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TEMPORARY MANAGER'S SUMMARY REPORT

Lynn Sherman is pleased to provide the following summary report relating to his time as temporary manager of Blue Cereus, LLC ("Blue Cereus") and its retail water systems.

OVERVIEW OF TEMPORARY MANAGERSHIP AND ITS ESTABLISHMENT

Mr. Sherman's service as temporary manager of Blue Cereus, LLC (hereinafter "Blue Cereus") began on March 15, 2019. He succeeded Jane Whaley, whose appointment as temporary manager on August 30, 2018, originated the temporary managership of Blue Cereus.¹

Blue Cereus holds CCN No. 11088 and operates two retail public water systems: i) San Pedro Village (PWS TX2330046); and ii) La Caleta Estates (PWS TX2330063). Neither retail system has its own water supply. Instead, each retail system relies upon a separately owned wholesale water provider for the production, treatment and delivery of potable water:

- i) San Pedro Water Resources (hereinafter "San Pedro Water") provides wholesale service to San Pedro Village; and
- ii) Seguro Water Co., LLC (hereinafter "Seguro") provides wholesale service to La Caleta Estates.

In each instance, the retail system relies upon the wholesale water provider for *everything*, including the water pressure needed to deliver the water to each retail customer. The retail systems only consist of delivery pipes and retail meters. The wholesale water providers own the groundwater wells and all the production, treatment, storage and pumping equipment. As a result, they have complete control over every aspect of the retail systems' ability to deliver potable water to the retail customers.

Originally, there was no bifurcation of wholesale and retail service, and each was a single integrated system, jointly owned and operated by the principals of today's Blue Cereus and its wholesale water providers. However, the then co-owner partners elected to separate, and they divided each of the two systems into independent retail and wholesale systems, with one partner owning the retail systems, and the other partner owning the wholesale systems and their associated groundwater wells. The former partners then entered into a wholesale water purchase and sale agreement for each of the two sets of systems (hereinafter the "Wholesale Agreements"), which are attached as *Exhibit A*. *Notably, the Wholesale Agreements expired by their own terms on December 31, 2014,*² *and no written agreements have been in place since.*

Nevertheless, three and a half (3 ½) years later, on June 1, 2018, Seguro and San Pedro Water sent Blue Cereus a *Notice of Default and Notice of Termination* giving notice that the above-referenced (*and by then long defunct*) Wholesale Agreements would terminate on August 30, 2018, unless Blue Cereus made arrangements to pay certain amounts alleged to be delinquent under said Wholesale Agreements.³ Then, ten (10) days later, on June 11, 2018, Seguro and San Pedro Water filed with the PUC their *Request to Place Blue Cereus, LLC Under Temporary Management or Supervision*, which was predicated on the same

¹ In addition to serving as temporary manager, Ms. Whaley also served as the operator of Blue Cereus's retail systems through her company "WH2O LLC", which she had done prior to serving as temporary manager and continues to do.

² See Section 4.01(c) of each Wholesale Agreement attached as *Exhibit A*.

³ See PUC Docket No. 48455, *Request of Seguro Water Company, LLC and San Pedro Canyon Water Resources to Place Blue Cereus, LLC Under Temporary Management or Supervision and for Other Appropriate Relief*, p. 1. See also PUC Docket No. 48650, *Commission Staff's Request for an Emergency Order Appointing a Temporary Manager to Blue Cereus, LLC Without a Hearing*, p. Sec. III, "Factual Allegations".

false premise that Blue Cereus was in default of the payment terms of the Wholesale Agreements.⁴ It was this filing that initiated Blue Cereus being placed under temporary managership. **However, at no point in their Request to Place Blue Cereus, LLC Under Temporary Management or Supervision did Seguro or San Pedro Water inform the PUC that the Wholesale Agreements had expired by their own terms over three and a half (3 ½) years earlier.**⁵

BILLING AND COLLECTIONS

Upon being appointed, the current temporary manager's primary task was to *re-establish customer billing and collections*, which ceased altogether during the entire six-month term of the first temporary manager, after years of relatively satisfactory and consistent collections by Blue Cereus (according to company records).⁶ With the aid of an intern, who worked approximately 30 hours a week making regular contact with customers by phone, email, text and mail, a collection rate of approximately 95% was re-established, and we even collected for the invoices that should have been billed by the first temporary manager.

METER READING

Regular, predictable meter reading has been the biggest issue encountered during our service as temporary manager. The water systems that are the subject of this temporary managership are located on or near Lake Amistad on the Rio Grande near Del Rio, Texas. It is remote, and reliable meter readers are few and far between. After numerous attempts to find a reliable meter reader, we finally located Greg Velasquez, a certified operator for the City of Del Rio, who now reads the Blue Cereus meters the second weekend of every month and has done so predictably and professionally since December of 2020.

NEED FOR SUSTAINABLE RETAIL RATES AND TO ESTABLISH SUPPORTABLE WHOLESALE RATES

At the outset of the term of the first temporary manager, the PUC established an additional emergency rate for the retail systems of \$20 per connection per month.⁷ If not for this additional amount, Blue Cereus's retail rates would not have been sufficient to sustain the retail systems during the temporary managership.

However, the \$20 emergency rate only applies for a designated period of time during the temporary managership. Permanent sustainable retail rates are needed. Fortunately, on September 12, 2019, the Commission held an open meeting, where it discussed the need to establish final rates, and PUC Docket No. 50030 was opened for that purpose. Since that time, the retail rate matter has been severed into PUC Docket No. 50239; the owner of Blue Cereus has filed a Class B Rate/Tariff change application for each retail system;⁸ and PUC Staff has reached an agreement in principle with Blue Cereus regarding the retail rates and with the wholesaler water providers regarding the pass-through amounts.⁹ According to the

⁴ PUC Docket No. 48455, *Request of Seguro Water Company, LLC and San Pedro Canyon Water Resources to Place Blue Cereus, LLC Under Temporary Management or Supervision and for Other Appropriate Relief*.

⁵ It is worth noting that the wholesale water providers continued to assert the terms of the *defunct* Wholesale Agreements, even during the term of the current temporary manager, by applying volumetric charges, escalation percentages, and interest charges on *asserted* accumulated balances for the years following the Wholesale Agreements' termination as though they were still in effect. See PUC Docket No. 50030, *Testimony of Lynn Sherman*, dated Oct. 18, 2019, Pages 6-7.

⁶ See e.g., PUC Docket No. 48650, *Temporary Manager's Response to Submission by Legal Counsel for Seguro Water Co. and San Pedro Canyon Water Resources*, dated Sept. 5, 2019, Exhibit B, entitled "Blue Cereus Payments to Wholesalers - 2008 to Aug 2018."

⁷ See PUC Docket No. 48650, *Emergency Order Establishing Emergency Rate*, dated Sept. 17, 2018.

⁸ See PUC Docket No. 50239, *Class B Rate/Tariff change application for La Caleta Estates and Class B Rate/Tariff change application for San Pedro Village*, each dated Jan. 21, 2020.

⁹ See PUC Docket No. 50239, *Joint Status Report*, dated July 1, 2021.

recently filed Joint Status Report, dated July 1, 2021, either a Joint Stipulation and Settlement Agreement will be filed with supporting documents by July 28, 2021 or a hearing on the applications will be requested.¹⁰

If the effort to obtain a Joint Stipulation and Settlement Agreement is unsuccessful, and a hearing on Blue Cereus' rate applications is requested, the PUC should consider proceeding simultaneously and separately with the currently pending wholesale rate case against Seguro and San Pedro Water initiated by the current temporary manager in PUC Docket No. 50769.¹¹

It is imperative that sustainable retail rates and supportable wholesale rates be established, and, given the deteriorated relationship between Blue Cereus and the wholesale water providers, it probably is imperative that the PUC oversee the process through to its end and final documentation.

DISPARITIES IN RETAIL AND WHOLESALE METER READINGS

Historically, there have been wide-ranging differences in the meter readings taken by the wholesale water providers (i.e., Seguro and San Pedro Water) and the totals of the retail meter readings from each retail system.

When the current temporary manager was appointed, the wholesale water providers averred to "furnish, install, operate, and maintain, at [their] expense, at the Point of Delivery, the necessary metering equipment, including a meter house or pit, a rate-of-flow controller, and the required devices of standard type for measuring the quantity of water delivered."¹² However, it took months of significant back and forth and the direct involvement of the PUC legal department before the wholesale water providers finally installed appropriate wholesale metering equipment at the actual Points of Delivery.

Since that time, and particularly since Greg Velazquez was hired, the retail meters have been under regular evaluation. To date, at least ten (10) retail meters have been repaired or replaced in San Pedro Village, and at least fourteen (14) have been repaired or replaced in La Caleta Estates.

It should be noted, however, that the wholesale water providers have had no reason to read their wholesale meters since the PUC Staff negotiated a *flat* temporary wholesale rate with the parties (at least through the end of the current temporary manager's term). Since a flat rate is not correlated to actual usage, it is not necessary for the wholesale meters to be read. As a result, there has not been an opportunity to compare the readings of the wholesale meters and the aggregate readings of the retail meters to determine if the above-referenced meter replacements successfully addressed the disparities that previously existed. This type of analysis is important to determine the amount of distribution loss within each retail system. As a result, the PUC should consider how it might require regular (e.g., monthly) wholesale meter readings, even if the wholesale water providers are paid a flat rate that is not predicated on actual usage. (See rate discussion above).

PAYMENT OF B&J TRACTOR SERVICES

B&J Tractor Service installs, repairs and maintains the retail water systems' pipelines and meters. When the current temporary manager assumed his responsibilities, B&J Tractor Service was owed \$9,233.32.

¹⁰ *Id.*

¹¹ See PUC Docket No 50769, *Blue Cereus, LLC's Ratepayer Petition for Texas Water Code §13.0426 Review of Water Utility Rates Charged in an Unincorporated Area of the State*, dated April 17, 2020.

¹² PUC Docket No. 48650, *Commission Staff's List of Witnesses and Exhibits*, dated March 7, 2019, Exhibit 2, "Affidavit of Dina Robinson-Ferguson, Administrator of Seguro Water Company, LLC and San Pedro Water Resources, JV," Page 2.

Over the course of the next year, B&J Tractor Services was paid this amount in full. As of June 30, 2021, the total amount paid to B&J Tractor Service is \$32,686.01, and all invoices have been paid in full.

**REPEATED OUTAGES AND BOIL WATER NOTICES ATTRIBUTABLE TO
THE WHOLESALERS' SYSTEMS**

Over the past year, there have been at least twelve (12) shutdowns at the wholesale water providers' water plants, and ten (10) of these outages resulted in boil water notices (BWNs) which had to be distributed to the customers of the impacted retail system. The responsibility for sending the BWNs fell to the temporary manager of the retail systems, even though the outage was wholly within and attributable to the wholesale water provider's water plant. That is almost one a month, and they take anywhere from a half to a full day to complete, depending on the number of BWNs that must be mailed.

In contrast, during this same period, there were only two (2) outages within the retail systems, and they were related to major pipeline repairs.

**WHOLESALERS CUT-OFF WATER TO FORCE PAYMENT OF INVOICES AFTER
ARBITRARILY SETTING A "5 BUSINESS DAY" PAYMENT REQUIREMENT**

On Friday, April 30, 2021 – *before the April billing month was even complete*, the wholesale water providers sent an e-mail transmitting their invoices for supplying water in the month of April to the temporary manager and, *for the first time*, arbitrarily stipulated that payment was due within 5 business days.

There is absolutely no basis for such an abbreviated payment period. There is no written agreement between the parties to that effect, and industry standard is 20 to 30 days.¹³ Moreover, as confirmed by a quick review of the "P&L by Month" tab of the spreadsheets accompanying this report, the current temporary manager never missed a monthly payment to the wholesale water providers over the course of two (2) years once collections were re-commenced following his appointment.

The day on which the wholesale water providers' email with the abbreviated payment period was delivered, the temporary manager (who is an attorney) was in a pre-hearing conference for an electric transmission line routing case before the State Office of Administrative Hearings, which commenced the following Monday, May 3rd, and continued through the entire week.

Then, on Monday, May 10th, the temporary manager began to receive calls, texts and emails from numerous customers of both retail systems indicating that water service had ceased. The reason: the wholesale water providers cut-off their supply of water for an entire day ("closed out and isolated", to use the wholesaler's language)¹⁴ to leverage the retail customers' health and wellbeing to enforce an arbitrarily brief payment period that had no basis in law or in fact. **In fact, it effectively violated the PUC's moratorium on disconnections for unpaid utility bills, which was still in effect and not lifted until the following month (i.e., on June 18, 2021).**

Simply stated, the wholesale water providers' actions were reprehensible! Yet, they were not the least bit chastened: ten (10) days later, on May 20th – and this time *eleven (11) days* before the end of the billing month, the wholesale water providers sent another email transmitting their wholesale invoices for *May* and making the same five (5) business day payment demand.¹⁵ This time,

¹³ Notably, the now-defunct agreements between the wholesale water providers and Blue Cereus effectively allowed a minimum of 20 days for payment. See Section 3.03 of the Wholesale Agreements attached as *Exhibit A*.

¹⁴ See email from Dina Ferguson, dated May 10, 2021, at 5:01 p.m. attached *Exhibit B*.

¹⁵ See email from Dina and Bob Ferguson, dated May 20, 2021, attached *Exhibit C*.

however, there was time for the PUC legal department to get involved and other arrangements were made that were more aligned with previous practices.

In light of these and other instances about which the PUC Staff and legal department have been aware, but are not enumerated here, one can only question whether the wholesale water suppliers are appropriately suited for the responsibilities associated with the provision of potable water supplies to the public.

INVENTORY OF ALL PROPERTY

Excepting new connections and the meter replacements referenced above, the inventory of property associated with Blue Cereus's retail water systems has not changed since the current temporary manager's term began.

BUSINESS TRANSACTIONS

Demonstrating all activities during the current temporary manager's term, beginning on March 15, 2019, and extending through June 30, 2021, the following documents have been prepared and are included in the accompanying Excel spreadsheet:

1. A spreadsheet reflecting all income and expenses (*the "P&L" tab*);
2. The spreadsheet of income and expenses, referenced immediately above, broken down by month (*the "P&L by Month" tab*);
3. A list of accounts payable, of which there are none (*the "Accts Payable" tab*); and
4. A list of invoices from and payments to B&J Tractor Service (*the "B&J Tractor Invoices & Pmts" tab*).

OVERVIEW OF CURRENT ACCOUNTS AND OUTSTANDING ACCOUNTS PAYABLE

All accounts are paid in full, including:

1. Wholesale water providers
2. B&J Tractor Service (*system repair and maintenance*)
2. Greg Velazquez (*meter reading*)

DISCONNECTIONS AND PAYMENT ARRANGEMENTS

During his tenure, the current temporary manager had to issue disconnection notices for lack of payment to one-third (1/3) of the customers of the San Pedro Village retail system and almost half (1/2) of the customers of the Las Caleta Estates retail system. Today, however, no disconnections exist; no disconnection notices are outstanding; and no customer is under a payment arrangement.

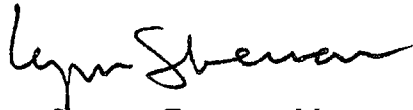
NUMBER OF CONNECTIONS

Today, San Pedro Village has 47 active retail connections, and La Caleta Estates has 65 active retail connections.

SIGNIFICANT EVENTS TO BRING THE SYSTEM INTO COMPLIANCE

1. Sale of the Utility: NONE
2. TCEQ FMT Assistance: NONE
3. System Repairs: NONE
4. Bacteriological Tests: *to be provided by Operator*
5. Planned Improvements: NONE

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lynn Sherman". The signature is fluid and cursive, with the first name "Lynn" being more prominent than the last name "Sherman".

Lynn Sherman, Temporary Manager
Blue Cereus, LLC

EXHIBIT A

AGREEMENT TO SELL AND PURCHASE WATER
between
SEGURO WATER CO., LLC
and
BLUE CEREUS, LLC

* Effective as of June 1, 2009 *

BC 1

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AGREEMENT TO SELL AND PURCHASE WATER

between
SEGURO WATER CO., LLC
and
BLUE CEREUS, LLC

This Agreement is made and entered into as of the 24th day of November, 2009, but with an Effective Date as stated below, by and between the SEGURO WATER CO., LLC ("Seguro Water") and BLUE CEREUS, LLC ("Blue Cereus") (collectively "the Parties") for the following purposes and considerations:

RECITALS

WHEREAS, Seguro Water has supplied potable water to the water distribution system ("the Distribution System") in the La Caleta Estates subdivision ("the Subdivision") in Val Verde County, Texas (for which Blue Cereus has purchased the Distribution System) through the two wells and related equipment ("the Water Supply System") that Seguro Water owns on Well Lots A-1 (Block 1) and B-1 (Block 4) in the La Caleta Estates subdivision in Val Verde County, Texas;

WHEREAS, Seguro Water desires to sell water on a wholesale basis to Blue Cereus, and Blue Cereus desires to buy that water from Seguro Water;

WHEREAS, Blue Cereus has obtained an amendment to its certificate of convenience and necessity from the Texas Commission on Environmental Quality ("the TCEQ") to provide retail water utility service in the Subdivision and desires to serve adjacent areas;

WHEREAS, the Parties understand and agree that this Agreement supercedes that other certain agreement between the Parties regarding the same subject of this Agreement, which was effective May 1, 2007, and that the effectiveness of this Agreement is made before the Parties sign this Agreement due to the timing of the TCEQ's approval, Seguro Water's continued provision of water without interruption to the Distribution System, and other related issues;

WHEREAS, all things necessary to be done and actions required to be taken have been done and taken in order to constitute this Agreement as a legal, valid, and binding obligation of Seguro Water and Blue Cereus, each to the other, and it is found, determined, and declared that entering this Agreement is in the best interests of the parties and in furtherance of the purposes of each; and

NOW THEREFORE, in consideration of the following mutual covenants contained and other consideration received and to be received, Seguro Water and Blue Cereus agree as follows:

ARTICLE 1

DEFINED TERMS AND INTERPRETATIONS

1.01. **Defined Terms.** For all purposes of this Agreement the following terms shall have the following meanings unless the context clearly requires otherwise:

"*Average daily delivery*" means the daily use averaged over a period of one year. It is usually expressed in terms millions of gallons per day (mgd). For example, if a water system used 36,500,000 gallons in one year, its average daily delivery would be 100,000 gallons per day, or 0.100 mgd.

"*Blue Cereus*" means Blue Cereus, LLC, a Texas limited liability company.

"*Costs of alternative dispute resolution*" means all costs incurred by the prevailing party in connection with a alternative dispute resolution process that results in the settlement of the controversy, including attorneys' fees, expert witness' fees, the value of employee time, and all other expenses incurred and paid by the prevailing party.

"Force Majeure" means and refers to acts of Nature or God; strikes, lockouts, or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States, the State of Texas, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines, pumps, canals, or other facilities; partial or entire failure of water supply; or any other cause not reasonably within the control of the party claiming such inability.

"Maximum daily rate of delivery" means the maximum amount of water that may be demanded by a water system in one 24-hour period in a given year. Typically, for a few days in the summer, a system will use about 2.0 times its average daily demand (200,000 gallons per day, or 0.200 mgd, as used in the average daily use example above).

"Seguro Water" means Seguro Water Co., LLC, a Texas limited liability company.

"Temporary or partial failures to deliver water" means the diminished ability of the Water Supply System to produce and deliver requested water quantities because of short-term problems, such as line breaks, pump outages, power outages, that generally are remedied within twenty-four (24) hours from their occurrence.

1.02. **Article and Section Headings.** The headings or titles of the articles and sections, the cover page, and the table of contents of this Agreement are solely for convenience of reference and may not affect the meaning, construction, or effect of its provisions unless it is necessary to resolve an ambiguity.

1.03. **Interpretations.** The singular form of any word used in this Agreement will include the plural, and vice-versa, unless the context requires otherwise. The use of a word of any gender in this Agreement shall include the other gender, unless the context requires otherwise. This Agreement and all of its terms and provisions shall be construed under the laws of the State of Texas and in a manner so as to effectuate its purposes as stated in the recitals to this Agreement and to sustain its validity.

ARTICLE 2 SALE AND PURCHASE OF WATER

2.01. **Term.** From the Effective Date through the Date of Termination, Seguro Water will provide potable water on a wholesale basis to Blue Cereus in accordance with this article and all other relevant provisions of this Agreement.

2.02. **Date of Termination.** The Date of Termination shall be either (a) ninety (90) days after the date on which Seguro Water gives notice to Blue Cereus that it is unable to or no longer desires to meet Blue Cereus's water supply needs, or (2) thirty (30) days after Blue Cereus gives notice to Seguro Water that it desires to terminate this Article of this Agreement, whichever date is earlier.

2.03. **Requirements.**

(a) **Quality and Efficiency.** Seguro Water will provide potable, treated water that meets all applicable federal and state drinking standards to Blue Cereus at the Point of Delivery. Seguro Water will operate and maintain its system that supplies water to Blue Cereus in an efficient manner and will take such actions as it deems reasonably necessary to provide Blue Cereus with water in accordance with this Agreement.

(b) **Quantity.**

(A) **Average and Maximum Annual Deliveries by Seguro Water.** Seguro Water will supply treated water to Blue Cereus in the quantities that Blue Cereus needs, but not to exceed an average daily delivery of 60,000 gallons and not to exceed an average monthly delivery of 2,000,000 gallons and not to exceed 24,000,000 gallons per year.

(B) **Maximum Rate of Delivery by Seguro Water.** Seguro Water will be able to deliver and shall deliver to Blue Cereus treated water at a maximum daily rate of delivery of 60,000 gallons per day.

(C) Shortage of Supply. With all possible dispatch, Seguro Water shall remedy all temporary or partial failures to deliver water in the agreed quantities. If Seguro Water suffers a shortage of water supply available not caused by a temporary or partial failure to deliver water, then Seguro Water may reduce or limit the supply of water agreed to be provided in this Agreement in the same ratio or proportion as the supply of water it provides to its other customers is reduced or diminished, and Seguro Water shall not be under any obligation to supply more than such diminished amount of water during such water shortage.

2.04. Point of Delivery. Seguro will deliver the water it provides pursuant to this Agreement at the Point of Delivery located at the delivery side of the Master Meter for Blue Cereus.

2.05. Pressure. Seguro Water will deliver the water it provides pursuant to this Agreement at the rate necessary to comply with the requirements of the Texas Commission on Environmental Quality.

2.06. Metering.

(a) Installation and Maintenance. Seguro Water will furnish, install, operate, and maintain, at its expense, at the Point of Delivery, the necessary metering equipment, including a meter house or pit, a rate-of-flow controller, and the required devices of standard type for properly measuring the quantity of water delivered.

(b) Calibration, Inaccuracies, and Readings.

(1) Seguro Water will test and calibrate the metering equipment for accuracy, as an operation and maintenance expense, once each calendar year at intervals of approximately 12 months, and will report the results of that test and calibration to Blue Cereus. Each time Seguro Water tests the metering equipment, Seguro Water shall calibrate it to register accurately. Seguro Water will give Blue Cereus at least two days prior notice of the time of any test and calibration of the metering equipment, and Blue Cereus will have the right to have a representative present to observe each test and any calibrations found thereby to be necessary.

(2) Blue Cereus will have the right to inspect and check the accuracy of the metering equipment at any time during usual business hours after not less than one nor more than seven days notice to Seguro Water.

(3) If any question arises at any time as to the accuracy of any metering equipment, Seguro Water will have that metering equipment tested promptly upon demand of Blue Cereus. Blue Cereus will bear the expense of such test, if the meter is found to be correct, and Seguro Water will bear the expense of such test, if the meter is found to be incorrect. Readings within two percent (2%) of accuracy, plus or minus, will be considered correct.

(4) If, as a result of any test, the meter is found to be registering incorrectly, Seguro Water will correct the readings of the meter at the rate of its inaccuracy for any period that is definitely known. However, if the period is not definitely known, then the shorter of the following periods shall be used as the basis for correction:

(A) a period extending back either 60 days from the date of demand for the test or, if demand for the test was not made, 60 days from the date of the test; or

(B) a period extending back half of the time elapsed since the previous test.

The records of readings will then be adjusted accordingly.

(5) If the meter fails to register for any period, then the amount of water furnished during such period will be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless Seguro Water and Blue Cereus can agree upon a different and reasonable amount.

(6) Seguro Water will read the metering equipment on the first day that water is delivered pursuant to this Agreement and the last business day of each month thereafter.

**ARTICLE 3
COST OF WATER**

3.01. Payment for Water. Blue Cereus will pay Seguro Water a monthly volumetric water rate for the potable, treated water that it receives and for Seguro Water's readiness to provide that water.

3.02. Monthly Volumetric Water Rate.

(a) Rate for 2009. The monthly volumetric water rate for the twelve-month period beginning on January 1, 2009 is:

- (1) \$3,400.00 as a monthly minimum charge for zero gallons;
- (2) \$1.45 per 1,000 gallons, or portion of a 1,000 gallons, of water delivered above zero gallons delivered up to 800,000 gallons;
- (3) \$1.75 per 1,000 gallons, or portion of a 1,000 gallons, of water delivered above 800,000 gallons delivered up to 1,500,000 gallons;
- (4) \$2.00 per 1,000 gallons, or portion of a 1,000 gallons, of water delivered above 1,500,000 gallons delivered up to 2,100,000 gallons;
- (5) \$2.50 per 1,000 gallons of water, or portion of a 1,000 gallons, delivered above the first 2,100,000 gallons delivered.

(c) Rate for 2010 and Each Twelve-Month Period Thereafter. The monthly volumetric water rate for the twelve-month period beginning on January 1, 2011, for each and every twelve-month period thereafter, will be the same as for the prior twelve-month period plus two percent (2%) for each rate component, unless Seguro Water and Blue Cereus agree otherwise. Seguro Water and Blue Cereus agree to begin negotiations on a new monthly volumetric water rate for 2010 on or before November 1, 2010.

3.03. Billing and Payment. Not later than the tenth (10th) business day of each month, Seguro Water will furnish Blue Cereus a statement of the amount of water delivered during the preceding month and the payment due under the terms of this Agreement. Blue Cereus shall pay Seguro Water this amount billed on or before the tenth (10th) day of the calendar month following the month it receives a statement Seguro Water.

3.04. Payment Disputes. In the event of any controversy between the two parties concerning payment of money under this article, Blue Cereus shall make payment in full as billed by Seguro Water and shall identify, in writing, the portion of the payment that it disputes.

**ARTICLE 4
GENERAL PROVISIONS**

4.01. Term of Agreement.

(a) The Effective Date of This Agreement. The Effective Date of this Agreement is June 1, 2009.

(b) Supercedes Prior Agreements. This Agreement supercedes all prior agreements on the same subject between the parties.

(c) Date of Termination; Renewal. This Agreement shall expire at 11:59 p.m., December 31, 2014. However, the parties may thereafter renew this Agreement for subsequent five (5) year periods by a mutual consent executed in writing at least thirty (30) days prior to the expiration of this Agreement.

4.02. Conservation Commitment. Seguro Water and Blue Cereus are committed to the conservation of water to the maximum extent practicable. For that purpose, these two parties will:

- (1) maintain and operate their respective water supply facilities in a manner that will prevent the unnecessary waste of water;
- (2) enact rules that require installation of water conserving devices, adoption of a water conservation program, and other action aimed at water conservation.

4.03. Compliance with State and Federal Laws. This Agreement is subject to all local, state, and federal rules, regulations, and laws as may be applicable to agreements of this type in this State. Seguro

Water and Blue Cereus shall maintain compliance with such rules, regulations, and laws in meeting their respective obligations under this Agreement and will cooperate in obtaining such permits, certificates, or other authorizations as may be necessary to effectuate the purposes of this Agreement.

ARTICLE 5 LIABILITY, BREACH OF AGREEMENT, AND REMEDIES

5.01. **Liability.** Subject to the provisions of this Agreement:

(1) Seguro Water will indemnify and hold harmless Blue Cereus against any claim, liability, damage, or suit for damages brought by any third party against Blue Cereus as a result of or in connection with any negligent or intentional activity or operation of Seguro Water or its agents, representatives, or employees in relation to subjects of this Agreement and against any expenses incurred in connection with the defense against or the preparation for the defense against any such claim or suit.

(2) Blue Cereus will indemnify and hold harmless Seguro Water against any claim, liability, damage, or suit for damages brought by any third party against Seguro Water as a result of or in connection with any negligent or intentional activity or operation by Blue Cereus or its agents, representatives, or employees in relation to subjects of this Agreement and against any expenses incurred in connection with the defense against or the preparation for the defense against any such claim or suit.

5.02. **Breach of Agreement.** A party to this Agreement will be in breach of this Agreement if it fails to perform any of its obligations or duties under this Agreement.

5.03. **Alternative Dispute Resolution.** Unless the relevant statute of limitations would require otherwise, prior to the institution of any civil or administrative action, the parties shall attempt to settle any controversy arising under this Agreement through a collaborative dispute resolution process or a means of alternative dispute resolution, as defined in Chapter 154 of the Texas Civil Practices & Remedies Code, as amended.

5.04. **Remedies.** If a party has breached any provision of this Agreement, any other party may, at its option, seek specific performance of this Agreement against the breaching party or pursue any other legal or equitable remedy or both. All of the rights and remedies of any party under this Agreement are intended to be distinct, separate, and cumulative, and none of those rights or remedies is intended to be in exclusion of or a waiver of any of the others, unless expressly so provided.

5.05. **Interest on Past Due Payments.** If Blue Cereus fails to make any payment to any other party when a payment is due under this Agreement, the past due payment shall bear interest of eight percent (8%), compounded monthly. The Parties intend that interest charged on past due payments shall be in strict compliance with applicable usury laws. If at any time any interest charged or received would be usurious under applicable law, then the recipient of the payment shall immediately credit all sums determined to be usurious as a payment against the payor's obligations to the recipient.

ARTICLE 6 MISCELLANEOUS PROVISIONS

6.01. **Entire Agreement.** This Agreement contains the complete and entire agreement between the parties respecting the matters addressed in this Agreement and supersedes all prior contracts, negotiations, agreements, representations, and understandings, if any, between the parties respecting these matters.

6.02. **Modification.** This Agreement may not be modified, discharged, or changed in any respect except by a further agreement in writing duly executed by the parties. However, any consent, waiver,

approval, or authorization shall be effective if signed by the party granting or making such consent, waiver, approval, or authorization.

6.03. Assignment. Each party may not assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. However, this section shall not prevent either party from pledging this Agreement as security for loans and shall not require written consent for the assignment of this Agreement to a Special Utility District or other political subdivision that assumes all of the right, assets, and obligations of a party.

6.04. Parties Bound. This Agreement shall be binding upon the parties and inure to the benefit of the parties and their successors and assignees. However, an assignment shall not have the effect of relieving the party making an assignment of any liability under this Agreement that was incurred prior to the date of the assignment.

6.05. Notices. Except as may be otherwise specifically provided in this Agreement, all notices required or permitted under this Agreement shall be in writing and will be deemed to be delivered and received when:

- (1) delivered in person to the party to be notified;
- (2) deposited in the United States Mail, certified or registered mail, return receipt requested, postage prepaid;
- (3) delivered to a bonded courier delivery service; or
- (4) sent by telephonic document transfer to the recipient's current telecopier number

properly addressed to the parties at their respective addresses set forth below or at such other addresses as may have been specified by written notice delivered in accordance with this section. Delivery of notice by telephonic document transfer after 5:00 p.m. local time of the recipient shall be deemed delivered on the following day.

6.06. Other Instruments. The parties agree that they will execute such other instruments and documents as are or may become necessary or convenient to effectuate the purposes of this Agreement.

6.07. Invalid Provision. Any clause, sentence, provision, paragraph, section, or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective will not impair, invalidate, or nullify the remainder of this Agreement; but the effect of such holding shall be confined to the clause, sentence, provision, paragraph, section, or article held to be invalid, illegal, or ineffective.

6.08. Time of Essence. Time shall be of the essence of this Agreement.

6.09. Third Party Beneficiaries. Except as otherwise expressly provided, nothing in this Agreement, express or implied, is intended to confer upon any person other than the parties and their successors and assignees any benefits, rights, or remedies under or by reason of this Agreement.

6.10. Saturday, Sunday, or Legal Holiday. If any date set forth in this Agreement for the performance of any obligation or for the delivery of any instrument or notice should be on a Saturday, Sunday, or legal holiday, the compliance with such obligation or delivery shall be acceptable if performed on the next business day following such Saturday, Sunday, or legal holiday. For purposes of this section, "legal holiday" will mean any municipal, state, or federal holiday on which financial institutions or post offices are closed in Val Verde County, Texas.

6.11. Exhibits. All recitals and all schedules and exhibits referred to in this Agreement are incorporated in this Agreement by reference and shall be deemed part of this Agreement for all purposes as if set forth at length in this Agreement.

6.12. No Waiver. The consent to or waiver of any default of any covenant or provision of this Agreement or with respect to any other matter arising in connection with this Agreement, whether express or implied, by any party shall not be construed as a consent to or waiver of any other default of the same or any other covenant, provision, or matter.

6.13. Force Majeure.

(a) **Invocation.** If, by reason of Force Majeure, any party shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then that party shall give written notice of the full

particulars of such Force Majeure to the other party within a reasonable time after its occurrence. The obligations of the party giving such notice, to the extent affected by such Force Majeure, shall be suspended during the continuance of the inability claimed and for no longer period, and that party shall in good faith use its best efforts to remove or overcome such inability with all reasonable dispatch.

(b) Settlement of Strikes and Lockouts. The settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require settlement of strikes and lockouts by acceding to demands of the opposing party when such settlement is unfavorable to it in the judgment of the party having the difficulty.

(c) Payments Required. The provisions of this section shall not relieve a party of its obligations to make payments for water to Seguro Water as required under Article V.

IN WITNESS WHEREOF, this instrument is executed as of the last day written below, with an Effective Date as noted above:

SEGURO WATER CO., LLC

By: Robert B. Ferguson
Robert B. Ferguson, President and Member
210 Kings Way
Del Rio, Texas 78440

Date: September 24, 2009

By: Kitty Lewis
Kitty Lewis, Member
210 Kings Way
Del Rio, Texas 78440

Date: 11/24/09

BLUE CEREBUS, LLC

By: Jimmy Alan Hall
Jimmy Alan Hall, President and Member
401 Green Acres Drive, Suite 100
Wimberley, Texas 78676-5025

Date: September 23, 2009



particulars of such Force Majeure to the other party within a reasonable time after its occurrence. The obligations of the party giving such notice, to the extent affected by such Force Majeure, shall be suspended during the continuance of the inability claimed and for no longer period, and that party shall in good faith use its best efforts to remove or overcome such inability with all reasonable dispatch.

(b) Settlement of Strikes and Lockouts. The settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require settlement of strikes and lockouts by acceding to demands of the opposing party when such settlement is unfavorable to it in the judgment of the party having the difficulty.

(c) Payments Required. The provisions of this section shall not relieve a party of its obligations to make payments for water to Sedona Water as required under Article 17.



particulars of such Force Majeure to the other party within a reasonable time after its occurrence. The obligations of the party giving such notice, to the extent affected by such Force Majeure, shall be suspended during the continuance of the inability claimed and for no longer period, and that party shall in good faith use its best efforts to remove or overcome such inability with all reasonable dispatch.

(b) Settlement of Strikes and Lockouts. The settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require settlement of strikes and lockouts by acceding to demands of the opposing party when such settlement is unfavorable to it in the judgment of the party having the difficulty.

(c) Payments Required. The provisions of this section shall not relieve a party of its obligations to make payments for water to Seguro Water as required under Article V.

IN WITNESS WHEREOF, this instrument is executed as of the last day written below, with an Effective Date as noted above:

SEGURO WATER CO. LLC

AGREEMENT TO SELL AND PURCHASE WATER
between
SAN PEDRO CANYON WATER RESOURCES
and
BLUE CEREUS, LLC

☆☆ Effective as of September 18, 2009 ☆☆

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AGREEMENT TO SELL AND PURCHASE WATER
between
SAN PEDRO CANYON WATER RESOURCES
and
BLUE CEREUS, LLC

This Agreement is made and entered into as of the 22nd day of September, 2009, but with an Effective Date as stated below, by and between the SAN PEDRO CANYON WATER RESOURCES ("SPCWR") and BLUE CEREUS, LLC ("Blue Cereus")(collectively "the Parties") for the following purposes and considerations:

RECITALS

WHEREAS, SPCWR has supplied potable water to the water distribution system ("the Distribution System") in the San Pedro Village subdivision ("the Subdivision") in Val Verde County, Texas (for which Blue Cereus has purchased the Distribution System) through the well and related equipment ("the Water Supply System") that SPCWR owns on Block 4, Lot 11 in the Subdivision;

WHEREAS, SPCWR desires to sell water on a wholesale basis to Blue Cereus, and Blue Cereus desires to buy that water from SPCWR;

WHEREAS, Blue Cereus holds a certificate of convenience and necessity from the Texas Commission on Environmental Quality ("the TCEQ") to provide retail water utility service in the Subdivision and desires to serve adjacent areas, if possible;

WHEREAS, the Parties understand and agree that this Agreement supercedes that other certain agreement between the Parties regarding the same subject of this Agreement, which was effective May 18, 2008, and that the effectiveness of this Agreement is made before the Parties sign this Agreement due to meter reading cycle for the water systems;

WHEREAS, all things necessary to be done and actions required to be taken have been done and taken in order to constitute this Agreement as a legal, valid, and binding obligation of SPCWR and Blue Cereus, each to the other, and it is found, determined, and declared that entering this Agreement is in the best interests of the parties and in furtherance of the purposes of each; and

NOW THEREFORE, in consideration of the following mutual covenants contained and other consideration received and to be received, SPCWR and Blue Cereus agree as follows:

ARTICLE 1
DEFINED TERMS AND INTERPRETATIONS

1.01. **Defined Terms.** For all purposes of this Agreement the following terms shall have the following meanings unless the context clearly requires otherwise:

"*Average daily delivery*" means the daily use averaged over a period of one year. It is usually expressed in terms millions of gallons per day (mgd). For example, if a water system used 36,500,000 gallons in one year, its average daily delivery would be 100,000 gallons per day, or 0.100 mgd.

"*Blue Cereus*" means Blue Cereus, LLC, a Texas limited liability company.

"*Costs of alternative dispute resolution*" means all costs incurred by the prevailing party in connection with a alternative dispute resolution process that results in the settlement of the controversy, including attorneys' fees, expert witness' fees, the value of employee time, and all other expenses incurred and paid by the prevailing party.

"*Force Majeure*" means and refers to acts of Nature or God; strikes, lockouts, or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States, the State of Texas, or any civil or military authority; insurrections; riots; epidemics;

landslides; lightning; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines, pumps, canals, or other facilities; partial or entire failure of water supply; or any other cause not reasonably within the control of the party claiming such inability.

"Maximum daily rate of delivery" means the maximum amount of water that may be demanded by a water system in one 24-hour period in a given year. Typically, for a few days in the summer, a system will use about 2.0 times its average daily demand (200,000 gallons per day, or 0.200 mgd, as used in the average daily use example above).

"SPCWR" means San Pedro Canyon Water Resources, a joint venture between Bolaki, Ltd., a Texas limited partnership, and Etoile, Ltd., a Texas limited partnership.

"Temporary or partial failures to deliver water" means the diminished ability of the Water Supply System to produce and deliver requested water quantities because of short-term problems, such as line breaks, pump outages, power outages, that generally are remedied within twenty-four (24) hours from their occurrence.

1.02. **Article and Section Headings.** The headings or titles of the articles and sections, the cover page, and the table of contents of this Agreement are solely for convenience of reference and may not affect the meaning, construction, or effect of its provisions unless it is necessary to resolve an ambiguity.

1.03. **Interpretations.** The singular form of any word used in this Agreement will include the plural, and vice-versa, unless the context requires otherwise. The use of a word of any gender in this Agreement shall include the other gender, unless the context requires otherwise. This Agreement and all of its terms and provisions shall be construed under the laws of the State of Texas and in a manner so as to effectuate its purposes as stated in the recitals to this Agreement and to sustain its validity.

ARTICLE 2 SALE AND PURCHASE OF WATER

2.01. **Term.** From the Effective Date through the Date of Termination, SPCWR will provide potable water on a wholesale basis to Blue Cereus in accordance with this article and all other relevant provisions of this Agreement.

2.02. **Date of Termination.** The Date of Termination shall be either (a) ninety (90) days after the date on which SPCWR gives notice to Blue Cereus that it is unable to or no longer desires to meet Blue Cereus's water supply needs, or (2) thirty (30) days after Blue Cereus gives notice to SPCWR that it desires to terminate this Article of this Agreement, whichever date is earlier.

2.03. **Requirements.**

(a) **Quality and Efficiency.** SPCWR will provide potable, treated water that meets all applicable federal and state drinking standards to Blue Cereus at the Point of Delivery. SPCWR will operate and maintain its system that supplies water to Blue Cereus in an efficient manner and will take such actions as it deems reasonably necessary to provide Blue Cereus with water in accordance with this Agreement.

(b) **Quantity.**

(A) **Average and Maximum Annual Deliveries by SPCWR.** SPCWR will supply treated water to Blue Cereus in the quantities that Blue Cereus needs, but not to exceed an average daily delivery of 60,000 gallons and not to exceed an average monthly delivery of 2,000,000 gallons and not to exceed 24,000,000 gallons per year.

(B) **Maximum Rate of Delivery by SPCWR.** SPCWR will be able to deliver and shall deliver to Blue Cereus treated water at a maximum daily rate of delivery of 60,000 gallons per day.

(C) **Shortage of Supply.** With all possible dispatch, SPCWR shall remedy all temporary or partial failures to deliver water in the agreed quantities. If SPCWR suffers a shortage of water supply available not caused by a temporary or partial failure to deliver

water, then SPCWR may reduce or limit the supply of water agreed to be provided in this Agreement in the same ratio or proportion as the supply of water it provides to its other customers is reduced or diminished, and SPCWR shall not be under any obligation to supply more than such diminished amount of water during such water shortage.

2.04. Point of Delivery. SAN PEDRO will deliver the water it provides pursuant to this Agreement at the Point of Delivery located at the delivery side of the Master Meter for Blue Cereus.

2.05. Pressure. SPCWR will deliver the water it provides pursuant to this Agreement at the rate necessary to comply with the requirements of the Texas Commission on Environmental Quality.

2.06. Metering.

(a) **Installation and Maintenance.** SPCWR will furnish, install, operate, and maintain, at its expense, at the Point of Delivery, the necessary metering equipment, including a meter house or pit, a rate-of-flow controller, and the required devices of standard type for properly measuring the quantity of water delivered.

(b) **Calibration, Inaccuracies, and Readings.**

(1) SPCWR will test and calibrate the metering equipment for accuracy, as an operation and maintenance expense, once each calendar year at intervals of approximately 12 months, and will report the results of that test and calibration to Blue Cereus. Each time SPCWR tests the metering equipment, SPCWR shall calibrate it to register accurately. SPCWR will give Blue Cereus at least two days prior notice of the time of any test and calibration of the metering equipment, and Blue Cereus will have the right to have a representative present to observe each test and any calibrations found thereby to be necessary.

(2) Blue Cereus will have the right to inspect and check the accuracy of the metering equipment at any time during usual business hours after not less than one nor more than seven days notice to SPCWR.

(3) If any question arises at any time as to the accuracy of any metering equipment, SPCWR will have that metering equipment tested promptly upon demand of Blue Cereus. Blue Cereus will bear the expense of such test, if the meter is found to be correct, and SPCWR will bear the expense of such test, if the meter is found to be incorrect. Readings within two percent (2%) of accuracy, plus or minus, will be considered correct.

(4) If, as a result of any test, the meter is found to be registering incorrectly, SPCWR will correct the readings of the meter at the rate of its inaccuracy for any period that is definitely known. However, if the period is not definitely known, then the shorter of the following periods shall be used as the basis for correction:

(A) a period extending back either 60 days from the date of demand for the test or, if demand for the test was not made, 60 days from the date of the test; or

(B) a period extending back half of the time elapsed since the previous test.

The records of readings will then be adjusted accordingly.

(5) If the meter fails to register for any period, then the amount of water furnished during such period will be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless SPCWR and Blue Cereus can agree upon a different and reasonable amount.

(6) SPCWR will read the metering equipment on the first day that water is delivered pursuant to this Agreement and the last business day of each month thereafter.

ARTICLE 3 COST OF WATER

3.01. Payment for Water. Blue Cereus will pay SPCWR a monthly volumetric water rate for the potable, treated water that it receives and for SPCWR's readiness to provide that water.

3.02. Monthly Volumetric Water Rate.

(a) Rate for 2009 and 2010. The monthly volumetric water rate for the period beginning on the date of the Master Meter reading on or about September 18, 2009 through the date of the Master Meter reading to be on or about January 18, 2011, is:

- (1) \$1,100.00 as a monthly minimum charge for zero gallons;
- (2) \$2.15 per 1,000 gallons, or portion of a 1,000 gallons, of water delivered above zero gallons delivered up to 300,000 gallons;
- (3) \$2.40 per 1,000 gallons, or portion of a 1,000 gallons, of water delivered above 300,000 gallons delivered up to 450,000 gallons;
- (4) \$3.00 per 1,000 gallons, or portion of a 1,000 gallons, of water delivered above 450,000 gallons delivered up to 600,000 gallons;
- (5) \$3.25 per 1,000 gallons of water, or portion of a 1,000 gallons, delivered above the first 600,000 gallons delivered.

(c) Rate for 2011 and Each Twelve-Month Period Thereafter. The monthly volumetric water rate for the twelve-month period beginning on the date of the Master Meter reading to be on or about January 18, 2011, and for each and every twelve-month period thereafter, will be the same as for the prior twelve-month period plus two percent (2%) for each rate component, unless SPCWR and Blue Cereus agree otherwise. SPCWR and Blue Cereus agree to begin negotiations on a new monthly volumetric water rate for 2011 on or before November 1, 2010.

3.03. Billing and Payment. Not later than the fifteenth (15th) day of each month, SPCWR will furnish Blue Cereus a statement of the amount of water delivered during the preceding monthly billing period and the payment due under the terms of this Agreement. Blue Cereus shall pay SPCWR this amount billed on or before the fifth (5th) day of the calendar month following the month Blue Cereus receives a statement SPCWR.

3.04. Payment Disputes. In the event of any controversy between the two parties concerning payment of money under this article, Blue Cereus shall make payment in full as billed by SPCWR and shall identify, in writing, the portion of the payment that it disputes.

**ARTICLE 4
GENERAL PROVISIONS**

4.01. Term of Agreement.

(a) The Effective Date of This Agreement. The Effective Date of this Agreement is September 18, 2009.

(b) Supercedes Prior Agreements. This Agreement supercedes all prior agreements on the same subject between the parties.

(c) Date of Termination; Renewal. This Agreement shall expire at 11:59 p.m., December 31, 2014. However, the parties may thereafter renew this Agreement for subsequent five (5) year periods by a mutual consent executed in writing at least thirty (30) days prior to the expiration of this Agreement.

4.02. Conservation Commitment. SPCWR and Blue Cereus are committed to the conservation of water to the maximum extent practicable. For that purpose, these two parties will:

- (1) maintain and operate their respective water supply facilities in a manner that will prevent the unnecessary waste of water;
- (2) enact rules that require installation of water conserving devices, adoption of a water conservation program, and other action aimed at water conservation.

4.03. Compliance with State and Federal Laws. This Agreement is subject to all local, state, and federal rules, regulations, and laws as may be applicable to agreements of this type in this State. SPCWR and Blue Cereus shall maintain compliance with such rules, regulations, and laws in meeting their

respective obligations under this Agreement and will cooperate in obtaining such permits, certificates, or other authorizations as may be necessary to effectuate the purposes of this Agreement.

ARTICLE 5 LIABILITY, BREACH OF AGREEMENT, AND REMEDIES

5.01. **Liability.** Subject to the provisions of this Agreement:

(1) SPCWR will indemnify and hold harmless Blue Cereus against any claim, liability, damage, or suit for damages brought by any third party against Blue Cereus as a result of or in connection with any negligent or intentional activity or operation of SPCWR or its agents, representatives, or employees in relation to subjects of this Agreement and against any expenses incurred in connection with the defense against or the preparation for the defense against any such claim or suit.

(2) Blue Cereus will indemnify and hold harmless SPCWR against any claim, liability, damage, or suit for damages brought by any third party against SPCWR as a result of or in connection with any negligent or intentional activity or operation by Blue Cereus or its agents, representatives, or employees in relation to subjects of this Agreement and against any expenses incurred in connection with the defense against or the preparation for the defense against any such claim or suit.

5.02. **Breach of Agreement.** A party to this Agreement will be in breach of this Agreement if it fails to perform any of its obligations or duties under this Agreement.

5.03. **Alternative Dispute Resolution.** Unless the relevant statute of limitations would require otherwise, prior to the institution of any civil or administrative action, the parties shall attempt to settle any controversy arising under this Agreement through a collaborative dispute resolution process or a means of alternative dispute resolution, as defined in Chapter 154 of the Texas Civil Practices & Remedies Code, as amended.

5.04. **Remedies.** If a party has breached any provision of this Agreement, any other party may, at its option, seek specific performance of this Agreement against the breaching party or pursue any other legal or equitable remedy or both. All of the rights and remedies of any party under this Agreement are intended to be distinct, separate, and cumulative, and none of those rights or remedies is intended to be in exclusion of or a waiver of any of the others, unless expressly so provided.

5.05. **Interest on Past Due Payments.** If Blue Cereus fails to make any payment to any other party when a payment is due under this Agreement, the past due payment shall bear interest of eight percent (8%), compounded monthly. The Parties intend that interest charged on past due payments shall be in strict compliance with applicable usury laws. If at any time any interest charged or received would be usurious under applicable law, then the recipient of the payment shall immediately credit all sums determined to be usurious as a payment against the payor's obligations to the recipient.

ARTICLE 6 MISCELLANEOUS PROVISIONS

6.01. **Entire Agreement.** This Agreement contains the complete and entire agreement between the parties respecting the matters addressed in this Agreement and supersedes all prior contracts, negotiations, agreements, representations, and understandings, if any, between the parties respecting these matters.

6.02. **Modification.** This Agreement may not be modified, discharged, or changed in any respect except by a further agreement in writing duly executed by the parties. However, any consent, waiver, approval, or authorization shall be effective if signed by the party granting or making such consent, waiver, approval, or authorization.

6.03. **Assignment.** Each party may not assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. However, this section shall not prevent either party from pledging this Agreement as security for loans and shall not require written consent for the assignment of this Agreement to a Special Utility District or other political subdivision that assumes all of the right, assets, and obligations of a party.

6.04. **Parties Bound.** This Agreement shall be binding upon the parties and inure to the benefit of the parties and their successors and assignees. However, an assignment shall not have the effect of relieving the party making an assignment of any liability under this Agreement that was incurred prior to the date of the assignment.

6.05. **Notices.** Except as may be otherwise specifically provided in this Agreement, all notices required or permitted under this Agreement shall be in writing and will be deemed to be delivered and received when:

- (1) delivered in person to the party to be notified;
- (2) deposited in the United States Mail, certified or registered mail, return receipt requested, postage prepaid;
- (3) delivered to a bonded courier delivery service; or
- (4) sent by telephonic document transfer to the recipient's current telecopier number

properly addressed to the parties at their respective addresses set forth below or at such other addresses as may have been specified by written notice delivered in accordance with this section. Delivery of notice by telephonic document transfer after 5:00 p.m. local time of the recipient shall be deemed delivered on the following day.

6.06. **Other Instruments.** The parties agree that they will execute such other instruments and documents as are or may become necessary or convenient to effectuate the purposes of this Agreement.

6.07. **Invalid Provision.** Any clause, sentence, provision, paragraph, section, or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective will not impair, invalidate, or nullify the remainder of this Agreement; but the effect of such holding shall be confined to the clause, sentence, provision, paragraph, section, or article held to be invalid, illegal, or ineffective.

6.08. **Time of Essence.** Time shall be of the essence of this Agreement.

6.09. **Third Party Beneficiaries.** Except as otherwise expressly provided, nothing in this Agreement, express or implied, is intended to confer upon any person other than the parties and their successors and assignees any benefits, rights, or remedies under or by reason of this Agreement.

6.10. **Saturday, Sunday, or Legal Holiday.** If any date set forth in this Agreement for the performance of any obligation or for the delivery of any instrument or notice should be on a Saturday, Sunday, or legal holiday, the compliance with such obligation or delivery shall be acceptable if performed on the next business day following such Saturday, Sunday, or legal holiday. For purposes of this section, "legal holiday" will mean any municipal, state, or federal holiday on which financial institutions or post offices are closed in Val Verde County, Texas.

6.11. **Exhibits.** All recitals and all schedules and exhibits referred to in this Agreement are incorporated in this Agreement by reference and shall be deemed part of this Agreement for all purposes as if set forth at length in this Agreement.

6.12. **No Waiver.** The consent to or waiver of any default of any covenant or provision of this Agreement or with respect to any other matter arising in connection with this Agreement, whether express or implied, by any party shall not be construed as a consent to or waiver of any other default of the same or any other covenant, provision, or matter.

6.13. **Force Majeure.**

(a) **Invocation.** If, by reason of Force Majeure, any party shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then that party shall give written notice of the full particulars of such Force Majeure to the other party within a reasonable time after its occurrence. The obligations of the party giving such notice, to the extent affected by such Force Majeure, shall be suspended

during the continuance of the inability claimed and for no longer period, and that party shall in good faith use its best efforts to remove or overcome such inability with all reasonable dispatch.

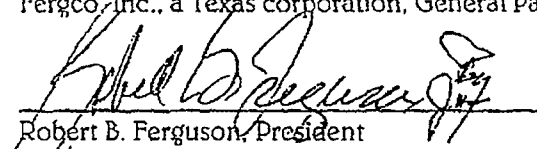
(b) Settlement of Strikes and Lockouts. The settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require settlement of strikes and lockouts by acceding to demands of the opposing party when such settlement is unfavorable to it in the judgment of the party having the difficulty.

(c) Payments Required. The provisions of this section shall not relieve a party of its obligations to make payments for water to SPCWR as required under Article V.

IN WITNESS HEREOF, this instrument is executed as of the last day written below, with an Effective Date as noted above:

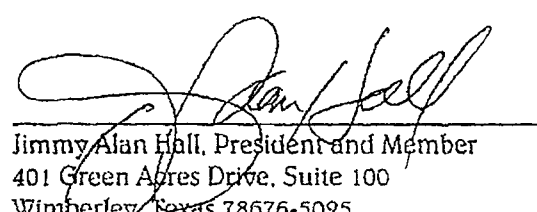
SAN PEDRO CANYON WATER RESOURCES JV

By: BOLAKI, LTD., a Texas limited partnership
By: Fergco, Inc., a Texas corporation, General Partner

By: 
Robert B. Ferguson, President

Date: 8/22/09

BLUE CEREUS, LLC

By: 
Jimmy Alan Hall, President and Member
401 Green Acres Drive, Suite 100
Wimberley, Texas 78676-5025

Date: 9/22/09

EXHIBIT B

Lynn Sherman

From: Dina Ferguson <dinajo64@icloud.com>
Sent: Monday, May 10, 2021 5:01 PM
To: Hull Elsa
Cc: Lynn Sherman; Hoard David; Davida Dwyer
Subject: Re: San Pedro outage

Elsa, both systems were closed out and isolated this morning due to non-payment. We just discussed this with Mr. Hoard, on this email response, and Mr. Hoard is working with Mr. Sherman to get electronic payments schedule for transfer. Once we've received confirmation of scheduling, we will have our operator return the systems to normal service.

We only have knowledge of the pressures on our equipment and system. We were notified by various customers that there was low to no pressure at their delivery points but have no knowledge of actual operating conditions on the distribution system.

Dina Ferguson
dinajo64@icloud.com
210-478-1698

On May 10, 2021, at 4:56 PM, Elsa Hull <elsa.hull@tceq.texas.gov> wrote:

Hi Lynn and Dina,
I just got a report that San Pedro Village has been without water all day. Can you give me an update? Is this related to the problem y'all reported recently? Have any boil water notices been issued? Please let me know as soon as possible.
Thank you,

Elsa Hull
Environmental Investigator
Texas Commission on Environmental Quality R16
707 E. Calton Rd., Suite 304
Laredo, TX 78041
956-791-6611 main
956-753-4051 direct
956-791-6716 fax
Elsa.hull@tceq.texas.gov

<http://www.tceq.texas.gov/customersurvey>

EXHIBIT C

Lynn Sherman

From: Dina Ferguson <dinajo64@icloud.com>
Sent: Thursday, May 20, 2021 5:12 PM
To: Lynn Sherman
Cc: Ferguson Bob; Hoard David; Davida Dwyer; Eleanor.DAmbrosio@puc.texas.gov
Subject: Monthly invoices
Attachments: SPWR - BC invoice 2021-05.pdf; Untitled attachment 00027.htm; Seguro - BC invoice 2021-05.pdf; Untitled attachment 00030.htm

Lynn,

Attached are the invoices for San Pedro and Seguro water delivery services during the month of May.

Please be advised that payments for the delivery of treated wholesale water for each month are due by the 5th day of the following month, and following your receipt of an invoice for same. The invoice for services provided will be delivered to you by email on or before the end of each month during the month of delivery of water. If payments are not received by the due date, water will be turned off by 10 am the next morning and will remain off until payment is received.

Bob Ferguson
Dina Ferguson