

ORIGINAL

STATE OF FLORIDA

COMMISSIONERS:  
LILA A. JABER, CHAIRMAN  
J. TERRY DEASON  
BRAULIO L. BAEZ  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON



OFFICE OF THE GENERAL COUNSEL  
HAROLD A. MCLEAN  
GENERAL COUNSEL  
(850) 413-6199

Public Service Commission

May 28, 2003

RECEIVED  
JUN 25 AM 10:11  
COMMISSION  
CLERK

VIA FACSIMILE

Herbert Hein  
13380 East Highway 40  
Silver Springs, FL 34488

Herbert Hein  
East Marion Sanitary Systems, Inc.  
4225-G Miller Road, #190  
Flint, MI 48507-1227

DISTRIBUTION CENTER  
03 JUN 25 AM 8:42

Re: Submission of Corrected Lease & Proof of Recordation in Docket No. 010869-WS - Application for Staff-Assisted Rate Case in Marion County by East Marion Sanitary Systems, Inc.

Dear Mr. Hein:

As discussed this afternoon, the proof of recording is still incorrect. Please mail a copy of the complete corrected lease and corrected proof of recording to:

Division of the Commission Clerk and Administrative Services  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850  
Reference Docket No. 010869-WS

I have advised our internal scheduling document to show this to be done by June 11, 2003. If you are unable to complete this request by that date, please explain in writing why and request an extension of time. I will then take that request before the Commission for them to determine whether an extension of time or a show cause proceeding is warranted.

Pursuant to Order No. PSC-02-1168-PAA-WS, a lease should have been submitted by February 26, 2003. It is now over three months past that date and we have still not received a complete and correct lease. Pursuant to Section 367.161, Florida Statutes, the Commission may impose a fine of up to \$5,000 per day for each day that a utility violates a Commission rule, order, or statute.

AUS \_\_\_\_\_  
CAF \_\_\_\_\_  
CMP \_\_\_\_\_  
COM \_\_\_\_\_  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_  
GCL \_\_\_\_\_  
OPC \_\_\_\_\_  
MMS \_\_\_\_\_  
SEC \_\_\_\_\_  
OTH \_\_\_\_\_

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD • TALLAHASSEE, FL 32399-0850  
An Affirmative Action/Equal Opportunity Employer  
PSC Website: <http://www.flpridapsc.com> Internet E-mail: [contact@psc.state.fl.us](mailto:contact@psc.state.fl.us)

DOCUMENT NUMBER - DATE  
05650 JUN 25 8  
PSC-0101168 CLERK

**LEASE AGREEMENT FOR  
WATER AND WASTEWATER TREATMENT FACILITIES**

THIS LEASE AGREEMENT (hereafter, the "Agreement") is made and entered into this 3rd day of February, 2003, by and between EAST MARION WATER DISTRIBUTION TRUST & EAST MARION SANITARY SYSTEM TRUST, both dated May 4<sup>th</sup>, 1995 ("Lessors"), and EAST MARION SANITARY SYSTEMS, INC., a Florida corporation ("Lessee").

**RECITALS**

1. Lessors as Successor Trustees, are the owner of the real property in Marion County, Florida described as : SEE ATTACHED EXHIBIT "A".
2. Lessee is the owner of a water production, storage, treatment, transmission, and distribution system (the "Water Plant"), and a wastewater collection, transmission, treatment and disposal system (the "Wastewater Treatment Plant"), (the Water Plant and the Wastewater Treatment Plant are sometimes hereafter collectively referred to as the "Systems"). The Systems are located within the boundaries of and service, the Development referred to as the "Systems".
3. Lessors are the owners of land in Marion County, Florida lying under the Systems, said land being more particularly described as: SEE ATTACHED EXHIBIT "A" collectively referred to as the "Leased Premises".
4. Lessors have agreed to lease the Leased Premises to Lessee pursuant to the Recitals dated as of the date of this Agreement, the terms of which grant Lessee the right to lease the Leased Premises from Lessor; to grant a separate non-exclusive perpetual easement and rights of way through, under, over, on and across the Development to patrol, inspect, alter, improve, repair, rebuild, remove, replace, construct, reconstruct, operate and maintain Systems and other attachments, fixtures, equipment, and accessories desirable in connection therewith over, under, through, upon, and across the Development at such places, streets, parcels and lots as may be necessary for efficient delivery of utility services to all occupants in the Development, and to assign such existing easements to Lessee as may be necessary for the foregoing purposes.
5. Lessors desire that Lessee act as the sole and exclusive provider of water and wastewater utility service to the Development and Lessee agrees to provide such utility services to the residents and the common areas of the Development under the terms and conditions set forth in this Agreement.
6. Lessors and Lessee desire to set forth herein the terms and conditions under which the Lessee shall be granted the sole and exclusive right to use the Leased Premises to operate and maintain the Systems and shall be granted the sole and exclusive right to provide water and wastewater utility services to the residents of the Development.

DOCUMENT NUMBER DATE

05650 JUN 25 8

SPRO-COPY (S) (S) (S) (S) (S)

7. The parties have negotiated in good faith and are empowered to be bound by the terms and conditions set forth in this Agreement.

ACCORDINGLY, for and in consideration of the sum of Ten (\$10.00) Dollars, the above Recitals and benefits to be derived from the mutual observation of the covenants contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

SECTION 1. AGREEMENT TO LEASE. Subject to the terms and conditions hereinafter set forth, Lessors hereby demises and leases the Leased Premises exclusively to Lessee and Lessee does hereby hire and take the Leased Premises from Lessors.

SECTION 2. TERM. To have and to hold for a term of ninety-nine (99) years for both parcels one and two, unless sooner terminated, as provided herein below. The term of this lease shall commence on January 1st, 2002 and shall expire ninety-nine (99) years from that date for both parcels one and two.

SECTION 3. RENTAL. The rent reserved under this Agreement shall be as follows:

1. Annual rental of \$3,000 per year for parcel 1 and annual rental of \$4,200 per year for parcel 2, payable in equal monthly installments of \$250.00 per month, for Parcel 1 and \$350.00 per month for parcel 2, payable on the eighth day of each month.

2. The annual rental amounts in subparagraphs 1 above shall increase based upon the following:  
A. Consumer Price Index (as hereinafter defined) commencing on the twenty-fourth (24th) month from the date of this Agreement. Every two (2) years thereafter, rental amounts shall be increased to an amount equal to the increase in the Consumer Price Index which shall be determined every two (2) years and paid at the new rental rate adjusted by the cumulative increase over the prior two (2) years. "Consumer Price Index" shall mean the Consumer Price Index which is presently designated as the United States City Average for All Urban Consumers, All Items, with a base period equaling 100 in 1982-1984. In the event the statistics are not available or in the event that publication of the Consumer Price Index is modified or discontinued in its entirety, the adjustment provided for herein shall be made on the basis of an index chosen by Lessor as a comparable and recognized index of the purchasing power of the United States consumer dollar published by the United States Department of Labor or other governmental agency, or 3% whichever is greater.  
B. Each time the rental amounts are paid more than fifteen days late after January 1<sup>st</sup>, 2004, Rental amount shall increase by 4%.

3. Real estate taxes (both ad valorem taxes and non ad valorem taxes) and special assessments, if any, for parcels one and two shall be paid by Lessee.

4. Personal property taxes on the Systems, and necessary license and occupational fees, insurance, repair, maintenance and compliance costs for the Systems shall be paid by Lessee.

SECTION 4. USE OF LEASED PREMISES; EXCLUSIVE PROVIDER OF UTILITY SERVICES. Lessee agrees that, throughout the term of this Agreement, it shall utilize the Leased Premises for water production, storage, treatment, transmission, distribution, and for wastewater collection, transmission, treatment and disposal, and for no other purpose, except upon the express written consent of the Lessors. Lessee further agrees that it shall maintain, operate and

administer the Leased Premises and Systems in a manner consistent with customary standards. Lessor agrees that, throughout the term of this Agreement, Lessee shall be the sole and exclusive provider of water and wastewater utility services for the residents of the Development.

**SECTION 5. SERVICE TO THE DEVELOPMENT.** Lessee shall provide water and wastewater services to each homesite and the common areas within the Development.

**SECTION 6. CUSTOMER RATES.** Lessee shall charge each customer/ account, the approved rates in accordance with of Florida Public Service Commission ("PSC") ruling. Lessee may pursue collection of delinquent accounts, including, the filing of legal actions and termination of service to customers consistent with the practice of other independent utility providers in the Marion County area. It shall be the Lessee's sole responsibility to insure that all applicable statues or laws are followed.

**SECTION 7. LIMITED OPTION TO PURCHASE PROPERTY** Lessors, subject to the limitations hereinafter set forth, grants to the Lessee, a limited option to purchase all of Lessor's right, title, and interest in and to the Leased Premises, together with all easements, rights of way, licenses, privileges, hereditaments, and appurtenances, if any, inuring to the benefit of the Lessor,

**A. Term.** The option hereby granted must be exercised by the Lessee no later than December 15<sup>th</sup>, 2018. This option shall expire without notice and be of no further effect upon the earlier of December 15<sup>th</sup>, 2018. or notification from Lessee of a bona fide offer to purchase Lessor's interest in the Leased Premises pursuant to Lessee's right of first refusal to acquire the Land described above. Upon such notification of a bona fide offer and purchase the Property pursuant to its right of first refusal set forth in subsection 7(K) below, Lessee's sole and exclusive right with respect to acquiring the Property; shall be its right of first refusal set forth in subsection 7(K) below.

**B. Exercise of option.** The option granted may be exercised by written notice delivered by the Lessee to the Lessor at the address stated in Section 10 of this Agreement.

**C. Purchase price.** Subject to the adjustments hereinafter described, the purchase price to be paid by the Lessee to the Lessor for the purchase of the Lands and Lessor's interest in the Leased Premises shall be Seventy-two Thousand Dollars (\$72,000), and adjusted annually by the greater of; either three percent (3%), or the average increase in valuation of all the Land in Marion County Florida. The purchase price of the Property shall be payable in cash at closing.

**D. PHYSICAL CONDITION OF PROPERTY.** Lessee acknowledges that upon the exercise of its option to purchase the Property or upon its exercise of its right of first refusal described below, the Property will be acquired by Lessee **AS IS, WITH ALL FAULTS, AND WITHOUT EXPRESSED OR IMPLIED WARRANTY AS TO THE FITNESS FOR ANY PARTICULAR PURPOSE.**

**E. Default: Remedy.** In the event that either party fails to perform such party's obligations hereunder (except as excused by the other party's default), the party claiming default will make

written demand for performance. If either party fails to comply with such written demand within 25 days after receipt thereof; the non-defaulting party will have the option to waive such default, to demand specific performance or to terminate this Agreement. On termination of this Agreement by reason of default, the parties will be discharged from all further obligations and liabilities hereunder, provided, however, all rights and remedies set forth in Section 35 of this Agreement shall survive termination.

F. Lessor's-Indemnification of Lessee. After the Closing of purchase of Lessee's rights in the Property("Closing', the Lessee agrees to defend, indemnify, and hold the Lessors harmless from all damages, liabilities, costs and expenses (including attorneys fees and other litigation expenses) arising from the ownership, and use of the Property incurred or accrued after the Closing or which are specifically assumed by the Lessee. The indemnification procedures to be followed will be those set forth in Section 9 of this Agreement

H. Assignability. This option is personal to Lessee and may not be assigned. Any attempt to assign this option shall be null and void.

I. De posit. At the time of the exercise of the option of right of refusal described below. Lessor shall make a \$25,000 earnest money deposit to be credited to Lessor at Closing, which deposit will be held by a mutually agreeable escrow agent.

J. Closing. Closing on the option to purchase the Systems or under Lessee's exercise of its right of first refusal shall occur on or before 45 calendar days from Lessee's exercise of the option or right of first refusal as the case may be.

**K. Lessee's Right of First Refusal.** In addition to the option granted in this Section 7. Lessee shall have the right to purchase the Property by meeting the exact terms and conditions of any bona fide offer to purchase the Property that Lessors receive. Lessee shall have 30 days from notification of the bona fide offer to accept and exercise its right of first refusal, which acceptance must be in writing and delivered to Lessors as provided in, the Notice provision in Section 10 of this Agreement. This right of first refusal is personal to Lessee's interest in the Property and in the event that Lessor sells the property to a third party and Lessee fails to exercise its right of first refusal, then Lessee's right of first refusal shall expire without notice and be of no further effect. This right of first refusal is not assignable. Any attempt to assign this right of first refusal shall be void.

SECTION 8. TERMINATION OF LEASE Lessors and Lessee agree that this Agreement may be terminated during the ninety-nine (99) year term as follows: This Agreement may be terminated by Lessee as to either parcel, or both of them, solely, at Lessee's discretion, with termination to be effective 180 days after written notice to Lessor. (the "Termination Date" ). In the event that this Agreement is terminated, as aforesaid, then Lessee agrees that it shall deliver up possession of the Leased Premises to Lessors as of the Termination Date.

SECTION 9. LIABILITY OF PARTIES. Lessee shall indemnify and hold Lessors harmless for any claims, actions, expenses or damages, including costs and attorney's fees, at trial and appeal.

which Lessors may incur for personal injury or property damage, that occurs, as a direct result of the negligent act or omission of Lessee, its agents, contractors, representatives and/or employers in the operation or maintenance of the Systems, under the following terms and conditions:

(a) A party seeking indemnification (the "Claimant") shall promptly notify the party from whom indemnification is sought (the "Indemnitor") of any liabilities for which the Indemnitor may be liable hereunder. A Claimant seeking indemnification for any claims brought by third parties shall endeavor to notify the Indemnitor in writing within fifteen (15) days after receipt of written notice of the third party claim (which notice of claim from a third party shall be of a nature which will reasonably advise the recipient of the fact that such a claim is being made). The notice will, to the extent possible, be sufficiently detailed so the Indemnitor is or will be able to reasonably understand the nature of the claim. The right of indemnification under the Agreement shall not be affected by any failure to give or any delaying giving any notice required herein, unless, and then only to the extent that, the rights and remedies of the Indemnitor shall have been prejudiced thereby.

(b) The Indemnitor shall have the right to negotiate with the third party relative to a claim, to control all settlements and to select lead counsel to defend any and all claims. The Claimant may select counsel to participate in any defense at the Claimant's sole cost and expense.

(c) In connection with any claim, all parties shall cooperate with each other and provide each other with access to relevant books and records in their possession or under their control, all at the cost of the Indemnitor.

(d) Lessors shall only be liable hereunder for actual claims, losses, damages, costs and expenses arising from matters covered under this indemnity. In no event shall Indemnitor be liable to Claimant for consequential, special, incidental or punitive damages, which are expressly excluded from this indemnity.

SECTION 10. NOTICES. Any notices which are required or permitted hereunder shall be delivered by United States mail, return receipt requested, postage prepaid or by hand delivery, to the parties at the following addresses:

LESSEE: East Marion Sanitary Systems Inc.	with copy to: Jimmy Gooding
G4225 Miller Rd. Suite 190	Gilligan, King & Gooding, P.A.
Flint, MI 48507	1531 SE 36th Ave.
	Ocala, Florida 34471

LESSOR: East Marion Sanitary Trust	East Marion Water Distribution Trust
P.O. Box 21	P.O. Box 902
Silver Springs, FL 34489	Elon, NC 27244

Notice of an address change shall be given in writing by the appropriate party to the other prior to the change. All notices shall be deemed delivered six (6) days after deposit in the United States mail, or at the time of hand delivery. Facsimile transmissions shall be treated as originals for purposes of giving notice under this Agreement.

SECTION 11. INSURANCE. Lessee agrees to provide and maintain hazard and liability insurance upon the Systems and Leased Premises throughout the term of this Agreement. Lessors shall be named as an additional insured.

SECTION 12. ASSIGNMENT AND SUBLEASE. Lessee may not assign or sublease any part of the Systems and Leased Premises without the prior written consent of the Lessor.

SECTION 13. QUIET ENJOYMENT. Lessee, upon paying the rent reserved hereunder and performing all the other covenants and conditions required to be performed under this Agreement, shall and may peaceably and quietly have, hold and enjoy the Systems and the Leased Premises hereby demised for the term aforesaid, free from disturbance by the Lessor or anyone claiming by, through or under the Lessor.

SECTION 14. ENVIRONMENTAL INDEMNITY. Lessee, subject to the procedures and the limitations set forth in Section 9 of this Agreement, hereby agrees to indemnify, reimburse, defend and hold harmless Lessors, directors, employees, successors and assigns from and against all demands, claims, civil or criminal actions or causes of action, liens, assessments, civil or criminal penalties or fines, losses, damages, liability, obligations, costs, disbursements, expenses or fees of any kind or of any nature (including, without limitation, cleanup costs, attorneys', paralegal's, consultants' or experts' fees and disbursements and costs of litigation) which may at any time be imposed upon, incurred by or asserted or awarded against Lessor directly or indirectly, related to or resulting from: (a) any acts or omissions of Lessee on or about the Leased Premises which contaminate air, soils, surface waters or ground waters over, on or under the Leased Premises; (b) the breach of any representation or warranty under this Agreement; (c) pursuant to or in connection with the application of any Environmental Law, the acts or omissions of Lessee or its affiliates which result in any environmental damage alleged to have been caused, in whole or in part, by the manufacture, processing, distribution, use, handling, transportation, treatment, storage, or disposal of any Hazardous Substance on, in or about the Leased Premises; or (d) the presence, whether past present or future, of any Hazardous Substances introduced by Lessee or its agents, successors, assigns, contractors or employees, on, in or about the Leased Premises. (a) Lessee's indemnification obligation under this section shall be subject to and limited by the procedures and the limitations set forth in Section 9 of this Agreement and shall continue, survive and remain in full force and effect notwithstanding termination of this Agreement. (b) Those liabilities, losses, claims, damages and expenses for which a lender is indemnified under this section shall be reimbursable to Lessor at Lessor's option to make payments with respect thereto, without any requirement of waiting for ultimate outcome of any litigation, claim or other proceeding, and Lessee shall pay such liability, losses, claims, damages and expenses to Lessor as so incurred within thirty (30) days after notice from Lessor itemizing the amounts incurred to the date of such notice. (c) Lessee waives any acceptance of this indemnity by Lessors. The failure of Lessors to enforce any right or remedy hereunder, or to promptly enforce any such right or remedy, shall not constitute a waiver thereof nor give rise to any estoppel against Lessors, nor excuse Lessee from its obligations hereunder. Any waiver of such right or remedy must be in writing and signed by Lessors. This indemnity is subject to enforcement at law and/or equity, including actions for actual damages and/or specific performance; provided, however, any provision in this Section 14 to the contrary notwithstanding, Lessee may be liable for consequential, special, incidental or punitive damages.

SECTION 19. CAPTIONS. Captions are used throughout this Agreement for convenience of reference only and shall not be considered in any manner in the construction or interpretation hereof.

SECTION 20. SEVERABILITY. The provisions of this Agreement shall be deemed severable. If any part of this Agreement shall be held unenforceable by any court of competent jurisdiction, the remainder shall remain in full force and effect, and such unenforceable provision shall be reformed by such court so as to give maximum legal effect to the intention of the parties. as expressed therein.

SECTION 21. CHARACTERIZATION. It is the intent of the parties hereto that the business relationship created by this Agreement and any related documents is solely that of a long term commercial lease between Lessors and Lessee and has been entered into by both parties in reliance upon the economic and legal bargains contained herein. None of the agreements contained herein are intended, nor shall the same be deemed or construed, to create a partnership between Lessors and Lessee, to make them joint venturers, to make Lessee an agent, legal representative, partner, subsidiary or employee of Lessors, nor to make Lessors in any way responsible for the debts, obligations or losses of Lessee.

SECTION 22. EASEMENTS. During the Lease Term, Lessor shall have the right to grant non-exclusive electric or cable utility easements on, over, under and above the Leased Premises without the prior consent of Lessee. provided that such non-exclusive electric or cable utility easements will not materially interfere with Lessee's long-term use of the Premises.

SECTION 23. FURTHER ASSURANCES. Each of the parties agrees to sign such other and further documents and otherwise cooperate with each other as may be necessary or appropriate to carry out the intentions expressed in this Agreement.

SECTION 24. ENTIRE AGREEMENT. This Agreement, and any other instruments or agreements referred to herein, constitute the entire agreement between the parties with respect to the subject matter hereof and there are no other representations, warranties or agreements except as herein provided.

SECTION 25. CHOICE OF LAW; VENUE. The creation of this Agreement and the rights and remedies of Lessors with respect to the Premises shall be governed by and construed in accordance with the internal laws of the State of Nevada. Venue for the resolution of any dispute between the Lessors and Lessee shall be in the State and federal courts whose jurisdiction the Lessors reside in, unless otherwise agreed to by Lessors in writing.

SECTION 27. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all such counterparts shall constitute but one agreement.

SECTION 28. RECORDING OF LEASE. After execution of this Agreement, the parties shall execute and record in Marion County, Florida, a short form memorandum describing the Land



(d) For purposes of this Agreement, "Environmental Law" shall mean any applicable federal, state, or local statutory or common law, ordinance, rule or regulation, relating to pollution or protection of the environment. including without limitation, any common law of nuisance or trespass, and any law, rule or regulation relating to emissions, discharges, releases or threatened releases of pollutants, contaminants or chemicals, or industrial, toxic or hazardous substances or waste into the environment (including without limitation, ambient. air, surface water, groundwater, land surface or subsurface strats) or otherwise relating to the manufacture, processing distribution, use, treatment. storage, disposal. transport or handling of pollutants, contaminants or chemicals or industrial. toxic or hazardous substances or wastes.

(e) For the purposes of this Agreement, the term "Hazardous Substance" means any substance or material (i) identified in Section 101(14) of CERCLA, 42 U.S.C. Statute 9601(14) and as set forth in Title 40, Code of Federal Regulations, part 302. as-the same may be amended from time to time. or (ii) determined to be toxic, a pollutant or contaminant- under Federal. state or local statute, law, ordinance, rule, or regulation or judicial or administrative order or decision, as same may be amended from time to time. (iii) asbestos, (iv) radon, (v) polychlorinated biphenyls and (vi) such other materials, substances or waste which are otherwise dangerous, hazardous, harmful or deleterious to human health or the environment.

**SECTION 15. RADON GAS.** RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND N BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON. AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY PUBLIC HEALTH UNIT.

**SECTION 16. WAIVER AND ACCEPTANCE.** No provision of this Agreement shall be deemed waived or amended except by a written instrument unambiguously setting forth the matter waived or amended and signed by both parties. Waiver of any matter shall not be deemed a waiver of the sane or any other matter on any future occasion. No acceptance by Lessors of an amount less than the annual rent set forth in Section 3 shall be deemed to be other than a payment on account of the earliest such rent or other payments then due or in arrears nor shall any endorsement or statement on any check or letter accompanying any such payment be deemed a waiver of Lessor's right to collect any unpaid amounts or an accord and satisfaction.

**SECTION17. SUCCESSORS BOUND.** Except as otherwise specifically provided herein, the terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of the respective heirs, successors, executors, administrators and assigns of each of the parties hereto.

**SECTION 18. NO MERGER.** The Voluntary or other surrender of this Agreement by Lessee, or a mutual cancellation thereof, shall not result in a merger of Lessor's and Lessee's estates, and shall, at the option of Lessors, either terminate any or all existing subleases or subtenancies, or operate as an assignment to Lessors of any or all of such subleases or subtenancies.

and the stating the Lease Term and other information the parties agree to include. The Memorandum of Lease to be executed and recorded is attached as Exhibit "B".

SECTION 29. NO BROKERAGE. Lessor and Lessee represent and warrant to each other that they have not contracted with any broker for compensation for real estate services in connection with this Agreement. Each of Lessor and Lessee agrees to protect, indemnify, save and keep harmless the other, against and from all liabilities, claims, losses, costs, damages and expenses, including attorneys' fees, arising out of, resulting from or in connection with their breach of the foregoing warranty and representation.

SECTION 30. NO ASSUMPTION OF LIABILITIES BY LESSOR. The parties acknowledge that Lessor shall not incur any liabilities with respect to Lessee. Accordingly, in addition to the other terms and conditions of this Agreement. Lessor shall neither assume nor be liable for any payments and benefits to past and/or present employees of Lessee in connection with the business it conducts on or from the Premises except as otherwise agreed to in writing by Lessor. including, but not limited to. salaries, wages, commission, bonuses. vacation pay, health and welfare contributions, pensions. profit sharing, severance or termination pay, or any other form of compensation or fringe benefit.

SECTION 31. NO JOINT VENTURE. Lessee acknowledges that Lessor shall not be deemed a partner or joint venturer with Lessee or any contractor, agent, representative, management company or broker affiliated with Lessee. Lessee shall indemnify and hold Lessor harmless from and against any and all liabilities, damages, claims of losses, demands, costs or fees (including attorney's fees) incurred based on any such assertion under the procedures and subject to the limitations set forth in Section 10 of this Agreement.

SECTION 32. NO CONSTRUCTION. No construction shall be commenced on any portion of either parcel without the prior written consent of Lessor.

SECTION 33. IMPACT FEES. Any impact fees relating to the Systems or any improvements shall be paid by Lessee. In no event shall Lessor be responsible for any impact fees relating to the Systems,

SECTION 34. TIME IS OF THE ESSENCE. Time is of the essence with respect to each and every provision of this Agreement in which time is a factor.

SECTION 35. COMPLIANCE WITH THE LAWS. The use, operation and occupation of the Leased Premises, and the condition thereof, shall, be at the sole cost and expense of Lessee and Lessee shall fully comply with all applicable statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals or any governmental agencies, departments, commissions, bureaus, boards or instrumentalities of the United States, the state in which the Leased Premises are located and. all political subdivisions thereof, including, without limitation, all health, building, fire, safety, and other codes, ordinances and requirements.

SECTION 36. DEFAULT. If a monetary default shall occur hereunder which is not cured within fifteen (15) days following receipt of written notice to Lessee from Lessor or if a non-monetary default shall occur hereunder and remains uncured for thirty (30) days or more following receipt of written notice to Lessee from Lessor or the Department of Environmental Protection, unless steps have, in good faith, been commenced promptly by Lessee to rectify the non-monetary default during the thirty (30) day period (or shorter time period if required by applicable law) and Lessee thereafter prosecutes the rectification to completion with diligence and continuity, Lessee shall be deemed in default under this Agreement. In the event that Lessee shall be deemed in default under this Agreement, Lessor shall then be entitled to terminate this Agreement prior to the natural expiration thereof. Upon the exercise of Lessor's right to terminate this Agreement, Lessor or its agents may immediately or any time thereafter, re-enter and resume possession of the Leased Premises and remove all persons and property therefrom, by a suitable action or proceeding at law. In addition to any insurance and indemnity provision contained in this Agreement, upon the default of Lessee under this Agreement, Lessor shall be entitled to recover any and all actual damages incurred by Lessor as a result of Lessee's default but not consequential, special, incidental or punitive damages. No remedy herein conferred upon or reserved to Lessee or Lessor shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute and shall survive termination of this Agreement.

SECTION 37. MISCELLANEOUS.

1. All of the parties to this Agreement have participated fully in the negotiation and preparation hereof and accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto.

2. In the event of any litigation between the parties under this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs at all trial and appellate levels.

Dated February 3<sup>rd</sup>, 2003

WITNESSES:

Donna Congdon

Print name: Donna Congdon

Terry Packer

Print name: Terry Packer

LESSOR:

C. J. Doerr

C. J. Doerr, Successor Trustee of  
East Marion Water Distribution Trust,  
Dated May, 4<sup>th</sup>, 1995

Rebecca Sergeant

Rebecca Sergeant, Successor Trustee of  
East Marion Sanitary Trust, Dated 5/4/95

Donna Conzider  
Print name: Donna Conzider

GENESEE  
Herbert Hein, President of East Marion Sanitary Systems, Inc., A Florida Corporation

Terry Parker  
Print Name: Terry Parker

STATE OF MICHIGAN  
COUNTY OF GENESEE

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> of February, 2003 by C.J. Doerr, Successor Trustee & Rebecca Sergeant Successor Trustee & Herbert Hein, President of East Marion Sanitary Services, Inc., who did take an oath. and who acknowledged to and before me that they executed the. same freely and voluntarily for the purposes therein expressed.

Terry Parker  
Terry Parker NOTARY PUBLIC  
GENESEE COUNTY, MICHIGAN  
MY COMMISSION EXPIRES: 09/04/04  
TERRY PARKER  
Notary Public, Genesee County, MI  
My Commission Expires Sep 4, 2004

10-6  
C-4  
W  
RECORDED TO  
CORRECT TYPOGRAPHICAL  
ERROR

DAVID R. ELLSPERMANN, CLERK OF COURT MARION COUNTY  
DATE: 05/20/2003 04:54:23 PM  
FILE NUM 2003062695 OR BK/PG 03420/0538  
RECORDING FEES 6.00

DAVID R. ELLSPERMANN, CLERK OF COURT MARION COUNTY  
DATE: 06/03/2003 04:34:34 PM  
FILE NUM 2003068688 OR BK/PG 03430/0392  
RECORDING FEES 6.00

EXHIBIT "B"  
MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE between EAST MARION WATER DISTRIBUTION TRUST & EAST MARION SANITARY SYSTEM TRUST, BOTH DATED May 4<sup>th</sup>, 1995 (hereinafter referred to as "Lessors") and East Marion Sanitary SYSTEMS, INC. A Florida corporation (hereinafter referred to as "Lessee"), dated this 3rd day of February, 2003. The substantive terms and conditions as set forth in an unrecorded Lease between the parties are as follows:

RM  
S.D.  
RS

1. Grant of Lease: Lessor demises and leases unto Lessee the Real Property described as Tract "B" and Tract "C" of Trails East Subdivision as recorded in Plat Book Z, Pages 37-40, Marion County Florida
2. Leased Premises: The Leased Premises are described as follows: Tract "B" and Tract "C" of Trails East Subdivision as recorded in Plat Book Z, Pages 37-40, Marion County Florida
3. Use of Property: Operation of water plant and wastewater treatment plant and related production, storage, collection transmission, distribution, and disposal systems.
4. Term of Lease: Ninety nine (99) years as to both parcels one and two of the Leased Premises, unless earlier terminated as set forth in the unrecorded Lease of even date.
5. Construction: This Memorandum of Lease is not a complete summary of the unrecorded Lease described above. The provisions in this Memorandum should not be used in interpreting the Lease. In the event of conflict between this Memorandum and the unrecorded Lease, the provisions of the unrecorded Lease shall control.

Dated February 3<sup>rd</sup>, 2003

WITNESSES:

Dennis Congdon  
Print name: Dennis Congdon

Terry Parker  
Print name: Terry Parker

Dennis Congdon  
Print name: Dennis Congdon  
Terry Parker  
Print Name: Terry Parker

LESSOR:

C. J. Doerr  
C. J. Doerr, Successor Trustee of East Marion Water Distribution Trust, Dated May, 4<sup>th</sup>, 1995

Rebecca Sergeant  
Rebecca Sergeant, Successor Trustee of East Marion Sanitary Trust, Dated 5/4/95

LESSEE:

Herbert Fleig  
Herbert Fleig, President of East Marion Sanitary SYSTEMS, Inc.. A Florida Corporation

DAVID R. ELLSPERMANN, CLERK OF COURT MARION COUNTY  
DATE: 06/12/2003 04:34:29 PM  
FILE NUM 2003073456 OR BK/PG 03438/0688  
RECORDING FEES 6.00

CERTIFIED A TRUE COPY  
DAVID R. ELLSPERMANN

East Marion Sanitary

BY

C. Doerr