johnson, Trustees of THE GEORGE H. JOHNSON REVOCABLE TRUST, dated July 9, 1987, hereby assigns, transfers and conveys to MERCADO MANAGEMENT, INC., an Arizona corporation, all right, title and interest they may have in a five percent (5%) membership interest in JOHNSON UTILITIES, L.L.C., an Arizona limited liability company.

DATED as of the _____ day of _____, 20__.

THE GEORGE H. JOHNSON REVOCABLE TRUST,
dated July 9, 1987

By: _____

George H. Johnson, Trustee

By: _____

Jana S. Johnson, Trustee

The undersigned, MERCADO MANAGEMENT, INC., an Arizona corporation, hereby accepts of the foregoing assignment of all right, title and interest of George H. Johnson and Jana S. Johnson, Trustees of THE GEORGE H. JOHNSON REVOCABLE TRUST, dated July 9, 1987, in a five percent (5%) membership interest in JOHNSON UTILITIES, L.L.C., an Arizona limited liability company, and agrees to be bound by the Operating Agreement as amended and restated on November 12, 1997.

DATED as of the _____ day of _____, 20__.

MERCADO MANAGEMENT, INC., an Arizona
corporation

By: _____

Andrew W. Kunasek

Its: _____

President