

7/30/08

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Water Property Investors LLC  
c/o Disque D. Deane, Jr.  
425 Park Avenue, 27<sup>th</sup> Floor  
New York, NY 10022

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APNs: \_\_\_\_\_

**RE-SALE CONTRACT FOR TOWN OF PRESCOTT VALLEY EFFLUENT  
WATER RIGHTS**

Water Property Investors, LLC, a Delaware limited liability company (“WPI”), and \_\_\_\_\_, a \_\_\_\_\_ (“Developer”), enter into this Re-Sale Contract for Town of Prescott Valley Effluent Water Rights (“Re-Sale Contract”) as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (“Effective Date”). WPI and Developer are sometimes referred to herein collectively as “Parties” and individually as “Party.”

**RECITALS**

A. Pursuant to a contract with the Town of Prescott Valley, a municipal corporation of Arizona (“Town”), WPI holds the exclusive right to sell or pledge a quantified portion of the Town’s effluent water (“Effluent”), and any first generation effluent that may be produced by on-site use of the Effluent (“First Generation Effluent”), as a 100-year assured water supply for subdivision development or certain other uses within the Town (“Water Rights”). The contract between WPI and the Town (“Town Contract”) is attached hereto as Exhibit “1”.

B. Every new subdivision built within the Town requires a written confirmation – in the form of a Certificate of Assured Water Supply (“CAWS”) – issued by the Arizona Department of Water Resources (“ADWR”) indicating that the water pledged to the proposed subdivision meets the 100-year assured water supply requirements.

C. ADWR has determined that the Water Rights can be pledged as a 100-year assured water supply in one or more applications to ADWR for a CAWS. The requirements for issuance of a CAWS based on the Water Rights are set forth in the Town Contract and Exhibits 1, 1-A and 2 thereto, and associated ADWR regulations and policies.

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D. Developer owns, or intends to purchase, certain property within the corporate limits of, or suitable for annexation into the Town for subdivision development (“Property”). The new subdivision(s) will require one or more CAWSs from ADWR.

E. By this Re-Sale Contract, Developer seeks to purchase \_\_\_\_\_ acre-feet of Water Rights to pledge to one or more CAWSs for subdivision development on the Property.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements hereinafter set forth, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties agree as follows:

1. **Incorporation by Reference.** The above Recitals and Exhibits hereto are incorporated herein by this reference.
2. **Term.** The term of this Re-Sale Contract shall commence on the Effective Date and shall terminate as provided in Section 14 herein.
3. **Property.** The Property is generally that described as \_\_\_ acres, located \_\_\_\_\_, on which Developer intends to obtain approval for \_\_\_\_\_ residential units. The Property is more particularly described in Exhibit “2” attached hereto.
4. **Recordation.** Developer shall promptly record this executed Re-Sale Contract in the official records of the Yavapai County Recorder’s office, as part of the title records of the Property. Within 10 days of recordation, Developer shall deliver to WPI a copy of this Re-Sale Contract showing recordation.
5. **Water Rights.**
  - 5.1 **Quantity Purchased.** Developer hereby agrees to purchase \_\_\_\_\_ acre-feet of Water Rights from WPI (“Purchased Water Rights”).
  - 5.2 **Payment Terms.**
    - 5.2.1 **Definitions.**
      - 5.2.1.1 **Price Per Acre-Foot** means the dollar amount Developer must pay per acre-foot of Purchased Water Rights. The Price Per Acre-Foot is as follows: .
      - 5.2.1.2 **Total Number of Acre-Feet** means the total number of acre-feet of Purchased Water Rights.
      - 5.2.1.3 **Down Payment** means an amount equal to 25% of the product of the then-applicable Price Per Acre Foot multiplied by the Total Number of Acre-Feet.

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5.2.1.4 ***CAWS Payment*** means an amount equal to 25% of the product of the then-applicable Price Per Acre-Foot multiplied by the number of acre-feet of Purchased Water Rights pledged to the CAWS.

5.2.1.5 ***Building Permit Payment*** means an amount equal to 50% of the product of the applicable Price Per Acre-Foot multiplied by the number of acre-feet of Purchased Water Rights pledged to the CAWS divided by the total number of building permits associated with the CAWS.

5.2.1.6 ***Total Purchase Price*** means an amount equal to: the sum of the Down Payment plus the CAWS Payment plus each Building Permit Payment for every building permit associated with the CAWS.

5.2.2 Payment Schedule.

5.2.2.1 ***First Payment.*** On or before the Effective Date, Developer shall pay WPI the Down Payment.

5.2.2.2 ***Second Payment.*** Within 10 days of issuance of a CAWS, Developer shall pay WPI the CAWS Payment.

5.2.2.3 ***Remaining Payments.*** Within 10 days of Developer's receipt of building permit(s) associated with a CAWS based in whole or part on the Purchased Water Rights, Developer shall pay WPI the Building Permit Payment multiplied by the number of building permits issued, until the Total Purchase Price has been paid in full.

5.2.3 Payment Procedure. Subject to Section 8 herein, all payments for the Purchased Water Rights shall be made on the schedule set forth in Subsection 5.2.2 herein and in accordance with the terms of the Effluent Water Auction Escrow Agreement ("Escrow Agreement") attached hereto as Exhibit "3."

5.2.4 Payments Nonrefundable. Subject to the provisions of Sections 14 and 16 herein, the payments made by Developer pursuant to Subsection 5.2.2 herein are nonrefundable.

6. **Limitations on Use.** Developer commits and agrees to (i) use the Purchased Water Rights to obtain one or more CAWSs to support subdivision development on the Property, and (ii) to comply with the Use Requirements set forth in Section 8 of the Town Contract.

7. **Acknowledgement of Rights and Obligations.** Developer expressly acknowledges and agrees that the Purchased Water Rights are acquired by Developer subject to the terms and conditions of this Re-Sale Contract and the applicable terms and conditions of the Town Contract, and Developer is bound by, and must comply with, such terms and conditions.

8. **Security.** WPI may, in its sole discretion, require Developer to post a performance bond or other mutually-acceptable form of security guaranteeing some or all of the payments due hereunder. The Parties acknowledge that once ADWR issues a CAWS based on any portion of the Purchased Water Rights, ADWR considers such CAWS irrevocable absent extraordinary circumstances. Thus, within 10 days of issuance of a CAWS, Developer shall (i) pay WPI in full the remaining balance due on the Total Purchase Price for the Purchased Water Rights pledged to such CAWS, or (ii) post a bond, irrevocable letter of credit or other mutually-acceptable form of security that secures the full balance due on the Total Purchase Price for the Purchased Water Rights pledged to such CAWS. Any security instrument provided pursuant to this Section 8 shall include the Town as a secured party to the full extent of the Town's rights to receive a portion of the balance due on the Total Purchase Price for the Purchased Water Rights pledged to such CAWS, as provided in the Town Contract.

9. **Assurances.** From time-to-time and at any time after the execution and delivery of this Re-Sale Contract, each of the Parties, at its own expense (except as otherwise provided in this Re-Sale Contract), shall execute, acknowledge and deliver any further instruments, documents and other assurances reasonably requested by the other Party, and shall take any other action consistent with the terms of this Re-Sale Contract that may reasonably be requested by the other Party to demonstrate its ability to perform and carry out the intent of this Re-Sale Contract.

10. **WPI's Representations, Warranties and Covenants.** WPI represents, warrants and covenants to Developer as follows:

10.1 The undersigned has the authority to execute this Re-Sale Contract on behalf of WPI and to bind WPI to its provisions. This Re-Sale Contract has been duly authorized and approved by all required action.

10.2 WPI's execution of this Re-Sale Contract and performance of its obligations hereunder will not violate any contract, transaction, option, covenant, condition, obligation or undertaking of WPI, nor to the best of WPI's knowledge will it violate any law, ordinance, statute, order or regulation.

10.3 WPI has not previously sold, transferred, assigned or otherwise encumbered the Purchased Water Rights that are the subject of this Re-Sale Contract.

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- 10.4 Subject to Section 8 herein, the Purchased Water Rights have not been, and shall not during the term of this Re-Sale Contract be, pledged or committed to any other use by WPI.
- 10.5 WPI has taken the steps authorized by Subsection 7.1.3 of the Town Contract to evidence release of the Town's security interest in the Purchased Water Rights as of the Effective Date.
- 10.6 No party to the Town Contract is in breach of that contract and it remains in full force and effect.
- 10.7 This Re-Sale Contract and all documents required hereby to be executed by WPI are and shall be valid, legally binding obligations enforceable against WPI in accordance with their terms.
- 10.8 WPI is not aware of any action, suit, proceeding or governmental investigation pending, threatened against or affecting the Purchased Water Rights or this Re-Sale Contract either in law or equity.
- 10.9 WPI shall provide prompt notice to Developer if WPI discovers that any of its own representations, warranties and covenants was untrue when made or will become untrue at any point during the term of this Re-Sale Contract.

**11. Developer's Representations, Warranties and Covenants.** Developer represents, warrants and covenants to WPI as follows:

- 11.1 The signatory for Developer has the authority to execute this Re-Sale Contract on behalf of Developer and to bind Developer to its provisions. This Re-Sale Contract has been duly authorized and approved by all required action.
- 11.2 Developer's execution of this Re-Sale Contract and performance of its obligations hereunder will not violate any contract, transaction, option, covenant, condition, obligation or undertaking of Developer, nor to the best of Developer's knowledge will it violate any law, ordinance, statute, order or regulation.
- 11.3 This Re-Sale Contract and all documents required hereby to be executed by Developer are and shall be valid, legally binding obligations enforceable against Developer in accordance with their terms.
- 11.4 Subject to Section 8 herein, Developer shall not sell, transfer, assign, encumber, pledge or commit the Purchased Water Rights to any use other than subdivision development on the Property.

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- 11.5 Developer is not aware of any action, suit, proceeding or governmental investigation pending, threatened against or affecting the Purchased Water Rights or this Re-Sale Contract either in law or equity.
- 11.6 Developer has not previously sold, transferred, assigned or otherwise encumbered its rights or interests to the Purchased Water Rights under this Re-Sale Contract.
- 11.7 Developer has not colluded or conspired with any person or entity to fix the price or terms for the Purchased Water Rights.
- 11.8 Developer shall provide prompt notice to WPI if Developer discovers that any of its own representations, warranties and covenants was untrue when made or will become untrue at any point during the term of this Re-Sale Contract.

12. **No Re-Sale; Limited Assignment; Successors.** Developer shall not sell, assign or otherwise transfer its rights hereunder to any party; provided, however, with the prior written approval of WPI, which approval shall be granted pursuant to reasonable business conditions, Developer may assign any of its rights and delegate any of its obligations under this Re-Sale Contract (i) to any entity that affirmatively agrees in writing to fulfill the representations and warranties and other covenants herein. Further, Developer may collaterally assign its rights hereunder to any financial institution providing financing in connection with the transactions contemplated herein provided that the financial institution shall take such rights subject and junior to Town's and WPI's security interests set forth herein. Subject to the foregoing, this Re-Sale Contract shall apply to, be binding in all respects upon, and inure to the benefit of, the successors and permitted assigns of the Parties.

13. **Default.** A Party shall be in default if it fails to perform any of its obligations under this Re-Sale Contract at the time performance is due. The defaulting Party shall have 30 days from receipt of a written demand to cure such non-performance or to notify the non-defaulting Party of the existence of, and basis for, a good faith dispute. If the default is curable but cannot be cured within the 30-day period for reasons beyond the control of the defaulting Party, and the defaulting Party is diligently pursuing reasonable efforts to cure such default, the cure period shall be extended as reasonably necessary to permit performance. In the event of a good faith dispute, the Dispute Resolution provisions of Section 28 herein shall apply.

14. **Termination of Re-Sale Contract.**

- 14.1 Automatic Termination. This Re-Sale Contract shall automatically terminate, and neither Party shall have any further obligations or responsibilities to the other Party under same, except as expressly set forth herein, upon the first of the following dates to occur: (i) one year from the Effective Date (or such other period agreed to in writing by WPI) *if*

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Developer has not provided WPI with written proof of the purchase or option to purchase the Property; (ii) the date each of the Parties has completed in full its obligations under this Re-Sale Contract; (iii) 11:59 p.m. Mountain Standard Time 4 years from the Effective Date of this Re-Sale Contract; or (iv) the date the Town Contract terminates.

14.2 Termination by Party. This Re-Sale Contract may be terminated (i) by mutual consent of the Parties; or (ii) by either Party if the other Party is in breach of a material provision of this Re-Sale Contract, and the breach has not been (a) cured within the cure period provided in Section 13 herein, (b) resolved pursuant to the Dispute Resolution process in Section 28 herein, or (c) waived in writing by the non-breaching Party.

14.3 Effect of Termination. The right to terminate as set forth in Subsection 14.2 herein shall be in addition to any other rights that may be available to WPI or Developer in law or equity and shall not be construed as an election of remedies. The termination of this Re-Sale Contract shall not relieve either Party of any liability that accrued prior to such termination.

14.4 Procedures Upon Termination. Subject to the terms of Subsection 14.3 and Section 15 herein, upon the termination of this Re-Sale Contract all of the provisions of this Re-Sale Contract shall terminate and:

14.4.1 Developer shall, within 30 days from the date of termination (i) pay all monies owed to WPI through the date of termination for the Purchased Water Rights committed to an issued CAWS; and (ii) relinquish to WPI in a written notice (“Notice”) all rights and interest in the remaining Purchased Water Rights (“Uncommitted Purchased Water Rights”).

14.4.2 Any payments made prior to the effective date of the termination, and those payments required under Subsection 14.4.1 shall not be subject to refund.

15. **Survival.** Each of the following shall survive the termination of this Re-Sale Contract: (a) Section 4 herein (Recordation), Section 5 herein (Water Rights), Section 6 herein (Limitations on Use), Section 7 herein (Acknowledgement of Rights and Obligations), Section 8 herein (Security), Section 10 herein (WPI’s Representations, Warranties and Covenants), Section 11 herein (Developer’s Representations, Warranties and Covenants), Section 12 herein (No Re-Sale; Limited Assignment; Successors), Section 15 herein (Survival), Section 16 herein (Remedies), Section 17 herein (Indemnification); Section 18 herein (Cooperation and Further Documentation), Section 19 herein (Other Water Rights Allocations), Section 26 herein (Successors; Third-Party Rights), Section 29 herein (Relationship of the Parties), Section 30 herein (Severability), Section 32 herein (Governing Law), Section 33 herein (Communications); (b) Subsection 14.4 herein (Procedures upon Termination); and (c) those provisions, and

the rights and obligations therein, set forth in this Re-Sale Contract which either by their terms state or evidence the intent of the Parties that the provisions survive the expiration or termination of this Re-Sale Contract (or must survive to give effect to the provisions of this Re-Sale Contract).

**16. Remedies.**

- 16.1 Remedies upon Breach or Default. In the event of a breach or default by a Party hereto, which is not cured within the period specified in Section 13 herein, and in addition to its other remedies specified in this Re-Sale Contract or available under applicable law, the non-breaching Party shall have the right to: (i) seek specific performance of the breaching Party's duties and obligations under this Re-Sale Contract, (ii) recover from the breaching Party all damages and losses incurred or suffered by the non-breaching Party as a result of such breach or default, (iii) recover all monies due at the time of breach or default, and (iv) perform the breaching Party's unperformed duties and obligations (in which event the breaching Party shall, within 5 days of request by the non-breaching Party, reimburse the non-breaching Party for all sums, amounts, costs and expenses expended by said Party in connection therewith).
- 16.2 Successful Challenge. If, through no fault of either Party, this Re-Sale Contract or any of Sections 5, 6, 8, 14, 15, 16, 17 herein is declared invalid or unenforceable as the result of an action or proceeding filed by a third party, this Re-Sale Contract shall automatically terminate and the Procedures Upon Termination in Subsection 14.4 herein shall apply.
- 16.3 ADWR Suspends Issuance of CAWSs. In the event that ADWR suspends issuance of CAWSs, and such suspension (i) is not due to any action or inaction on the part of Developer, and (ii) has not been lifted or resolved within the cure period specified in Section 13 herein, Developer may relinquish, in writing, all rights and interest in the Uncommitted Purchased Water Rights to WPI in exchange for WPI refunding monies received from Developer for the Uncommitted Purchased Water Rights.
- 16.4 ADWR Refuses to Issue any CAWSs Based on the Purchased Water Rights. In the unlikely event that ADWR refuses to issue any CAWSs based on the Purchased Water Rights because of regulatory, policy, administration changes or other reasons unrelated to any action or inaction on the part of the Town, WPI or Developer, Developer may relinquish, in writing, all rights and interests in the Purchased Water Rights to WPI in exchange for WPI refunding to Developer its Down Payment for the Purchased Water Rights. Said refund shall be paid by WPI within 30 days of receipt of the aforementioned notice and refund demand from Developer or within such other period as mutually agreed to by the Parties.

- 16.5 Termination of Town Contract. In the event the Town Contract is terminated during the term of this Re-Sale Contract, Developer shall have the right to a refund of any amounts paid under this Re-Sale Contract for Uncommitted Purchased Water Rights, without interest.
- 16.6 Expiration of Re-Sale Contract. This Re-Sale Contract shall expire at 11:59 p.m. Mountain Standard Time 4 years from the Effective Date unless earlier terminated as provided herein. To the extent Developer holds any Uncommitted Purchased Water Rights on the date this Re-Sale Contract expires, then Developer shall forfeit the Down Payment for those Uncommitted Purchased Water Rights to WPI and Developer irrevocably relinquishes any and all claims to the Uncommitted Purchased Water Rights.

**17. Indemnification.**

- 17.1 Indemnification Requirements. Developer shall indemnify, defend and hold harmless WPI, its directors, officers, employees and agents for, from and against all damages, liabilities, claims, actions, demands, costs and expenses (including, but not limited to, costs of investigations, lawsuits and any other proceedings whether in law or in equity, settlement costs, attorneys' fees and costs), and penalties or violations of any kind, which arise out of, or result from the performance of obligations created by this Re-Sale Contract ("Claim"), including, but not limited to, the performance of obligations to obtain a CAWS or development approval for the Property, any required environmental review and documentation supporting such approval processes, or proof of reliability of the Purchased Water Rights, unless such Claim results from any material misrepresentation made by WPI herein, or the negligence or wrongful act, breach, default or omission of WPI, its directors, officers, employees or agents.
- 17.2 Indemnification Procedures. WPI shall promptly notify Developer in writing of the details of the Claim. Provided, however, that no delay on the part of WPI in notifying Developer shall relieve Developer from any obligation unless (and then solely to the extent) Developer is prejudiced. Further, WPI shall promptly notify Developer of the existence of any demand, or other matter to which indemnification obligations would apply, and shall give Developer a reasonable opportunity to defend the same at its own expense and with counsel of its own selection. Provided that WPI shall at all times also have the right to fully participate in the disputed matter at its own expense. If Developer shall, within a reasonable time after this notice, fail to defend, WPI shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle (exercising reasonable business judgment), the Claim or other matter, on behalf, or for the account, and at the risk, of Developer. If the

Claim is one that cannot by its nature be defended solely by WPI, then Developer shall make available all information and assistance to WPI that WPI may reasonably request.

18. **Cooperation and Further Documentation.** Each Party agrees in good faith to (i) cooperate with one another, ADWR and other third parties, and (ii) execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Re-Sale Contract.

19. **Other Water Rights Allocations.** The Parties acknowledge that during the term of this Re-Sale Contract, WPI may reserve for other entities some portion of the Water Rights other than the Purchased Water Rights (“Other Allocations”). Developer expressly agrees not to challenge those Other Allocations.

20. **ADWR Determinations.** It is expressly understood by the Parties that WPI assumes no responsibility under this Re-Sale Contract for satisfying any requirements to obtain a CAWS. The Parties acknowledge that ADWR has the sole responsibility and jurisdiction to issue a CAWS. WPI does not represent or warrant that ADWR will issue any particular CAWS.

21. **No Development or Other Approval.** It is expressly understood that nothing in this Re-Sale Contract constitutes any approval or guarantee of development of the Property. Any and all requests for approvals of development of the Property are independent of this Re-Sale Contract and separately administered by the Town in accordance with standard Town procedures.

22. **No Public or Municipal Services.** No public or municipal services are provided to Developer by WPI pursuant to this Re-Sale Contract, nor shall this Re-Sale Contract in any way affect the provision of any such services by the municipal provider.

23. **Due Diligence.** Each Party expressly acknowledges that it has been given the opportunity to inspect and make such investigations regarding this Re-Sale Contract and the Purchased Water Rights, and has performed such due diligence inspections and investigations thereof and of its suitability for such Party’s purposes as such Party deems appropriate, necessary and prudent to enter into this Re-Sale Contract and to consummate the transaction contemplated hereunder.

24. **No Physical Delivery of Water.** Developer expressly acknowledges that (i) the Purchased Water Rights are neither real or personal property nor a service, but rather a sole and exclusive contractual right that may be relied upon to support one or more CAWSs for subdivision development on the Property, and (ii) the Purchased Water Rights do not entitle Developer to the transfer or physical delivery of any water which must be effectuated through a separate application process by the end user to the Town’s Utility Department.

25. **No Recourse Against Town.** No Party hereto shall have any recourse against Town due to the failure of either of them to fulfill obligations as between them under this Re-Sale Contract.

26. **Successors; Third-Party Rights.** This Re-Sale Contract will apply to, be binding in all respects upon, and inure to the benefit of, the successors and permitted assigns of the Parties. Except as set forth in Section 17 herein and Subsection 9.10 of the Escrow Agreement, nothing expressed or referred to in this Re-Sale Contract will be construed to give any person or entity, other than the Parties to this Re-Sale Contract, any legal or equitable right, remedy or claim under this Re-Sale Contract, except such rights as shall inure to a successor or permitted assign pursuant to Section 12 herein.

27. **Other Water Service Facilities.** This Re-Sale Contract does not address financing and construction of facilities necessary to obtain water service for the Property which will involve one or more agreements between Developer and entities other than WPI. WPI offers no warranty or assurance of any kind regarding access to these other facilities.

28. **Dispute Resolution.** If any dispute arises between the Parties concerning any term or provision of this Re-Sale Contract (“Dispute”), the Parties shall try to informally resolve the Dispute through good faith discussions. If the Parties cannot resolve the Dispute within 30 days, and either Party concludes that informal resolution is unlikely, then the Parties agree to submit to non-binding mediation. The mediation shall be governed by the commercial mediation rules of the American Arbitration Association. The mediator shall be selected by the Parties, or, at the Parties’ request, appointed by a presiding judge of the Superior Court of Arizona. The mediator shall have at least 5 years experience in mediating or arbitrating disputes. The Parties shall share the costs of mediation equally. At the conclusion of the mediation, either Party may initiate litigation.

29. **Relationship of the Parties.** Nothing contained in this Re-Sale Contract shall create any partnership, joint venture, or agency relationship between the Parties.

30. **Severability.** Except as otherwise provided herein (including, without limitation, Subsection 16.2 herein), if any provision of this Re-Sale Contract is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Re-Sale Contract shall remain in full force and effect.

31. **Waiver.** The failure by either Party to enforce any of the covenants, terms or conditions of this Re-Sale Contract shall not be deemed a waiver thereof, unless such waiver is in a writing executed by the Party making the waiver.

32. **Governing Law.** This Re-Sale Contract shall be deemed an Arizona contract and construed according to Arizona law, regardless of whether this Re-Sale Contract is executed by either of the Parties in another state or otherwise.

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33. **Communications.** All notices, demands, requests and other communications required or permitted by or provided for in this Re-Sale Contract shall be given in writing to the Parties at their respective addresses set forth below, or at such address as a Party shall designate for itself in writing in accordance with this Section 33.

To WPI:	Water Property Investors LLC	Phone: 212.754.5132
	c/o Disque D. Deane Jr.	Facsimile: 212.754.5101
	425 Park Avenue	Mobile: 917.213.5478
	New York, NY 10022	Email: d.dean@waterinv.com

To Developer:	Phone:
	Facsimile:
	Mobile:
	Email:

Communications may be transmitted (i) by personal delivery, (ii) by messenger, express, air courier or similar courier service, or (iii) by facsimile. Except as otherwise provided in this Re-Sale Contract, delivery or service of any communication shall be deemed effective upon receipt. The date of receipt shall be the date shown as the date of delivery in the written proof of delivery by personal, express mail or courier service, or the electronic confirmation sheet for a facsimile. Any communication received after 5:00 p.m. local time, or on a day other than a business day, shall be deemed received on the next succeeding business day.

34. **Entire Agreement.** This Re-Sale Contract, and the exhibits referenced and incorporated in this Re-Sale Contract, shall constitute the entire agreement between the Parties with respect to the subject matter contained herein and therein, and shall supersede all prior contracts and understandings.

35. **Modification.** This Re-Sale Contract may be modified or amended only by a written instrument signed by both Parties.

36. **Counterparts.** This Re-Sale Contract may be executed in counterparts, each of which shall be considered part of the whole. The Parties agree that valid execution of this Re-Sale Contract may be accomplished by signatures exchanged between the Parties by facsimile transmission and that such signatures shall be valid and binding as though they were original signatures. This Re-Sale Contract shall become binding when one or more counterparts hereof, individually or taken together, bears the signatures of all of the Parties.

IN WITNESS WHEREOF, the Parties have executed this Re-Sale Contract by and through their authorized representatives effective on the date first written above.

**WATER PROPERTY INVESTORS, LLC**

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7/30/08

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By: Disque D. Deane Jr. Title:

**DEVELOPER**

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By: Title:

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ACKNOWLEDGMENT

STATE OF ARIZONA )

) ss

COUNTY OF YAVAPAI )

On \_\_\_\_\_, 2008, before me, \_\_\_\_\_, Notary Public in and for said County and State, personally appeared, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

7/30/08

ACKNOWLEDGMENT

STATE OF ARIZONA )

) ss

COUNTY OF YAVAPAI )

On \_\_\_\_\_, 2008, before me, \_\_\_\_\_, Notary Public in and for said County and State, personally appeared

\_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public