BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Notice of Sale of assets of)
MARTIN DOWNS UTILITIES, INC. to)
Martin County, Florida.)
DOCKET NO. 9308/8-WG

APPLICATION FOR SALE TO GOVERNMENTAL AUTHORITY

Applicant, MARTIN DOWN UTILITIES, INC. ("Utility"), by and through its undersigned attorneys, and pursuant to Section 367.071(4)(a), Florida Statutes, and Rule 25-30.037(3), Florida Administrative Code, files this Application for approval of the transfer of all of the water and wastewater facilities operated under Water Certificate No. 343-W and Wastewater Certificate No. 301-S located in Martin County, Florida, to Martin County, and submits the following:

1. The full name, address and telephone number of Applicant is:

Martin Downs Utilities, Inc. Post Office Box 620 Palm City, FL 34990 (407) 283-9100

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2. The name, address and telephone number of the representative of the Applicant to contact concerning this Application is:

Martin S. Friedman, Esquire Rose, Sundstrom & Bentley 2548 Blairstone Pines Drive Tallahassee, Florida 32301 (904) 877-6555

DOCUMENT NUMBER-DATE
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3. The full name, address and telephone number of the governmental authority is:

Martin County Board of County Commissioners Martin County, Florida 2401 S.E. Monterey Road Stuart, Florida 33496 (407) 288-5421

4. The name, address and telephone number of the representative of the governmental authority to contact concerning this Application is:

Johnathon A. Ferguson, Esquire Assistant County Attorney 2401 S.E. Monterey Road Stuart, Florida 34996 (407) 288-5440

Sale by and between Martin Downs Utilities, Inc. and Martin County, Florida, the County on April 29, 1993 obtained from the Utility a copy of the annual report as filed by the Utility with the Florida Public Service Commission for the calendar year ending December 31, 1992. The County obtained from the Utility all schedules of rates, fees and charges, and policies and procedures in effect at the time the Agreement of Purchase and Sale was executed and through Closing. The information required to be considered by Martin County, Florida pursuant to Section 367.071, Florida Statutes, was considered by the Board of County Commissioners and the appropriate public interest findings have been made and are contained within the County's records.

- 6. Pursuant to the Agreement of Purchase and Sale by and between Martin Downs Utilities, Inc. and Martin County, Florida, all customer deposits and the accumulated interest thereon, have been transferred and assigned to Martin County, Florida. A copy of the Agreement of Purchase and Sale, as amended by the Memorandum of Understanding is attached hereto as Exhibit "A".
- 7. Simultaneously with the filing of this Application the Utility is paying all outstanding regulatory assessment fees and filing the final Regulatory Assessment Fee Return with the Division of Administration of the Florida Public Service Commission. A copy of that filing is attached hereto as Exhibit "B".
- 8. The transfer of the assets of Martin Downs Utilities, Inc. took place on August 12, 1993.
- 9. Attached are the originals of Water Certificate No. 343-W and Wastewater Certificate No. 301-S for cancellation.

WHEREFORE, MARTIN DOWNS UTILITIES, INC. requests that this Commission approve the sale of its water and wastewater assets to Martin County, and cancel its water and wastewater certificates.

Respectfully submitted this 17th day of August, 1993, by:

ROSE, SUNDSTROM & BENTLEY 2548 Blairstone Pines Drive Tallahassee, Florida 32301 (904) 877-6555

MARTIN S.) FRIEDMAN

AGREEMENT OF PURCHASE AND SALE

This Agreement of Purchase and Sale (the "Agreement") is made and entered into this 26th day of May 1987, between MARTIN DOWNS UTILITIES, INC., a Florida corporation, (hereinafter called the "Seller"), and the BOARD OF COUNTY COMMISSIONERS OF MARTIN COUNTY, FLORIDA, a political subdivision of the State of Florida, (hereinafter called "County").

RECITALS

- A. Seller and Southern Land Group, Inc. are wholly owned subsidiaries of Southern Realty Group, Inc.. Southern Realty Group, Inc. and Southern Land Group, Inc. are parties, along with County, to the Martin Downs Planned Unit Development Zoning Agreement dated August 8th, 1980 and recorded in Official Records Book 502, Page 1646, public records of Martin County, Florida.
- B. Paragraph 15 of Exhibit "F" to that P.U.D. Agreement provides.as follows:

The Applicant shall work with Martin County toward establishing a cooperative arrangement to provide expanded water supply and sewage treatment facilities capable of serving Palm City residents outside of Martin Downs. The developer will supply hydraulic capacity within its water distribution system to serve areas outside of Martin Downs. The developer will supply hydraulic capacity within its water distribution system to serve areas outside of the PUD(r). The size and location of this service shall be in accordance with the recommendations made by Tom Russo, P.E., of Gee & Jenson, Inc., in his August 1, 1980 letter to Thomas Sansbury and the recommendations that may be made by Martin County's consulting engineers. The developer agrees that if and when County elects to acquire the subject water and sewer facilities, then the water and sewer plants and plant sites will be conveyed at developer's cost, less depreciation, or fair market value, whichever is less, unless it is mutually agreed between County and developer that another formula would aid expansion or bond financing of the service, and condemnation shall not be required.

C. The Seller owns and operates a water treatment and distribution system (hereinafter sometimes referred to as the "Water System") and a sanitary sewage collecton, treatment and disposal system

System to inance all or a portion o the cost of excess system capacity originally acquired additions, extension or improvements to the Utility System made necessary by the inclusion or expected inclusion of such new customers. Capital Facilities Charges shall not include normal rates and charges to defray costs of connection to the Utility System.

<u>Certificates</u>. "Certificates" shall mean those Certificates of Public Convenience and Necessity issued to the Utility.

Closing. "Closing" shall mean the consummation of the transaction contemplated herein, as more fully described in Paragraph 12.

Closing Date. "Closing Date" shall mean the date on which the parties hereto close the transaction contemplated herein which shall be one hundred twenty (120) days following Seller's delivery of written notice to the County of its intent to accelerate the closing date or within one hundred fifty (150) days following Seller's initial delivery of all documents required by Paragraph 6 of this Agreement, whichever date is later, but in no event later than May 26, 1994, unless an extension of such time is mutually agreed upon in writing by the parties.

<u>Closing Period</u>. "Closing Period" shall mean the period of time commencing on the date of execution of this Agreement and ending on the Closing Date.

<u>Commission</u>. "Commission" shall mean the Board of County Commissioners of Martin County, Florida.

<u>County</u>. "County" shall mean Martin County, a political subdivision of the State of Florida.

County Attorney. "County Attorney" shall mean the County Attorney or the Assistant County Attorney for Martin County, Florida.

County's Engineer. "County's Engineer" shall mean William M. Bishop Consulting Engineers, Inc. of Tallahassee and Jensen Beach, Florida or as otherwise designated in writing.

Developer Agreements. "Developer Agreements" shall mean those agreements however styled that are entered into on or before the Closing Date by Seller wherein the Seller has contracted to render certain Utility services to the contracting owner or developer in exchange for certain payments, including any agreement for refunding to developer amounts advanced for main extensions, when applicable.

<u>Excluded Assets.</u> "Excluded Assets" shall mean those assets described in Paragraph 3 and which are not included in the Purchased Assets.

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during the 12 month period preceding the date of determining he Purchase Price, adjus 3 to annualize revenue received from new connection dded during said 12 month period, less estimated Operating Expenses during the 12 month period following acquisition of the Utility System by the County.

Operating Expenses. "Operating Expenses" shall mean those expenses reasonably anticipated to occur with County operation of the Utility System, which shall include:

- operation and maintenance of utility plants and piping system.
- (2) expenses incurred in purchasing and installing meters
- (3) County legal, administrative, accounting and other intraservice expenses at the rate allocated from other County utility systems at the time of acquisition of the Utility System
- (4) renewal and replacement reserve account funding in an amount equal to 5% of the Utility System's prior years' Operating Income.

Operating Income. "Operating Income" shall include the recurring revenues of the Utility System received from the following sources:

- (a) basic service charges for providing water and/or sewer services
- (b) commodity charges or gallonage rate charges
- (c) meter installation fees

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- (d) interest earned on the above working accounts
- (e) guaranteed revenues for reservation of service, if insurable or ratable as determined necessary by the County's financial advisor
- (f) any other customer produced recurring revenue source that is insurable or ratable, received in the course of providing a utility service to the customer.

Purchased Assets. "Purchased Assets" shall mean those assets described in Paragraph 2 and which are not included in the Excluded Assets.

<u>Purchase Price</u>. "Purchase Price" shall mean the amounts described in Paragraph 4.

Seller. "Seller" shall mean Martin Downs Utilities, Inc.

<u>Sewer System.</u> "Sewer System" shall mean the sanitary sewage collection, treatment and disposal system operated by the Seller.

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Seller's ingineer. "Seller's Enginer" shall mean Environ that Concepts in Design, ac., or as otherwise designated in writing.

Utility System. "Utility System" shall mean the combination of the Sewer System and the Water System presently owned and operated by the Seller and any subsequent improvements and/or additions thereto which serves customers in the area depicted on Exhibit K hereto or as expanded according to law.

<u>Water System</u>. "Water System" shall mean the water treatment and distribution system operated by the Seller.

- 2. Purchased Assets. For convenience, the term "Purchased Assets" shall be used to designate the assets, business properties and rights which the Utility owns or in which it has an interest (but shall not include the "Excluded Assets" described in Paragraph 3 hereof), and any subsequent improvements or additions thereto which are being purchased hereunder by County and which include the following:
- (a) The real estate owned by the Seller described in Exhibit A, and all buildings and improvements owned by the Utility located thereon, and any additions or improvements thereto during the Closing Period.
- (b) All easements, licenses, rights-of-way and consents owned by Seller for the construction, operation and maintenance of the Utility System, including but not limited to the easements specifically set forth in Exhibit B, and all those acquired during the Closing Period.
- (c) All water treatment plants, water supply and distribution facilities, sewage treatment plants, sewage collection and disposal facilities of every kind and description, including but not limited to water and wastewater treatment plants, buildings, lift stations,

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percolation ponds, i er wells, supply pipes, lection pipes or facilities, values, meters, meter boxes, service connections, lift and pumping stations and all other physical facilities and property installations now owned by the Seller under the name of Martin Downs Utilities, Inc. and any subsequent improvements or additions thereto. Seller has the right to repair, replace and maintain the inventory items on a reasonable basis and to substitute any inventory item with another of equal quantity and quality during the Closing Period.

- (d) All franchises of every character whatsoever related to the Utility System and all certificates, immunities, privileges, permits, licenses, license rights, easements, consents, grants, ordinances, leaseholds, rights-of-way and all rights to construct, maintain and operate plants and systems for the procuring, distribution and transmission of water and for the collection, treatment and disposal of sewage and every right of every character whatever in connection therewith; all agencies for the supply of water to Seller; all water rights, flowage rights, and riparian rights, and all renewals, extensions, additions or modifications of any of the foregoing; all rights granted to Seller under Certificates, as defined herein.
- (e) All of the personal property of the Seller, tangible and intangible, including inventory subject to reasonable fluctuations, exclusively used by the Seller in connection with the Utility System as described in Exhibit C attached hereto, and all subsequent improvements or additions thereto.
- (f) One or more copies of all past and current customer billing records and meter books, prints, plans, engineering reports,

information required by County which are in passession of Seller or its agents on the closing Date pertaining to the operation of the Utility System.

- (g) One set of record drawings, including as-built drawings when available, showing all facilities of the Utility System, including structural, mechanical and electrical details. Such drawings shall also include any original tracings, sepias, or other reproducible material where same is in possession of Seller.
- (h) All rights, privileges and obligations of the Seller under the Developer Agreements described in Exhibit D attached hereto, or executed prior to the Closing Date in the form provided in Exhibit "E" hereto or as otherwise consented to by the County as provided for herein, including amounts previously paid pursuant to any Developer Agreement for which the obligations of the Seller to the Developer have not been fully satisfied or extinguished and all amounts that remain payable to the Seller pursuant to any Developer Agreements executed on or before the Closing Date however denominated, including but not limited to, connection charges or contributions—in—aid—of—construction.
- 3. <u>Excluded Assets.</u> The Seller and County expressly agree that there is hereby specifically reserved to the Seller the following assets:
- (a) <u>Cash and Bank Accounts</u>. All cash and bank accounts of the Seller except customer deposits.
- (b) <u>Customer Accounts Receivables.</u> Customer accounts receivable from services rendered to customers by the Utility System that exist on the Closing Date. The Seller and the County hereby

administered pursuamento Paragraph 9(d) hereof

- (c) <u>Deposits</u>. Telephone and electric utility deposits and deposits on equipment loaned to the Seller by chemical purveyors or others shall be the property of the Seller.
- (d) Seller hereby retains all rights to the name and good will, of the Florida corporation, "Martin Downs Utilities, Inc."

4. Purchase Price.

- (a) The total Purchase Price for the Purchased Assets, subject to prorations and adjustments described herein, shall be determined within 90 days of Seller's exercise of its right to accelerate the Closing Date or ninety (90) days prior to May 26, 1994, whichever date is earlier, by:
 - (1) capitalizing the Net Income of the Utility System at the then prevailing water and sewer revenue bond interest rate, with 110% debt coverage, provided that market conditions can support a bond issue at such coverage amount. If the market conditions will not support such coverage, the coverage amount shall be increased to the amount necessary to insure or rate the water and sewer revenue bonds, as determined to be necessary by the County's financial advisor. In no case shall the coverage exceed 125%. The bond repayment period used shall be thirty (30) years.
 - (2) deducting from the resulting bond amount the following expenses of the utility acquisition:
 - i) Bond reserve account funding equal to the maximum annual principal and interest payment due over the life of the bonds issued to pay the Purchase Price.

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 - .v) Bond issuance costs to include but not be limited to:
 - a) printing costs
 - b) financial advisor's fee
 - c) consulting engineer's fee, including all costs and fees to appraise the value of the assets.
 - vi) The County's title insurance costs at the promulgated rate.
- vii) Martin County administrative and legal expenses, to equal \$25,000 as adjusted by the percentage change in the Consumer Price Index between the date of execution of this Agreement and the Closing Date.
- viii) Out of pocket expenses incurred or paid by the County for negotiations pertaining to the acquisition of Martin Downs Utilities prior to the date of entering into the Purchase and Sale Agreement for such acquisition on November 12, 1985.
- b. In no event shall the Purchase Price exceed the cost of replacing the Purchased Assets, less depreciation calculated on a straight line basis and extraordinary maintenance expenses at the time of determining the Purchase Price.
- c. In calculating the Purchase Price the parties shall follow the Example attached hereto as Exhibit O, except to the extent that

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such conflict the provisions of this Paragraph 4 shall control.

- d. The Purchase Price shall be determined by the County's consulting engineer subject to approval by the Seller. In the event the parties cannot agree on the correct Purchase Price pursuant to the terms of this Agreement, any dispute shall be submitted to and resolved by the decision of the president of the Florida Engineering Society or his designee.
- 5. Payment of Purchase Price. On the Closing Date, as herein defined, the Purchase Price, plus or minus prorations and adjustments provided for herein, shall be paid to the Seller in cash, received wired funds, or a cashier's check from a local lending institution, in accordance with the terms herein. The Purchase Price shall be payable at par.
- 6. Furnishing of Documents. Within sixty (60) days after the execution of this Agreement, the Seller will furnish to the County the documents listed below. The County shall have thirty (30) days after receipt of such documents to review and approve same, which approval shall not be unreasonably withheld. Failure to object to such documents within the thirty (30) day period shall constitute approval unless Seller agrees to an extension of time, which agreement shall not be unreasonably withheld.

Exhibit A: A legal description and survey prepared by a Land Surveyor registered in the State of Florida of all the real estate owned by the Utility in connection with the Utility System and which shows the locations of all buildings and improvements thereon.

Exhibit B: A description of all private easements and rights-of-way owned and/or legally used by the Seller for the construction, operation and maintenance of the Utility System, all

of such easements the true copies of the ement agreements containing the legal descriptions of the lands will be sufficient for purposes of this Exhibit. Easements located or shown in recorded plats and rights to locate lines in public rights-of-way shall be included in this Exhibit. This Exhibit shall be updated at the time of Closing.

Exhibit C: Inventory of all equipment, vehicles, tools, parts, laboratory equipment, office equipment, unset or reserved meters, and other personal property located on or in connection with the property being acquired by the County pursuant to this Agreement and that the Seller uses in normal operation of the Utility

System, together with a schedule showing the nature of the ownership or use rights thereof of the Seller. With respect to this personal property, the Seller represents that the same will not be depleted prior to the Closing, except in the normal and ordinary operations of the Utility System by the Seller. This Exhibit shall be updated at the time of Closing.

Exhibit D: A schedule and copies of all pending Developer's Agreements entered into between the Seller and owners and developers of property regarding water and sewer to be provided to the properties of such parties as of the date hereof. This Exhibit shall be updated at the time of Closing.

Exhibit E: The standard Developer's Agreements and Refund Agreements to be used by Seller during the Closing Period. Seller shall submit the proposed Developer Agreement and Refund Agreement set forth in Exhibit "E-1" to the Public Service Commission for approval immediately upon execution of this Agreement. Until such

time as Exhibit "E-1" is approved by the Publ. Service Commission,

Developer shall use the Agreement set forth Exhibit "E-2".

Seller shall provide the County with copies of all such agreements entered into immediately upon execution. The Seller shall not execute any Developer Agreement or Refund Agreement during the Closing Period other than in the form attached as Exhibit "E" without the written consent of the County, which consent shall not be withheld unreasonably. A request for such consent shall be submitted in writing to the County Administrator or his designee. The County Administrator or his designee shall have ten (10) days to respond to such request. Failure to object to the request within the ten (10) day period shall constitute consent to the proposed modification.

Exhibit F: All plans and specifications available to Seller, including profiles, showing the water treatment plants and sewage treatment plants of the Utility System as now constructed (as-built), together with the map showing the water distribution lines, sewage collection lines, and lift stations and appurtenances as now constructed (as-built), and all other facilities constituting the Water System and Sewer System as further defined in paragraph 2(g) hereof. This Exhibit shall be updated at the time of Closing.

Exhibit G: Schedule of rates, fees and charges in effect at the time of this Agreement. This Exhibit shall be updated at the time of Closing.

Exhibit H: Copies of permits, applications, or other documents issued to Seller, together with effective dates and expiration dates (if any), demonstrating approval of the facilities of the Utility System by all applicable government authorities, including, but not

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- (a) the Flori Department of Environment Regulation or its regulatory predecessor,
- (b) Martin County Health Department,
- (c) South Florida Water Management District,
- (d) the PSC; and
- (e) the County.

This Exhibit shall be updated at the time of Closing.

Exhibit I: A list of customer deposits by name and account number, setting forth the amount of each individual deposit and aggregate total thereof. These items shall be furnished by the Seller at least ten (10) days prior to the Closing Date and will be updated to the Closing Date.

Exhibit J: Copies of Seller's "Annual Report" for 1983, 1984, and 1985 as filed with the PSC. Seller shall provide the County with all subsequent annual reports filed with the PSC upon such filing.

Exhibit K: Map on which there is outlined the service area which the parties will attempt to serve with the system to be acquired herein, as described in paragraph 9(a).

Exhibit L: A list of the other contracts, leases, and agreements to be assumed by the County pursuant to Paragraph 10(a)(iii) of the Agreement. This list may be updated or added to at the time of Closing only with the consent of the County, which consent may be withheld for any reason.

Exhibit M: 1) A list of all known pending actions, suits, proceedings or investigations involving Seller. 2) A list of all pending actions, suits or proceedings for which County agrees to assume liability. These lists may be updated or added to at the

may be withheld for ny reason.

Exhibit N: 1) Description of all plant improvements and other works in progress. 2) Description of all improvements to be completed prior to the Closing Date. This document shall be updated 120 days prior to the Closing Date.

- 7. Representations and Warranties of the Parties. Each of the parties hereto represents and warrants to the other as follows:
- (a) Seller hereby represents and warrants to County and acknowledges that the County is relying upon each of the following such representations and warranties as a material inducement in the acquisition of the Purchased Assets and the transaction contemplated hereunder:
 - (i) It has good, marketable title to the real and tangible personal property which is to be conveyed, free and clear of all liens, claims and encumbrances, legal or equitable, except as provided for in this Agreement.
 - (ii) It will deliver as provided for in this Agreement copies of all its Developer Agreements,
 - (iii) It has not heretofore entered into any contract which obligates it to extend the Water System or the Sewer System or to furnish water or sewer services in addition to the services now being rendered by it, except as set forth in the Developer Agreements described in Exhibit D attached hereto.
 - (iv) That prior to closing, it will not, without the prior written consent of the County, dispose of the Utility System or any part hereof except as otherwise permitted herein.
 - (v) There are presently no known actions, suits, or proceedings pending against the Seller, and there are no

Seller that would are threatened against the operation of the Utility System being sold hereunder.

- (b) The County represents and warrants to Seller and acknowledges that the Seller is relying upon each of the following such representations and warranties as a material inducement in the sale of the Purchased Assets and the transaction contemplated hereunder:
 - (i) Martin County is and shall be at the time of Closing a duly organized and validly existing political subdivision of the State of Florida, and the County has and shall have at the time of Closing the power to purchase the Utility System in accordance with the terms of this Agreement.
 - (ii) The County has or shall have at the closing full power and authority without any restriction whatsoever, to execute, deliver and perform this Agreement and any ancillary documentation as shall be necessary to consummate the transaction. The execution and delivery of this Agreement on behalf of the County has been authorized and no further action is or shall be required to approve the execution and delivery of this Agreement.
 - (iii) The execution and delivery of this Agreement, and the consummation of the transaction contemplated hereby, and the compliance with the terms and conditions hereof by the County do not conflict with or result in a breach of any law, resolution, note, mortgage, lease, indenture agreement, judgment, decree or other instrument or restriction to which the County is a party or by which it is bound; or, if such conflict or breach would

- obtained prior Closing.
- (iv) There are presently no actions, suits, or proceedings pending against the County, and there are no investigations known to the County which are threatened against the County that would adversely affect this transaction.
- (v) The County has complied with or will comply with prior to Closing all Florida Statutes, rules or regulations applicable to the purchase of a privately held utility system by a governmental entity.
- (c) All of the representations and warranties contained in this Agreement or in any statement, certificate or exhibit furnished or to be furnished to the Seller by the County or to the County by the Seller pursuant to this Agreement, or in connection with the transactions contemplated hereby, shall continue to be true as of the Closing Date and the liability therefore shall survive the Closing. No such representations or warranties by the County or Seller omit or will omit to state any material fact. The County and Seller shall have no duty to investigate or inquire regarding the accuracy or veracity of any representation or warranty of the County or Seller and it shall be deemed reasonable for the County and Seller to fully rely upon same. In the event that any of the County's or Seller's representations or warranties should prove to be materially untrue, and if after giving the other party written notice of the default the other party has failed to cure such default within sixty (60) days, the County or Seller may, at its option, terminate this Agreement at any time prior to the Closing by providing notice to the other party of that party's exercise of its option to terminate. Such termination shall be treated as a default

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- provided in paragram 19 of this Agreement.
- 8. <u>Inspection of Utility Systems, Condition of Purchased Assets</u>
 at Closing.
- Inspection. The County, and its agents, employees and other representatives, shall have the right to enter upon Seller's property at all reasonable times prior to the Closing Date for the purpose of inspecting the Purchased Assets and the Utility System and conducting such studies, tests and examinations as the County deems reasonably necessary or appropriate to conclude the purchase of the Utility System; provided, however, that all such activities shall be at the sole cost and expense of the County and shall not interfere with the operation of the Utility System by Seller. The County shall protect, defend, indemnify and hold harmless the Seller, its employees, agents, successors and assigns from any and all liabilities, actions, suits, mechanics' lien claims, judgments, losses, costs, expenses (including, without limitation, reasonable attorney's fees and all costs and fees on appeal), claims and demands whatsoever incurred or suffered by or made against the Seller, its employees, agents, successors, and assigns, arising out of, or in connection with any such activities by or on behalf of the County. After all such tests and investigations are completed, the County shall promptly restore the Purchased Assets and Utility System to the condition they were prior to making such tests and investigations. Notwithstanding anything herein to the contrary, the County shall not be entitled to possession of the Purchased Assets or the Utility System prior to Closing except for the aforementioned investigation purpose. The obligations and indemnity on the part of the County in this provision shall survive the

demand within the y (30) days of actual notice by an officer or director of Seller.

- (b) Condition of Purchased Assets. The condition of the property, plant and all equipment included in the Purchased Assets will be good, operable and reasonably acceptable on the Closing Date.
- (c) Assignment of Rights of Action. Notwithstanding the foregoing, the Seller agrees to assign to the County any and all rights, to the extent that they are assignable, that the Seller may have against any engineer or other professional that certified to the Seller the construction or operation of the Utility System. The Seller agrees to intervene or enforce any such rights in the event it is ever determined that the County has no standing to enforce the rights assigned under this Paragraph, provided the Seller will not have any liability as provided in this paragraph and provided that the County will be responsible for all expenses, including costs and attorneys fees, arising out of the Seller's enforcement of such rights. The provisions of this Paragraph shall survive the Closing or any termination of this Agreement.
- 9. <u>Miscellaneous Agreements</u>. The County and the Seller agree as follows:
- (a) Operation of the Utility System during the Closing Period; notice to Martin County of director's meetings. Seller shall continue to own the Utility System during the Closing Period and shall operate the System pursuant to the uniform policies and procedures attached hereto as Exhibit P, subject to approval by the Public Service Commission as provided for in paragraph 9(b). Seller will extend its service area to encompass properties outside the Martin Downs PUD as shown on the map attached hereto as Exhibit K.

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The County agrees not to object to such extension of the Seller's service area. Seller shall notify the Martin County Administrator of all meetings of its Board of Directors by mail no less than three (3) days prior to any such meeting. Not more than two (2) representatives designated by the County shall be permitted to attend all meetings of Seller's Board of Directors for observation and to provide input from the County's perspective. The County's representative shall not however have any voting rights on the Seller's Board of Directors.

- (b) <u>Seller's reorganization and approval by Public Service</u>

 <u>Commission.</u> Seller shall complete reorganization and restructuring of its operations, and shall submit proposed rate changes to the PSC, establishing the nondiscriminatory policies of Seller set forth in Exhibit P prior to January 1, 1988. Seller shall use its best efforts to obtain all required regulatory approval of such rates and policies.
- (c) Assignment and Assumption of Developer Agreements. On the Closing Date, the Seller shall assign to the County and the County shall assume in writing all the obligations and rights of Seller relating to all Developer Agreements listed on Exhibit D attached hereto and all Developer Agreements entered into by Seller, as provided for herein, during the Closing Period.

Seller shall transfer to County Capital Facility Charges collected by Seller under Developer Agreements attributable to obligations of the Seller to the Developer which have not been fully satisfied or extinguished as of the date of this Agreement.

(d) <u>Customer Deposits and Accounts Receivable.</u> At closing the Seller will transfer all Customer Deposits, plus accrued interest thereon as required by the Public Service Commission, to the County

with a list of Customers and the amount of deposit for each customer.

On or about the Closing Date, the Seller and the County shall jointly cause the meter for each customer's water and/or sewer account to be read. The County shall bill and collect for all water and wastewater service not previously billed for by Seller as of the Closing Date. The County shall rebate to Seller its share of revenues collected based on the joint meter reading. In the event any customer of the Utility System does not pay his bill for water and/or sewer service provided by Seller within thirty (30) days after such bill is rendered, including all prior delinquent accounts, if any, the County agrees that, at any time thereafter, if reasonable efforts at collection have been made by the County and failed, upon written request from the Seller, the County will interrupt water service to any such delinquent customer until all of said charges have been paid or a period of ninety (90) days has elapsed, whichever may occur first.

At the elapse of the ninety (90) day period, the Seller shall advise the County of any unpaid bills and the County shall remit to the Seller the amount due on the bill from the Customer Deposit Account. The County's liability shall be limited to the maximum of the deposit plus any accrued interest thereon transferred by Seller. If the bill is less than the deposit, the County may retain the balance. On the Closing Date the parties shall execute and enter into the Deposit Indemnification Agreement attached hereto as Exhibit Q.

(e) <u>Estoppel Letters</u>. Prior to Closing, Seller shall furnish to the County an estoppel letter from the holders of all existing mortgages on the real and personal property, containing information, relating to the amount necessary to release same. Seller further

personal property t the Closing or from full received at the Closing.

- (f) <u>Utility Electric Service</u>. On the Closing Date the Seller will use its best efforts to cause the electric service used in connection with the Utility System to be transferred to the account of the County. The Seller shall be responsible only for payment for all such electricity service rendered to the Seller through and including the Closing Date.
- (g) <u>Renewals of Permits.</u> The Seller shall apply for and use due diligence to obtain renewal of all Permits which will expire prior to ninety (90) days subsequent to Closing. The County will reimburse the Seller at the Closing for any costs of renewing any such Permits.
- (h) Cancellation of Certificates. The parties hereto recognize and agree that the Seller has the right to transfer its Utility

 System to a governmental unit with the automatic approval of the PSC pursuant to Section 367.071(3), Florida Statutes. Upon closing the transaction contemplated by this Agreement the parties shall so notify the PSC. The Seller hereby agrees to cooperate with the County after Closing in securing the cancellation of the Water and Sewer Certificates.
- (i) <u>Lease of County lines.</u> During the Closing Period Seller shall operate and maintain previously installed County water and sewer'lines, as provided in the Lease Agreement attached hereto as Exhibit R. Simultaneously with execution of this Agreement, Seller and County shall execute such Lease Agreement.
- (j) Martin Downs Utilities, Inc., Personnel Protection. The County agrees to offer employment to all personnel of Seller who

Employment shall offered commensurate wit ob description being equal or superior to the job description of Seller and with salaries being adjusted to the County's pay plan. Fringe benefits will be consistent with th County's uniform benefit program.

- (k) Broker. The County and Seller each represent to the other that they have not disclosed this Agreement or the subject matter hereof to any real estate broker, agent, salesmen, or finder so as to create any legal right or claim in any such broker, agent, salesmen, or finder for a real estate commission, finder's fees, or similar compensation with respect to the negotiation and/or consummation of this Agreement or the conveyance of the Property or the Utility System by the Seller to the County. Seller and the County hereby indemnify and agree to hold and save the other harmless from any claims (or any expenses related thereto, including expenses for attorney's fees, including fees or costs for any appeal, incurred in defending any such claims or in enforcing this indemnity) for any real estate commissions, finder's fees, or similar compensation arising out of or in any way connected with any claimed agency relationship with the indemnifying party and relating to the subject matter of this Agreement. This paragraph 9K shall survive the Closing or termination of this Agreement.
- (1) On the Closing Date the parties shall enter into the Indemnification Agreement attached hereto as Exhibit S.
- (m) Upon full payment of the principal and interest on the bonds issued by the County to pay the Purchase Price, or when the amounts deposited in the Debt Service account are sufficient to pay same, the amounts outstanding in the Bond Reserve account described in paragraph 4(2)(i) shall be refunded to Seller.

- (iii) County shall have assumed in writing the obligations of the Seller contained in all Developer Agreements described in Exhibit D, and all subsequent Developer Agreements entered into in accordance with this Agreement, and have also assumed Seller's obligations under any and all written contracts, leases, and agreements with respect to the Utility System described in Exhibit L subject to the exceptions stated in this Agreement.
- (iv) The County shall have performed all the material undertakings required to be performed by it under the terms hereof prior to or at Closing.
- (v) The County shall have furnished to the Seller prior to or at the Closing a written opinion of the County Attorney that, according to the present state of the law in Florida:
 - (1) The County has full power and authority to purchase the Utility System and to comply with the terms and provisions of the Agreement of Purchase and Sale.
 - (2) The County is not prohibited by law or decree of a court of competent jurisdiction from consummating the transaction contemplated by the Agreement of Purchase and Sale.
 - (3) The Board of County Commissioners of the County has taken all actions and proceedings and adopted all resolutions as necessary to authorize the purchase of the Utility System and the execution of the Agreement of Purchase and Sale.

mechanism for tra erring all contributions—aid-of-construction to the County during the Closing Period for the purpose of legally avoiding the payment of taxes on such contributions for the ultimate benefit of the consumer.

- assumes rate-making and regulatory authority over the Utility System which is now exercised by the Florida Public Service Commission, either in whole or in part, then the parties agree to make whatever changes to this Agreement are necessary to effectuate the purposes of this Agreement as if the Utility was still regulated by the Florida Public Service Commission. It is the intent of the parties that no change of regulatory or rate-making authority from the Florida Public Service Commission to the County should in any way adversely affect the rates, fees, charges, interest rates and other factors which influence the purchase price of the Utility differently than if the Utility were regulated by the Florida Public Service Commission.
 - 10. Conditions Precedent to Closing.
- (a) The obligation of the Seller to close the transaction contemplated by this Agreement is subject to the condition that, at or before the Closing Date:
 - (i) The County shall not be prohibited by law or decree of a court of competent jurisdiction from consummating the transaction.
 - (ii) The Board of County Commissioners of Martin County,
 Florida, shall have taken all actions and proceedings and
 adopted all resolutions or ordinance necessary to authorize the

- (4) The Agreement of Purchase and Sale has been duly executed the County and is a bind g obligation of the County.
- (5) There are no actions, suits or proceedings pending or to the best of counsel's knowledge, threatened against the County that would prevent the operation of the utility System, make ineffective the acquisition of the Purchased Assets or prevent the County from having the ability to close the transaction or pay the Purchase Price of any part thereof at or after the Closing.
- (vi) There is and shall be no material error, misstatement or omission in the representations and warranties of the County.

 (vii) The County shall have performed or complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing.

 (viii) All instruments and documents required to carry out this Agreement or incidental thereto and all other related matters shall have been approved as to form and correctness by the County Attorney.
- (b) The obligation of the County to close the transaction contemplated by this Agreement is subject to the condition that, at or before the Closing Date:
 - (i) There shall not be pending or threatened on the Closing

 Date any action or proceeding which will prevent the operation

 of the Water and Sewer System, make ineffective the acquisition

 of the Purchased Assets or prevent the County from having the

 ability to close the transaction or pay the Purchase Price and

 any additional payment or part thereof at or after the Closing.

- pay the Purchase Price is contingent upon the County being able to obtain financing to make the purchase described herein. The County shall make a good faith and diligent effort to obtain such financing in order to close the transaction pursuant to this Agreement. Seller or its assigns shall have the right, at Seller's option, to accept bonds in lieu of cash in satisfaction of the purchase price payment provided for herein. The interest rate on such bonds accepted by Seller shall be as requested by Seller, provided that such interest rate shall not exceed the rate allowed by Florida Law without resort to administrative appeal.
- (iii) The Seller shall have furnished to the County a written opinion of counsel for the Seller, to the effect that:
 - (1) The Seller is a validly existing corporation in good standing under the laws of the State of Florida;
 - (2) The Seller is legally authorized to carry on its utility business under the laws of the State of Florida;
 - (3) This Agreement has been duly executed and delivered by the Seller and is a binding obligation of the Seller;
 - (4) The Seller is not limited by law or decree of a court of competent jurisdiction from consummating the transaction contemplated by this Agreement; and
 - (5) There are no actions, suits or proceedings pending or, to the best of counsel's knowledge, threatened against the Seller affecting the Utility System or affecting the ability of the Seller to transfer the Utility System at law or in equity before any federal, state, county, municipal or government court, department, commission, board, bureau,

agency operation permits applicable to the Utility System.

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- (c) In the event either party does not satisfy the conditions required of it prior to closing, the other party may, at its option, waive the condition and proceed to close, agree to an extension of the Closing Date to allow time to satisfy the condition, or terminate the Agreement and if a breach has occurred, exercise its rights under paragrah 19 of this Agreement.
 - 11. Title, Title Insurance, Permitted Encumbrances.
- Title The Seller shall by statutory warranty deed convey to the County on the Closing Date fee simple title to the real property described in Exhibit A to this Agreement and any additions or improvements thereto ("Property"). Ninety (90) days prior to the Closing Date, Seller shall provide the County a title insurance commitment, (ALTA 1970, Form B) issued by a title insurer designated by the County, insuring the County's interest and setting forth as exceptions only those matters permitted herein, the standard exceptions contained in the ALTA-Form B policy and such other title exceptions as the County may now or hereafter agree to take title subject to (collectively, "Permitted Exceptions"). In the event the title commitment reveals any additional exceptions which render title unmarketable, after written notice from the County specifying the matters that render title unmarketable, which notice shall be given within twenty (20) days from receipt of the title commitment, Seller shall have sixty (60) days to remove the additional exceptions with reasonable effort, and any efforts by the Seller to remove any defect shall not be an admission that any such defect is a valid title defect to Property. If the Seller fails to remove any

- execute an Assignment and Assumption of Agree onts substantially in the form attached hereto as Exhibit U.
- (v) The Seller shall deliver to County, by Warranty Deed, clear title to the property described in Exhibit "A", subject to the Permitted Exceptions provided for herein.
- (vi) The Seller shall pay all documentary stamps, if required, on the deed of conveyance of the real estate included in the Purchased Assets.
- (vii) The Seller shall pay over to the County, in cash or acceptable check, all deposits on customers' accounts in existence on the Closing Date, and shall deliver to the County a Deposit Indemnification Agreement substantially in the form attached hereto as Exhibit Q.
- (viii) The County shall pay all recording charges, other than those required to clear title to the Purchased Assets.
- (ix) The Seller and the County shall prorate the real property taxes on the Purchased Assets; provided, however, that if the Closing Date occurs prior to receipt by the Seller of the tax bills for the Purchased Assets for the tax fiscal year in which the Closing occurs, such taxes shall be prorated based on taxes for the last year in which a tax bill is available. Upon receipt of the actual tax bill for the year during which the Closing occurs there shall be a reproration based upon the actual taxes. Prorations shall be based on the maximum allowable discount.
- (x) The Seller shall pay any State sales taxes required of this transaction.
 - (xi) Insurance on the Utility System shall be cancelled by the

- (xii) The Seller and the County shall follow the procedure described in Paragraph 9(d) hereof with respect to customer accounts receivable for unpaid water and sewer service as of the Closing Date.
- (xii) Each party shall pay its own legal, accounting, engineering, surveying and other costs incurred in connection with this transaction, except as expressly provided otherwise herein.
- 13 <u>Interim Operation of Utility System.</u> During the Closing Period, the Seller agrees to maintain and operate the Utility System in a normal, reasonable manner, and the Seller agrees that during such time period the Seller will be responsible for any damage to the Utility System, other than normal wear and tear.
- 14. Other Documents and Further Assurances. The parties agree that at the Closing, or at any time thereafter, each party will upon the request of the other party, execute and deliver such other documents and instruments, and such other further assurances as reasonably may be required by the other to carry out the intent of this Agreement.
- 15. Access to Records. During the Closing Period, the County shall be entitled, during Seller's normal business hours, to have access to such records, books and files of the Seller as may be necessary to set up its books and records in order to facilitate the commencement of its operation of the Utility System.
- 16. <u>Notices.</u> All notices required pursuant to this Agreement shall be properly given if mailed postage paid by United States Mail addressed to the party to which notice is to be given at the

Martin Downs Ut ties, Inc.

With copies to:

Herbert L. Gildan, Esq. P.O. Box 3704 West Palm Beach, Fl. 33402

Michael H. Olenick, Esq. 900 E. Ocean Blud., Suite 120 Stuart, Florida 33494

As to County:

Mr. Robert H. Oldland
Administrator for Martin County
Martin County Administration Building
50 Kindred Street
Stuart, Florida 33497

With copies to:

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Martin County
50 Kindred Street
Stuart, Florida 33497
Attn: Chairman, County Commission

Noreen S. Dreyer County Attorney 50 Kindred Street Stuart, Florida 33497

- 17. Assignability. This Agreement shall not be assignable by either party without the written consent of the other; provided, however, that the Seller may assign this Agreement to an affiliate entity or in connection with a sale, transfer or reorganization of part or all of its remaining businesses which it controls directly or through subsidiary companies or partnerships.
- 18. Entire Agreement. This Agreement contains the entire agreement between the parties. It is expressly agreed by and between the parties hereto that there are no verbal or written representations, warranties, understandings, conditions, agreements or promises pertaining to the subject matter of this Agreement not

neither this Agr ent nor any of the terms rovisions, representations or warranties or covenants herein contained, can be modified, changed, amended, terminated, superseded, waived or extended except by appropriate written instrument duly executed by the parties hereto.

- 19. <u>Breach</u>. Upon breach of this Agreement by either party, and if such breach has not been cured after sixty (60) days written notice of breach has been given to the breaching party, the breaching party shall pay the reasonable costs, damages and expenses incurred by the other party on account of such breach, not to exceed an aggregate of one million (\$1,000,000) dollars. In addition, the non-breaching party shall have the right to seek specific enforcement of the terms and conditions of this Agreement.
- 20. <u>Headings and Captions</u>. The headings or captions appearing before each paragraph of this Agreement are for convenience and reference only, and do not form a part hereof, and in no way modify, interpret or construe the intent of the parties or affect any of the provisions of this Agreement.
- 21. Severability of Invalid Provisions. If any one or more of the covenants, agreements or provisions of this Agreement shall be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void, and shall be deemed separable from the remaining covenants, agreements or provisions, and, to the extent that the transaciton contemplated in this Agreement is not materially affected thereby,

- provisions of this greement.
- 22. <u>Benefit</u>. All the terms of this Agreement shall be binding upon and shall inure to the benefit of all parties hereto and their legal representatives, successors and permitted assigns.
- 23. Prior Agreements Superseded. This Agreement shall constitute the entire Agreement between the parties and shall supersede all prior negotiations, writings, agreements or other understandings between them regarding this Agreement. Any amendment of this Agreement must be made pursuant to written instrument signed by both parties hereto.
- 24. Third Parties. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons or entities other than the parties hereto and their respective legal representatives, successors or permitted assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party of this Agreement.
- 25. <u>Time of the Essence</u>. Time is of the essence as to all matters agreed herein by the parties.
- 26. <u>Contract Recordable.</u> This Agreement, or a memorandum referring to this Agreement, with the legal description provided in Exhibit "A" hereto, may be recorded in the Public Records of Martin County, Florida by either party after execution.
- 27. Governing Law and Venue. This Agreement and the rights and obligations of the parties hereto shall be governed by and interpreted and determined in accordance with the laws of the State

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be in Martin Count: Florida, and each party beby waives whatever their respective rights may have been in the selection of venue.

IN WITNESS WHEREOF, the Seller and the County have caused this Agreement to be executed as of the date and year first above written.

Signed, sealed and delivered in the presence of:

MARTIN DOWNS UTILITIES, INC.

any an connection nerewith shall

Witness

Witness

President

SECRETARY

STATE OF FLORIDA:

I HEREBY CERTIFY, that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Peter D. Command and Bernton well known to me to be the President and Service and respectively of the corporation in whose name the foregoing of instrument was executed, and that the same as such officer(s) of such corporation freely and voluntarily under authority duly vested in There by said corporation, and that the seal affixed thereto is the true corporate seal of said corporation.

WITNESS my hand and official seal this 14 day of June.

Margard Catre Notary Public

My Commission expires:
Notary Public, State Of Florida At Large
My Commission Expires Aug. 27, 1990
Section in Section Institute Company of America

ATTEST:

BOARD OF COUNTY COMMISSIONERS MARTIN COUNTY, FLORIDA

By:

CHAIRMAN

APPROVED AS TO FORM AND CORRECTNESS:

By: Kinde R. Mc Conr

Assistant COUNTY ATTORNEY

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding made and entered into this 27th day of April, 1993, by and between Martin County, a political subdivision of the State of Florida, (hereinafter referred to as the "County") and Martin Downs Utilities, Inc., a Florida corporation, (hereinafter referred to as the "Utility").

WITNESSETH:

WHEREAS, on May 26, 1987 the County and the Utility entered into an Agreement of Purchase and Sale (hereinafter referred to as the "Agreement") for the County's purchase of the Utility's assets; and

WHEREAS, the Agreement set forth terms and conditions which were to be satisfied on or before closing which was to occur on or before May 26, 1994; and

WHEREAS, the Utility had the option to accelerate the closing date by giving the County written notice to do so which it did on March 1, 1992; and

WHEREAS, since the notice to accelerate the parties have been working to determine the purchase price per the terms set forth in the Agreement; and

WHEREAS, in addition to the purchase price determination the parties have been trying to settle all other outstanding issues; and

WHEREAS, the parties have reached agreement on the purchase price formula and the settlement of all other issues; and

WHEREAS, the parties will attempt to close the transaction as near to July 15, 1993 as is practical with the understanding that slight delays may occur as the closing date draws near.

NOW, THEREFORE, in accordance with the mutual covenants hereinafter contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

- 1.0 <u>RECITALS</u>. The recitals above are true and correct and are hereby incorporated into and made a part hereof.
- 2.0 <u>CLOSING DATE</u>. Both parties agree to use best efforts to close this transaction on July 15, 1993 or as near to that date as is practical. Both parties understand that this is a multi-part transaction that requires the coordination of

Martin Downs Utility Acquisition Memorandum of Understanding Fanal Version 1.3 - April 27, 1993



many parties and it is possible that the closing date may have to be changed to accommodate a change in circumstances.

- 3.0 <u>TERMINATION OF MEMORANDUM OF UNDERSTANDING</u>. This Memorandum may be terminated at any time by the mutual written consent of the parties or it shall automatically terminate if the closing is not completed on or before September 30, 1993.
- determined by "capitalizing the Net Income of the Utility System at the then prevailing water and sewer revenue bond interest rate, with 110% debt coverage, . . . [and] the bond repayment period used shall be thirty (30) years. . . . 'Net Income' shall mean the Operating Income during the 12 month period preceding the date of determining the Purchase Price, adjusted to annualize revenue received from new connections added during said 12 month period, less estimated Operating Expenses during the 12 month period following acquisition of the Utility System by the County." For purposes of the foregoing, the following definitions shall apply:
 - Relevant 12 Month Period. The 12 month period to be used to calculate Operating Income will be June 1, 1992 May 31, 1993. If the closing occurs after August 15, 1993 but before September 30, 1993, then the 12 month period to be used to calculate Operating Income will be July 1, 1992 June 30, 1993.
 - 4.2 Operating Income. Operating Income will be calculated by adding the following components:
 - Water and Wastewater Service Charges. Gross 4.2.1 revenues for water and wastewater service will be calculated on a monthly basis for the relevant 12 month period. The gross revenue number for each month will then be divided by the average ERCs connected for that month. The average ERC number will be calculated by taking the number of ERCs connected as of the 1st and adding to it the number of ERCs connected as of the last day of the month and dividing by 2. This produces an average dollar amount for water and wastewater service per ERC for each month. The relevant 12 month period monthly averages will then be totaled in order to produce an average annual dollar amount for water and wastewater service generated per ERC. The average annual dollar amount per ERC for water and wastewater service will be multiplied by the

Marun Downs Utility Acquisition Memorandum of Understanding Final Version 1.3 - April 27, 1993 respective number of ERCs connected as of the last day of the relevant 12 month period. An ERC shall be considered connected when the meter is installed, service is available, and the ERC is obligated to pay base facility charges plus usage charges if applicable.

- 4.2.2 Meter Fees and Miscellaneous Revenues. The actual fees and revenues collected for the relevant 12 month period will be the number used.
- Guaranteed Revenues. The number of ERCs 4.2.3 reserved for water service and ERCs reserved for wastewater service will be determined by adding up the reservations represented by Developers Agreements executed on or before the last day of the relevant 12 month period. The annual revenue attributable to guaranteed revenues shall be calculated by multiplying the number of ERCs reserved for water service by Seventy One and 04/100 Dollars (\$71.04) per ERC and the number of ERCs reserved for wastewater service by Fifty Six and 40/100 Dollars (\$56.40) per ERC. The guaranteed revenues shall be secured in accordance with the provisions set forth in Section 5.0. Developer Agreements entered into by either party after the last day of the relevant 12 month period will not be counted in calculating Operating Income.
- 4.2.4 Bond Reserve Account Interest. The interest earnings generated by the bond reserve account will be counted as Operating Income and will be calculated as follows:

The principal amount to be deposited into the bond reserve account and the interest earnings thereon will be determined by solving the following equation:

(n + yi)/1.10 = DS

where

n = net operating income exclusive
 of reserve account earnings

y = reserve account funding amount

i = net interest rate on bonds
DS= annual debt service on the

bonds

and DS = y +/- 1%

and capitalizing the amount derived as DS over 30 years at prevailing interest rates at the time of pricing the bonds.

- 4.3 Operating Expenses. Operating Expenses will be calculated by adding the following components:
 - 4.3.1 Operations and Maintenance Expenses.
 For purposes of calculating the Purchase Price the parties agree that the County's operational and maintenance expenses, which includes, but is not limited to, the cost of purchasing and installing meters and the County's legal, administrative, accounting, and other intraservice expenses, will be One Million One Hundred Eighty Six Thousand and no/100 Dollars (\$ 1,186,000).
 - 4.3.2 Renewal and Replacement Reserve Account.
 The renewal and replacement fund will be calculated by multiplying the Operating Income number derived according to Section 4.2 by Five percent (5%).

5.0 SECURITY FOR GUARANTEED REVENUES

5.1 Amount and Form of Security. The amount of guaranteed revenues that must be secured will be determined by taking the guaranteed revenue number generated in Section 4.2.3 and subtracting the amount of guaranteed revenues that would have been generated by the number of reserved ERCs that have converted to retail ERCs during the period between the last day of the relevant 12 month period and the closing date. One Hundred percent (100%) of this guaranteed revenue amount will be secured by AA or AAA rated investment contracts for a period of ten (10) years subject to the escrow release provisions set forth in Section 5.2. reason for the security is to ensure that the quaranteed revenues counted towards Operating Income materialize even if one or more developers default. The specific details of the investment contracts will be worked out and mutually agreed to by the County's financial advisor, Kevin Mulshine and the Utility's financial advisor, Susan Weil. The escrow agreement associated with the guaranteed revenue security will be drafted by the County's Bond Counsel, Robert Freeman,

and subject to the review and approval of the Utility's counsel.

5.2 Release of Security.

- Semi-Annual Pledge of Security. There will 5.2.1 be a semi-annual accounting which will determine the amount of guaranteed revenues paid during the given period. All of the security pledged for a given period will be released at the end of that period if all guaranteed revenues counted towards Operating Income materialize by the end of that period. If there is a shortfall of guaranteed revenues in any period in which there is security pledged, then the security will be the first source of funds tapped to make up the shortfall. Guaranteed revenues generated by developer agreements executed after the last day of the relevant 12 month period will not be used to make up any shortfall in the guaranteed revenues pledged pursuant to Section 4.2.3.
- Conversion Factor For a Reserved ERC That 5.2.2 Becomes a Retail ERC. In addition to the semi-annual release of security outlined in Section 5.2.1, there will be a reduction in the amount of security required for subsequent periods based on the number of reserved ERCs that convert to retail ERCs during the previous six month period. A reserved ERC will be considered converted to a retail ERC when a meter is installed and the account becomes obligated to pay base facility and usage charges if applicable. For each ERC converted the annual amount of guaranteed revenues which must be secured for subsequent periods will be reduced by Three Hundred Fifty and no/100 Dollars (\$350.00).
- 6.0 BOND RESERVE ACCOUNT. The principal and interest of the bond reserve account established pursuant to Section 4.(2)(i) of the Agreement will be owned by the County. Section 9(m) of the Agreement which refunded the principal of the bond reserve account to the Utility upon full payment of the bonds is hereby superseded and no longer in effect. The Utility acknowledges and agrees that it has no claim on or interest in the principal or interest of the bond reserve account other than to have the interest generated by such an

account counted towards the Operating Income calculation.

- ENGINEERING ISSUES. The parties acknowledge and agree that, 7.0 as of the date of this Memorandum, there are no unresolved engineering matters that would pose an impediment to closing this transaction and that the property, plant and all equipment included in the Purchased Assets, as that term is defined in the Agreement, are in good, operable and reasonably acceptable condition. It is further understood, however, that there were several engineering matters that were reportedly resolved by the Utility constructing or repairing certain facilities and that prior to closing it will be necessary for the County's consulting engineer to field verify the work. Given that there may be unforseen engineering matters that need to be addressed by the County after closing, the Utility agrees, as part of the settlement of all major issues, to establish a pre-funded contingency fund, as set forth in Section 8.0, that may be used by the County to address such matters.
- B.0 PRE-FUNDED CONTINGENCY FUND. In recognition that there may be unforseen engineering and operational issues that will need to be addressed by the County subsequent to the closing, the Utility agrees to allow the County to deduct, over and above the deducts enumerated in Sections 4.(2)(i) (viii) of the Agreement, an additional Three Hundred Thousand and no/100 Dollars (\$300,000) from the gross bond amount to be used by the County at any time and for any purpose. This fund will not be earmarked for any specific item, deficiency, or program and will not be an escrow account and the Utility will have no claim or right to the fund.
- CAPITAL FACILITY CHARGES. The County understands and the 9.0 Utility acknowledges that all facility expansions required to satisfy or extinguish all developer agreements executed by the Utility are under construction and are planned to be completed prior to closing and, therefore, there will be no Capital Facility Charges to be transferred to the County pursuant to Section 9.(c) of the Agreement. In the event any of the facility expansions under construction are not completed prior to closing, then there shall be an escrow account established in an amount determined by the County's consulting engineer as the reasonable amount necessary to complete the work. Upon the completion of the work and the final payment of all claims related to the work, all remaining monies in the escrow account shall be paid to the Utility within Thirty (30) days. This escrow account is in addition to and totally separate from the pre-funded contingency fund described in Section 8.0.

Martin Downs Utility Acquisition Memorandum of Understanding Final Version 1.3 - April 27, 1993 10.0 SCOPE OF THE MEMORANDUM OF UNDERSTANDING. The intent of this Memorandum is to memorialize in writing the specifics agreed to by both parties in an effort to settle all differences of opinion related to the purchase price determination and related issues. It is intended to provide a more concrete framework for arriving at a purchase price and closing than was originally provided for in the Agreement of Purchase and Sale. It is not intended to identify and address each and every issue that may arise during the period leading up to the closing date. Both parties acknowledge this and agree to work out any differences of opinion that arise prior to closing within the spirit and intent of this Memorandum.

11.0 AGREED TO FOR SETTLEMENT PURPOSES.

- 11.1 Effect on Litigation or Arbitration. Both parties acknowledge and agree that this Memorandum is entered into in an effort to settle and close this transaction without having to resort to litigation or arbitration. In the event this transaction fails to close because it is terminated pursuant to Section 3.0, and the parties ultimately resolve this transaction through litigation or arbitration, then nothing herein shall be used by either party during the litigation or arbitration as evidencing an intent by the other party as to its position on any issue.
- 11.2 Enforceability. Notwithstanding the limitations set forth in Section 11.1, either party may enforce the terms of this Memorandum if the other party fails to perform, comply, or abide with its terms. The prevailing party in such an enforcement action shall be entitled to recover reasonable attorney's fees, court costs and all expenses even if not taxable as court costs including, without limitation, all such fees, costs and expenses incident to appeals, in addition to the relief granted pursuant to Section 19 of the Agreement. The Sixty (60) day period to cure a breach allowed for in Section 19 of the Agreement shall not apply to this Memorandum.
- 11.3 Choice of Law and Venue. This Memorandum shall be governed by the laws of the State of Florida and any and all legal action instituted because of this Memorandum shall be instituted in Martin County.
- 12.0 <u>CAPTIONS</u>. Captions in this Memorandum are included for convenience only and are not to be considered in any

Marum Downs Utility Acquisition Memorandum of Understanding Final Version 1.3 - April 27, 1993

construction or interpretation of this Memorandum or any of its provisions. 13.0 EFFECT ON PURCHASE AND SALE AGREEMENT. 13.1 Full Force and Effect. All terms and conditions of the Agreement of Purchase and Sale not specifically

- deleted, superseded, or amended by this Memorandum shall remain in full force and effect.
- 13.2 Deadlines Not Strictly Enforced. Notwithstanding Section 13.1, both parties understand and agree that strict enforcement of the deadlines set forth in the Agreement are not practical because of the protracted negotiations. Therefore, both parties agree that each shall have a reasonable time in which to perform the tasks set forth in the Agreement and that strict compliance with the Agreement's deadlines is hereby waived to the extent that such waiver does not unreasonably delay the proposed July 15, 1993 closing date.
- 14.0 RECEIVABLES AT CLOSING. The second and third paragraphs of Section 9(d) of the Agreement, except for the last sentence of the third paragraph, are hereby deleted and the following provision shall apply:

Sometime within the two (2) week period prior to the closing date the Utility and the County shall jointly read the meter for each customer and the Utility shall send a bill to each customer based on such meter readings with the notation on the bill that the amount due is payable to the County. The County shall pay to the Utility at closing an amount equal to One Hundred percent (100%) of the value of such bills, including any amounts due under previous bills. All monies received by the County as a result of such billing shall be the County's property.

15.0 EFFORT TO MINIMIZE DEDUCTS. The County will use reasonable efforts to minimize the amount of the deducts allowed pursuant to Section 4.(2)(i)-(viii) of the Agreement and will work with the Utility's financial advisor to minimize the amount of such deducts.

(END OF PAGE)

IN WITNESS WHEREOF, the parties hereto have accepted, made, and executed this Memorandum of Understanding upon the terms and conditions above stated on the date first written above.

WITNESS V. A. A. dansan

MARTIN DOWNS UTILITIES, INC.

BY: Neviel L. Frunta

David R. Giunta President

(PRINT NAME AND TITLE)

ATTEST:

MARSHA STILLER, CLERK

BOARD OF COUNTY COMMISSIONERS, MARTIN COUNTY

JEFF KRAUSKOPF, CHAIRMAN

APPROVED AS TO FORM AND CORRECTNESS:

JOHNATHAN A. FERGUSON ASSISTANT COUNTY ATTORNEY

FLORIDA PUBLIC SERVICE COMMISSION FOR THE PERIOD 1/1/93 TO 8/12/93

W5 161 MARTIN DOWNS UTILITIES, INC. PO BOX 620 PALM CITY, FLORIDA 34990 # 343W Florida Public Service Commission Certificates WATER OPERATING REVENUES: \$0 1. Unmetered Water Revnue (460) MEASURED WATER REVENUE 697,840 2. Residential Revenues (461.1) 104 479 3. Commercial Revenues (461.2) 0 4. Industrial Revenues (461.3) Q 5. Public Authorities (461.4) 0 6. Multiple Family Dwelling (461.5) \$802,319 7. TOTAL METERED SALES FIRE PROTECTION REVENUES 0 B. Public Fire Protection (462.1) 0 9. Private Fire Protection (462.2) \$0 10.TOTAL FIRE PROTECTION REVENUE 7.917 11.Other Sales to Public Authorities (464) 5,240 12.Sales to Irrigation Customers (465) 0 13. SALES FOR RESALE (466) 14.Interdepartmental Sales (467) \$815,476 15. TOTAL WATER SALES 131,494 16.Guaranteed Revenues (469) ō 17. Forleited Discounts (470) 4,653 18. Miscellaneous Service Revenues (471) 0 19.Rents From Water Property (472) 0 20.Interdepartmental Rents (473) 0 21.Other Water Revenues (474) \$136,147 22 TOTAL OTHER WATER REVENUES 23.TOTAL WATER OPERATING REVENUES (LINE 15+22) \$951,623 24.LESS: Expense for Purchased Water \$951,623 25.NET WATER OPERATING REVENUES \$42,823 26.Regulatory Assessment Fee Due (4.5% of line 25) \$42,823 27. TOTAL AMOUNT DUE

I, the undersigned owner/officer of the above-names utility, have read the foregoing Under penalties of perjury, I declare that, to the best of my knowledge and belief, the above is a true and correct statement of gross revenues derived from intrastate business for the period indicated.

UTILITY OFFICIAL:

(Signature)

(Date)

David R. Giunta (Name-Please Print) President (Title)

Telephone Number (407)283-9100

F.E.I. No. 59-2095697



WASTERWATER UTILITY REGULATORY ASSESSMENT FEE RETURN FLORIDA PUBLIC SERVICE COMMISSION FOR THE PERIOD 1/1/93 TO 8/12/93

WS 161		
MARTIN DOWNS UTILITIES, INC.		
P.O. BOX 620		
PALM CITY, FLORIDA 34990		
Florida Public Service Commission Certificates	# 3015	
WATERWATER OPERATING REVENUES:		
FLAT-RATE REVENUES	\$0	
1. Residential Revenues (521.1)	<u>Q</u>	
2. Commercial Revenues (521.2)	<u>o</u>	
3. Industrial Revenues (521.3)	<u>o</u>	
4. Public Authorities (521.4)	9 9 9 9	
5 Multiple Family Dwelling (521.5)	0	
6. Other Revenues (521.6)	<u>o</u>	
7. TOTAL FLAT-RATE REVENUES	<u>\$0</u>	
MEASURED REVENUES		
B. Residential Revenues (522.1)	\$673,902	
9. Commercial Revenues (522.2)	98.439	
10. Industrial Revenues (522.3)	<u>o</u>	
11. Public Authorities (522.4)	0	
12.Multiple Family Dwelling (522.5)	<u>o</u>	
13.TOTAL MEASURED REVENUES	\$772,341	
14.Revenues from Public Authorities (523)	<u>6,956</u>	
15.Revnues from Other Systems (524)	12,220	
16.Interdepartmental Revenues(525)	ō	
17.TOTAL	\$791,517	
OTHER WASTEWATER REVENUES		
18. Guaranteed Revnues (530)	\$89,521	
19.Sales of Sludge (531)	<u>o</u>	
20.Forleited Discounts (532)	0	
21.Rents From Wastewater Property (534)	<u>o</u>	
22.Interdepartmental Rent (535)	<u>\$0</u>	
23.Other Wastewater Revenues (536) Miscellaneous Charges	<u>\$4,978</u>	
24.TOTAL OTHER WASTEWATER REVENUES	\$94,499	
25.TOTAL WASTEWATER OPERATING REVENUES	\$886,016	
26.LESS: Expense for Purchased Wastewater		
27.NET WASTEWATER OPERATING REVENUES	\$886,016	
28.Regulatory Assessment Fee Due (4.5% of line 27)		\$39,871 \$39,871
29.TOTAL AMOUNT DUE		

I, the undersigned owner/officer of the above-names utility, have read the foregoing. Under penalties of perjury, I declare that, to the best of my knowledge and belief, the above is a true and correct statement of gross revenues derived from intrastate business for the period indicated.

UTILITY OFFICIAL:

AULIA **AULIA **AULIA **ELUNA*

EURIA*

EURIA*

EURIA*

EURIA*

EURIA*

EURIA

**

David R. Giunta (Name-Please Print)

(Signature)

President (Title)

Telephone Number (407)283-9100

F.E.I. No. 59-2095697