

FLORIDA CITIES WATER COMPANY

For/B. Bayo
PRC

July 27, 1995

Marshall W. Willis, Chief
Bureau of Economic Regulation
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

RE: Docket No. 950387-SU, Application of Florida Cities Water Company, North Ft. Myers Division, Wastewater Operations, for increase in Wastewater Rates in Lee County, Florida

Dear Mr. Willis:

The following is in response to your July 14, 1995 letter to Wayne Schiefelbein of Gatlin, Woods & Carlson requesting additional information for the referenced filing.

- 1) **During the billing audit, staff discovered usage discrepancies for May 1995 (per Utility Cycle 8) - Commercial usage. Recorded as usage for this month is 95,667(T) as compared with other usage during the same year ranging between 5,786(T) and 6,710(T) gallons. Please explain the usage for this month and why it is so high compared to Cycle 8 usage in other months during 1995.**

A meter reading error was found on one commercial account from the May 1995, Cycle 8 readings. The actual commercial usage for that month was 5,667 (T) gallons. The error was discovered and the customer's bill was credited.

- 2) **Similar to (1) above, Residential usage for February 1994 (per utility-Cycle 6), the usage was 16,502 (T) gallons compared with other usage during 1994 ranging between 5,822(T) and 9,048 (T) gallons. Please explain the usage for this month and why it is so high compared to Cycle 6 usage in other months during 1995.**

A meter reading error was found on one residential account from the February, 1994, Cycle 6 readings. The actual residential usage for that month was 6,505 (T) gallons. The error was discovered and the customer's bill was credited.

ACK _____
AFA _____
APP _____
CAF _____
CMU _____
CTR _____
EAG _____
LEG _____
LIN _____
OFC _____
ROB _____
SEC _____
WAS _____
OTL _____

FLORIDA CITIES WATER COMPANY
4837 Swift Road, Suite 100
Sarasota, Florida 34231
P.O. Box 21119 (34276-4119)
Telephone 813/925-3088

DOCUMENT NUMBER-DATE

07200 JUL 28 1995
00315
FPSC-RECORDS/REPORTING

- 3) **Similar to (1) and (2) above, Residential usage for August 1994 (per utility-Cycle 8), the usage was 14,831(T) gallons compared with other usage during 1994 ranging between 6,207(T) and 8,324(T) gallons. Please explain the usage for this month and why it is so high compared to Cycle 8 usage in other months during 1995.**

A meter reading error was found on one residential account from the August 1994, Cycle 8 readings. The actual residential usage for that month was 5,970 (T) gallons. The error was discovered and the customer's bill was credited.

- 4) **Lochmoor Country Club is named as the reuse customer on Schedule E-5, Page 1 of 1 (page 105). Please identify any other reuse customers, if any exist. Also please identify any charges associated with these customers. Is the utility presently providing service to Lochmoor Country Club at no charge?**

Florida Cities Water Company (FCWC) currently only has an agreement with Lochmoor Country Club to accept reclaimed water. No charges have been established to date for providing reuse service although FCWC is requesting approval of reuse charges in this docket. FCWC can not provide reclaimed water to Lochmoor or any reuse customer until the plant improvements associated with FDEP high level disinfection requirements are in place. These improvements are scheduled for completion by Sept. 1, 1995. At that time reclaimed water will be provided to Lochmoor at no charge until an approved rate is established.

- 5) **We note on page 288 of the filing you provide a copy of a memorandum from Jim Bishop regarding a rough draft contract for wastewater reuse at Lochmoor Country Club. Has this contract been finalized? Please provide a copy of the latest version of this contract?**

A copy of the agreement, which was signed on March 3, 1995, is enclosed.

- 6) **Is the Lochmoor Country Club associated in any way with the utility or its management?**

No.

- 7) **Does the utility anticipate any other reuse customers which may be served at some indeterminable time in the future?**

The Reuse Master Plan which was submitted to FDEP in fulfillment of the requirements for the reuse feasibility study identified several potential reuse customer that may be served by Waterway Estates AWTP in the future. These sites include El Rio Golf Course, Orange Grove Blvd. Median, N. Ft. Myers High School, Palm Island Development, Tropic Isles Elementary School and Tropic Terrace Condo Association as

potential reuse customers. FCWC has also met with the City of Cape Coral concerning the potential of supplying them with reclaimed water.

- 8) **Please provide detailed schedules of the estimated revenue requirement associated with the reuse customer. These schedules should include a breakdown of the plant accounts (using Uniform System of Accounts) associated with the provision of the reuse service along with a breakdown of operation and maintenance expenses (using Uniform System of Accounts).**

See attached schedules referencing "response to Question No. 8.

- 9) **Are there any utility assets which will be placed on the Lochmoor Country Club property to provide reuse service? What is the value of these assets? Who will be responsible for the maintenance of these assets?**

Yes, assets equivalent to \$14,992 will be located on Lochmoor Country Club property, this includes 60 ft of 8" reuse main, the float control valve and monitoring wells. FCWC will maintain these assets in accordance with the signed agreement.

- 10) **What plant needed to provide reuse to the Lochmoor Country Club property will be owned by the country club? Who will be responsible for the maintenance of this property?**

All plant providing reclaimed water will be owned and maintained by FCWC. Lochmoor Country Club will own and be responsible for maintenance of their irrigation system.

- 11) **Please describe the additional maintenance required at the treatment plant and in the field, including the Lochmoor Country Club property, as a direct result of the reuse plant additions, force mains, pumps, and the total reuse distribution system.**

Additional plant maintenance will be required with the chlorine facilities, monitoring equipment and reclaimed water pump. Field maintenance at Lochmoor will include maintaining the float valve and ground water monitoring.

- 12) **Schedule E-5, Page 1 of 1, (page 105) states "estimated" gallons per day (thousands) and calculates those gallons as 300. Is there actual usage data for the reuse customer? If so, please provide the usage data for the reuse customer. This "estimated" amount is located on page 287. (Section G). How was this number derived? Why is this number appropriate in the calculation of reclaimed water revenues?**

The irrigation requirements were based upon actual discussions with Lochmoor and the Reuse Master Plan which estimated they could accept approximately 300,000 GPD based upon an irrigation acreage of 81 acres and an irrigation rate of 0.96 in/week. This rate is higher than what is actually being utilized by the Lochmoor since they are located in a reduced threshold area and the permitted annual withdrawal allowed by the South Florida Water Management District is limited to 0.255 MGD. FCWC believes 300,000 GPD is an appropriate number provided the reclaimed water rate remains low. If a higher reclaimed water rate was requested, we could expect Lochmoor to utilize less water. We estimate between 200,000 and 250,000 GPD would be utilized based on past usage.

- 12a) **Has the utility examined data from the DEP, the Water Management District or from Lochmoor Country Club to ascertain the historic withdrawal for irrigation? What was the historic withdrawal for the periods reviewed?**

Recent historic data from the SFWMD indicate a lower withdrawal from Lochmoor than the proposed rate since withdrawal is limited by the SFWMD permit. However, prior to water conservation measures were implemented, SFWMD records show for 1987 and 1988 on an annual average, pumpage from Lochmoor to be 0.233 MGD and 0.333 MGD, respectively for irrigation.

- 13) **How did the utility calculate the reclaimed water rate of \$.13 per 1,000 gallons charge for the reuse customer on Schedule E-5, Page 1 of 1? Why does the utility believe this an appropriate charge?**

The present PSC approved reclaimed water rate for Florida Cities - South Fort Myers was utilized in the calculation. The rate is designed to encourage reuse since the reuse of reclaimed water from the wastewater plant is mandated by Lee County, the SFWMD and the FDEP. Specific Conditions 10a and 10b of the FDEP Construction Permit dated June 2, 1994 (included in the MFRs) indicate that the surface water discharge to the Caloosahatchee River is limited to 1.0 MGD with an exception for wet weather conditions. Therefore, all additional flow must be disposed of by reuse.

- 14) **Provide an explanation as to why the cost associated with this reuse project should not be shared by the water customers of the utility?**

The reuse project has been mandated by various regulatory agencies for the increased effluent disposal capacity at the wastewater plant. Water customers will not benefit in any way from this reuse project since Lochmoor does not utilize potable water from FCWC for irrigation and the irrigation wells will remain the property of Lochmoor for backup purposes.

- 15) **Provide a copy of the Reuse Feasibility Study submitted to the DEP in accordance with Section 403.064, FS?**

A copy of the Master Plan for Potential Reuse for North and South Wastewater Service Areas is enclosed.

- 16) **Did the utility explore any long-term effluent disposal options other than reuse? If so, provide an explanation to support the utility's conclusion that reuse is the best long run alternative?**

Other effluent disposal alternatives were considered. However, the Waterway Estates Wastewater Treatment Plant site is approximately 1.0 acre and surrounded by the Caloosahatchee River, a marina and residential homes. No other type of land application method of effluent disposal other than public access reuse would have been economically feasible. The FDEP indicated that they would not permit an increase in the surface water discharge; therefore, reuse became the only feasible option.

We hope these responses are sufficient in order for you to complete your analysis regarding the referenced filing. However, please feel free to contact Mr. Bob Dick at (941)936-0247 concerning questions 1 through 3, Larry Coel concerning the schedule provided for question 8 and Julie Karleskint in response to the other questions, at this office.

Sincerely,



Julie L. Karleskint, P.E.
Operations Manager

Enclosures

CC: B. Bayo, Div. of Records and Reporting
R. Dick
K. Gatlin
R. Jaeger, Div. of Legal Services

REUSE FACILITIES SCHEDULES

UPIS

Per Work Order 11-94-4649	Account	Amount
Treatment Plant	380	\$62,127
"	380	58,688 Allocated Portion
Outfall Sewer Lines	382	36,663
"	382	51,671
"	382	3,728
"	382	9,629
"	382	8,974
		<u>\$231,480</u>

DEPRECIATION EXPENSE

Account	Amount	1/2 Year	Depr. Rate	Depreciation Expense
380	\$62,127	\$31,064	5.60%	\$1,740
380	58,688	29,344	5.60%	1,643
382	36,663	18,332	3.30%	605
382	51,671	25,836	3.30%	853
382	3,728	1,864	3.30%	62
382	9,629	4,815	3.30%	159
382	8,974	4,487	3.30%	148
	<u>\$231,480</u>			<u>\$5,209</u>

RATE BASE FOR REUSE FACILITIES

Utility Plant In Service	\$231,480
Less: Depreciation	5,209
Rate Base	<u>\$226,271</u>

CALCULATION OF REVENUE REQUIREMENT (and Calculated Rate)	Calculated	Per MFRs	At Current Lee County Rate
A. Rate Base	\$226,271	N/A	N/A
B. Required Rate of Return	9.08%	9.08%	N/A
C. Required Oper. Income (A x B)	\$20,545	N/A	N/A
D. Gross Conversion Factor (MFRs Pg 30)	1.6789	1.6789	N/A
E. Revenue Requirement (C x D)	<u>\$34,494</u>	<u>\$14,235</u>	<u>\$22,995</u>
F. Estimated Gallons (Thousands) of Reuse Per Year	109,500	109,500	109,500
G. Calculated Rate per 1,000 Gallons	<u>\$0.32</u>	<u>\$0.13</u>	<u>\$0.21</u>

DETAIL OF UNITS AND COMPLETION REPORT

Reference: FWC N. Ft. Myers - Wastewater Dkt 950387-34

○ : Reuse Facility Additions

TOTAL 8.88

APR-20-1995 15:49 FWC 00321 FLORIDA CITIES WT CO LEE TO SARASOTA GEN P.03

		CONSTRUCTION PROPERTY UNITS				CONSTRUCTION COST					
PLANT PROP. ACCT.	W/O UNIT REF.	UNIT DESCRIPTION	QUANTITY	UNIT	MATERIAL	LABOR & TRANSPORT	CONTRACT	DIRECT ENG.	OVER-HEAD	TOTAL	UNIT COST
380	01	Modification to liqual. Tank drum screen & platform	1	LS			112,437	11,799	12,476	136,682	136,682.03
	02	Modify BTU No. 1 aeration equip. & recycle pump	1	LS			306,099	32,180	33,888	372,767	372,766.90
	03	Modify sludge holding tank, piping & bridge	1	LS			40,893	4,291	4,518	49,702	49,702.40
	04	Line feed & storage facility	1	LS			204,466	21,433	22,592	248,511	248,510.90
	05	Air handling equip, scration blowers, air system	1	LS			184,019	19,300	20,333	223,649	223,639.70
	06	Recinmated water facil. w/pumps & chlorination facil	1	LS			51,116	5,363	5,648	62,127	62,126.90
	07	Misc. electrical/instrumentation (Reuse in part)	1	LS			333,324	35,184	37,051	407,559	407,558.80
382	08	10" PVC DR - 25 Reuse main	1310	LP			30,165	3,145	3,333	36,643	27.99
	09	8" PVC DR - 25 Reuse main	1307	LP			42,513	4,461	4,697	51,671	39.53
	10	8" DIP (Longspan)	30	LP			3,067	322	339	3,728	124.26
	11	Float Control Valve	1	HA			7,923	831	875	9,629	9,629.40
	12	Monitoring Well (s)	3	HA			7,383	775	816	8,974	2,991.27
		TOTAL THIS PAGE BROUGHT FORWARD FROM SUPPLEMENTAL SUBMIT NO. _____					1,326,023	139,132	146,316	1,611,673	
		TOTAL SERVICES & METERS HYDANTS			XXX	XXX	XXX	XXX	XXX	1,611,673	
		TOTAL COST OF PROJECT			XXX	XXX	XXX	XXX	XXX	1,611,673	
RETIROMENT PROPERTY UNITS											
PLANT PROP. ACCT.	UNIT DESCRIPTION	TAX AREA	INSTALLATION YEAR AND WORK ORDER #	ORIG UNIT COST	QUANTITY	ORIGINAL COST	RETIROMENT COST			SALVAGE VALUE (CR)	NET COST
							MATERIAL	REMOVAL	OVER-HEAD		
							TOTAL				
WORK COMPLETED		CHARGES COMPLETED		DATE CLOSED		BY		CPR POSTING DATE		BY	

x 14.4% =
 58,688 (B)
 14.4% of (A)

● Reuse - Direct 172,792
 ● Reuse - Allocated 58,688 (B)
 # 231,480

to be allocated (A)

RECLAIMED WATER RATES ON PAGE 6

LEE COUNTY RESOLUTION NO. 94-03-215

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, AMENDING WATER AND SEWER SYSTEM CONNECTION FEES AND MISCELLANEOUS SERVICE CHARGES PURSUANT TO THE PROVISION OF LEE COUNTY ORDINANCE NO. 87-3, AS AMENDED, PROVIDING FOR EFFECT UPON ALL PRIOR RATE SCHEDULES; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Lee County, as its governing body, has previously adopted Lee County Ordinance 87-3, establishing procedures for adopting rate adjustments for the Lee County Water and Sewer System; and,

WHEREAS, the connection fees for the Lee County Water System and Sewer System are structured so as to fairly allocate the costs for facility expansion, system improvements, and growth among the customers using that system; and,

WHEREAS, miscellaneous service charges for the Lee County Water System and Sewer System are structured so as to recover the costs of service; and,

WHEREAS, previously, the connection fees and miscellaneous service charges for the Lee County Water System and Sewer System were established in various independent ordinances and resolutions; and,

WHEREAS, pursuant to the provisions of Lee County Ordinance No. 87-3, as amended, the connection fees and miscellaneous service charges for the Lee County Water System and Sewer System are to be incorporated into and adjusted from time to time by means of County Resolution; and,

WHEREAS, it is in the public interest and to the public benefit that this Resolution is adopted thereby revising and clarifying the

Post-It™ brand fax transmittal memo 7671 # of pages 7

To <u>P. BLAOMILLER</u>	From <u>K. YTTTERBERG</u>
Co.	Co.
Dept.	Phone #
Fax #	Fax #

4:30
3-30-94

G. CUSTOMER DEPOSIT

	<u>Water System</u>		<u>Sewer System</u>	
			County	Matlacha
Residential Service				
Metered and Unmetered				
Single-Family	\$ 45.00		\$ 65.00	\$ 32.00
Multi-Family (*) (per Dwelling Unit)	36.00		52.00	32.00
Recreational Vehicle (*) (per Dwelling Unit/Lot)	25.00		35.00	32.00
Commercial Service and All Non-Residential Services				
<u>Meter Size</u>				
5/8"	\$ 45.00		\$ 65.00	32.00
3/4"	67.00		97.00	48.00
1"	115.00		165.00	80.00
1 1/2"	225.00		325.00	159.00
2"	360.00		520.00	255.00
3"	720.00		1,040.00	509.00
4"	1,125.00		1,625.00	796.00
6"	2,250.00		3,250.00	1,592.00
8"	3,600.00		5,200.00	2,547.00
10"	6,525.00		9,425.00	4,616.00

Unmetered commercial and non-residential deposits will be calculated individually based on estimates of wastewater discharges and the above schedule of rates.

(*) The Multi-Family charge is calculated individually based on twice the average or anticipated monthly bill of the customer as estimated by the County.

The above deposit amounts are minimums. Additional deposit amounts may be required in order to secure payment of current bills.

H. RECLAIMED WATER RATES:

All users of the County's reclaimed water system having entered into an agreement for the delivery and use of reclaimed effluent water for such service shall pay the following rates to be phased in over a two fiscal year period. Rates for Fiscal Year 1995 will become effective twelve (12) months from the effective date imposed in Section Five.

	<u>Rate per 1,000 Gallons</u>
Fiscal Year 1994	\$0.17
Fiscal Year 1995	\$0.21



FLORIDA CITIES WATER COMPANY

May 2, 1995

Jim Bishop
Lochmoor Country Club
3911 Orange Grove Boulevard
North Fort Myers, FL 33903

Re: Reuse Agreement

Dear Mr. Bishop:

Enclosed is the signed agreement between Lochmoor Country Club and Florida Cities Water Company (FCWC). The easement has been recorded and the reclaimed water line is complete. The plant is currently being upgraded to meet high level disinfection requirements with construction completion scheduled for October 1, 1995. Upon completion of these improvements, FCWC will be able to supply Lochmoor with reclaimed water.

I have discussed your concerns with metering the reclaimed water at the point of delivery to the irrigation system with our Ft. Myers staff and they are concerned that you will be paying for stormwater as well as reclaimed water into the system. Therefore, since there will be no charge for the reclaimed water until a rate is established and approved by the Public Service Commission, you may wish to wait until reclaimed water is delivered to the golf course before making changes to the contract. At that time, you would be able to determine which method would be most beneficial to the Country Club.

We appreciate your assistance in working with us and should you have any questions or concerns, please contact me.

Sincerely,



Julie L. Karleskint, P.E.
Operations Manager

CC: R. Ytterberg w/enclosure
FDEP - Ft. Myers w/enclosure
SFWMD

RECLAIMED WATER USE AGREEMENT

This Agreement is made and entered into on this 3rd day of March, 1995, between Lakmoor Country Club Resort Enterprises and its assigns and successors in interest, hereinafter referred to as "USER", and Florida Cities Water Company, hereinafter referred to as "UTILITY".

WHEREAS, UTILITY owns and operates the Waterway Estates Advanced Wastewater Treatment Plant, and said plant is to be permitted to provide treated wastewater effluent for public access irrigation by the Florida Department of Environmental Protection; and

WHEREAS, USER is owner of golf course described in Exhibit "A" (hereinafter referred to as "USER'S PROPERTY") and is desirous of obtaining reclaimed water for irrigation of same.

NOW, THEREFORE, in consideration of the premises of undertakings and covenants set out hereinafter, USER and UTILITY hereby agree as follows:

1. DEFINITIONS

1.1 Reclaimed Water - Refers to wastewater treatment plant effluent which conforms to the requirements of all federal, state and local regulations.

1.2 Regulatory Agencies - Refers to all agencies having jurisdiction over wastewater treatment, disposal, use of reclaimed water for public access irrigation, rates or general utility matters. Agencies include, but are not necessarily limited to, Environmental Protection Agency (EPA); Florida Department of Environmental Protection (FDEP); Florida Public Service Commission (FPSC); and Lee County Board of County Commissioners.

2. CONSTRUCTION

2.1 USER agrees to complete all engineering studies, testing, permit application preparation, design and construction at its own expense for the complete irrigation system. The system is anticipated to include, but not be limited to, a pond of a size appropriate for the temporary storage of reclaimed water and any and all equipment necessary to transfer and utilize the reclaimed water stored in the pond on USER'S PROPERTY.

2.2 UTILITY agrees to execute, as the applicant, all permit applications required by the FDEP or other regulatory agencies relative to this Agreement, subject to UTILITY's prior review and discretionary approval of the permit application, plans, specifications or other information as may be submitted in support of the permit application. UTILITY shall also provide groundwater monitoring facilities as required by regulatory agencies.

2.3 The point(s) of delivery of reclaimed water from the UTILITY to the USER is the outlet end of the reclaimed water main into the USER's pond. This point will be used to separate the UTILITY-owned system from the USER-owned system, at its expense, the UTILITY shall own, operate and maintain the reclaimed water distribution system upstream of the point(s) of delivery. At its expense, the USER shall own, operate and maintain all works downstream of the point(s) of delivery.

3. VOLUME OF WATER AND DELIVERY SCHEDULE

3.1 The UTILITY will deliver reclaimed water and the USER shall accept an annual average daily flow of approximately 300,000 GPD in approximately equal weekly quantities (referred to as a weekly allocation"). This quantity may be reduced should wet weather conditions prevail and USER can not accept said amount. The UTILITY shall install appropriate meter(s) at the point(s) of delivery so that the volume of reclaimed water delivered can be measured.

3.2 The UTILITY shall supply the USER 300,000 Gallons on an annual average daily basis pursuant to the terms of this agreement.

4. OPERATIONAL RESPONSIBILITIES

4.1 It shall be the responsibility of the UTILITY to take periodic samples from the groundwater monitoring wells located on USER'S PROPERTY and any other monitoring as may be required by a regulatory agency.

4.2 UTILITY has the right to terminate delivery of reclaimed water to USER at any time that the reclaimed water is of unacceptable quality or continuation of delivery would interfere with UTILITY's treatment process, UTILITY is requested by a regulatory agency to cease delivery, USER is in noncompliance with permits or if contaminants are detected in groundwater monitoring wells. UTILITY shall maintain continuous monitoring of reclaimed water at its wastewater treatment plant in accordance with FDEP regulations. An automatic control valve shall be installed and maintained by the UTILITY at the treatment plant to insure that only water of acceptable quality is sent to the USER. All reclaimed water delivered under this Agreement shall conform to the applicable water quality standards specified in Florida Administrative Code (FAC) Chapter 62-610, Part III: Reuse; Slow-Rate Land Application Systems, Public Access Areas, Residential Irrigation and Edible Crops and the permit issued by the FDEP pursuant thereto reclaimed water. It shall also be the UTILITY's responsibility to discontinue delivery to USER as soon as practical upon becoming aware of any circumstances which results in the delivery of reclaimed water not meeting said standards.

4.3 It is the responsibility of USER to utilize the reclaimed water for the intended purpose of irrigation of said property and to maintain irrigation equipment and appurtenances and ponds.

4.4 UTILITY shall in no way be responsible for any of USER'S equipment located either on UTILITY'S property or USER'S PROPERTY.

4.5 If relocation of USER'S equipment located on UTILITY'S property becomes necessary, USER shall be responsible for the cost of design, replacement and/or relocation of USER'S equipment as may be reasonably requested by UTILITY. UTILITY shall only make such request if circumstances necessitate the relocation of the equipment. UTILITY shall use all reasonable efforts to accommodate USER'S equipment.

4.6 The USER shall be responsible for erecting and maintaining signs upon and around the USER'S PROPERTY in conformance with all applicable regulations. The sign shall designate that non-potable reclaimed water is being utilized in the area.

4.7 The USER shall also be responsible for maintaining the appropriate buffer zones in conformance with applicable regulations.

5. CHARGES

For furnishing of the reclaimed water, the USER shall pay the UTILITY at the rates and charges specified in its tariff as approved by the FPSC. The UTILITY'S rate per 1000 gallons may not be changed without prior notice. The UTILITY shall bill the USER monthly. Bills are due and payable when rendered and become delinquent if not paid within twenty (20) days.

6. TERMS OF THE AGREEMENT

6.1 The UTILITY shall deliver and the USER shall accept and use reclaimed water produced at the UTILITY'S wastewater treatment facility. Agreement shall be effective on the date of the execution and for a term of twenty (20) years. The term of this Agreement shall be renewed automatically from year to year beyond the initial twenty year term, unless terminated by either party by written notice not less than one hundred eighty (180) days in advance of the anniversary of the commencement of each renewal.

6.2 If UTILITY or USER fails in their attempt to obtain or renew the necessary authorization or permits from regulatory agencies, this Agreement will be null and void. If, for any reason, the necessary authorization or permits from any regulatory agency are withdrawn, this Agreement becomes null and void.

6.3 The UTILITY and USER agree to negotiate, in good faith, the business terms of this Agreement if either party would sustain a material adverse financial repercussion from same.

7. EASEMENTS

7.1 USER shall grant to the UTILITY all easements for the construction, operating and maintenance of the UTILITY'S reclaimed water system upon USER'S PROPERTY that are necessary for the

00327

delivery of reclaimed water to the delivery point(s). All such easements shall be used exclusively for this purpose. The form of Easement Agreement and the legal description of the property to be served by the easement are incorporated by reference, attached hereto as Exhibit "B", and made a part of this Agreement.

7.2 Upon execution by USER, the Easement Agreement shall be recorded in the appropriate record book in the official records of Lee County, Florida.

8. ACCESS

8.1 The UTILITY shall have the right, at any reasonable time and upon notice to USER in advance, to enter upon those portions of the USER'S PROPERTY necessary to review and inspect the practices of the USER with respect to conditions agreed to herein. Where reasonable, the UTILITY shall give USER advance notice of at least twenty four (24) hours.

8.2 Such entry shall be solely for the purpose of review of the operation of reclaimed water irrigation system, for inspection of UTILITY-owned mains and appurtenances and/or for sampling at any monitoring wells located on the property of the USER. The USER may have a representative accompany the UTILITY's personnel.

9. TERMINATION OR ASSIGNMENT

9.1 Either party has the right to terminate its obligations under this Agreement upon one (1) year advance written notice to the other party, unless said termination complies with the terms of paragraph 6.1.

9.2 Either party shall have the right to terminate this Agreement if performance is prevented by third-party litigation, lack of required permits, inability to fund the project or any other event beyond the control of the party seeking to terminate.

9.3 Either party shall have the right to transfer all or any part of the treatment or distribution facilities owned by it to others and to assign all or any part of its rights and obligations under this Agreement to others who shall be bound by, accept and be responsible for all applicable terms and conditions of this Agreement.

10. EXCUSE FROM PERFORMANCE BY GOVERNMENTAL ACTS

If for any reason during the term of this Agreement, local, state or federal governments or agencies shall fail to issue necessary permits, grant necessary approvals, or shall require any change in the operation of the treatment, transmission and distribution systems or the application and use of reclaimed water, then to the extent that such requirements shall affect the ability of any party to perform any of the terms of this Agreement, the affected party shall be excused from the performance thereof. In such an event, a new Agreement may be negotiated by the parties

hereto in conformity with such permits, approvals, or requirements, provided.

11. EMERGENCY SITUATIONS

11.1 The UTILITY shall not be held liable by the USER for failure to deliver reclaimed water if an emergency situation beyond the control of the UTILITY occurs which prevents delivery of reclaimed water. Emergencies may include but not be limited to:

- a. A lack of reclaimed water due to loss of flow to the treatment plant or due to process failure.
- b. Contamination in the reclaimed water making it unsuitable for irrigation.
- c. Equipment or material failure in the reclaimed water distribution system, including storage and pumping.
- d. An act of God.

11.2 If an emergency situation occurs, the UTILITY shall notify the USER by telephone as soon as reasonably practical. A confirmation letter describing the nature of the emergency and the anticipated duration shall be forwarded by the UTILITY to the USER with five (5) business days.

12. USE OF RECLAIMED WATER: IRRIGATION SYSTEM

12.1 The USER may use reclaimed water delivered by the UTILITY for agricultural, urban irrigation or other purposes in any manner determined by the USER except that use of the reclaimed water shall be consistent with all local, state, and federal regulations.

12.2 The USER shall provide, in a manner approved by the appropriate regulatory agencies, an approved backflow prevention device between the reclaimed water irrigation system and any other irrigation water source(s). The cost of such backflow prevention device(s) and installation shall be borne by the USER, and the complete operation of the device shall be the responsibility of the USER. The USER agrees to identify to the UTILITY all well(s) connected to the irrigation system. The USER may continue to use well(s) and/or lake or pond water source(s) for its irrigation system in accordance with their South Florida Water Management District permit, provided that the two are not operated simultaneously.

13. INDEMNIFICATION

13.1 USER shall save and hold harmless, defend and indemnify UTILITY, its agents, representatives, servants and employees, insofar as it legally may, from all claims costs, penalties, damages and expenses (including attorney's fees) arising out of the following:

- a. Claims related to USER'S construction, erection, location, operation, maintenance, repair, installation, replacement or removal of that part of the system controlled by USER for effluent disposal and reuse;
- b. Claims arising out of USER's negligence or omissions.
- c. Claims or fines for non-compliance with permit conditions solely controlled by USER.
- d. Claims arising out of USER's groundwater or use of reclaimed water, except where such claim is related solely to failure of the reclaimed water provided at the point of delivery to meet water quality standards as provided in Paragraph 4.2, herein.

13.2. UTILITY shall save and hold harmless, defend and indemnify USER, its agents, representatives, servants and employees, from all claims, costs, penalties, damages and expenses (including attorney's fees) arising out of the following:

- a. Claims related to the UTILITY's construction, erection, location, operation, maintenance, repair, installation, replacement or removal of that part of the system controlled by UTILITY for effluent disposal and reuse;
- b. Claims arising out of UTILITY's negligence or omissions.
- c. Claims arising out of UTILITY's providing reclaimed water to the point of delivery which does not meet applicable water quality standards as provided in Paragraph 4.6, herein.

14. DISCLAIMER OF THIRD PARTY BENEFICIARIES

This Agreement is solely for the benefit of the formal parties hereto and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal party hereto.

15. SEVERABILITY

If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained therein are not materially prejudiced and if the intentions of the parties can continue to be effected. To that end, this Agreement is declared to be severable.

16. APPLICABLE LAW

This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

17. NOTICES

Unless designated otherwise from time to time by the applicable party, all notices required or authorized under this Agreement shall be given in writing and shall be served by mail on the parties at the addresses listed below:

UTILITY: Florida Cities Water Company
7401 College Parkway
Ft. Myers, Florida 33907

USER: Lochmoor Country Club
3911 Orange Grove Blvd
N Ft Myers FL 33903

18. EXHIBITS

This Agreement incorporates the following Exhibits which are specifically made a part of this Agreement:

- Exhibit "A" - Property legal description and legal survey
- Exhibit "B" - Reclaimed Water Pipeline Easement Form
- Exhibit "C" - Plans for Point(s) of Delivery
- Exhibit "D" - Certified Title Opinion

19. THIS WRITTEN AGREEMENT with its attached Exhibits constitute the entire Agreement between the parties and has been entered into voluntarily and with independent advice and legal counsel, and has been executed by the authorized representative of each party on the date written above. Modifications to and waivers of the provisions herein shall be made in writing by the parties hereto.

IN WITNESS THEREOF, the parties hereto have caused their respective signature and seals to be affixed hereto, the date and year first above written.

Signed, sealed and delivered in the presence of:

James E. Bishop
[Signature]

By: James E. Bishop "USER"
Name: James E. Bishop
Title: U. President
Company: Resort Enterprises Inc
Address: N. Ft Myers FL 33903

Michael Acosta
[Signature]

By: Michael Acosta "UTILITY"
Name: Michael Acosta
Title: Sr. Vice President
Company: FLORIDA CITIES WATER COMPANY
Address: 4837 Swift Road, Suite 100
Sarasota, Florida 34231

FOR USER

STATE OF FLORIDA)
COUNTY OF LEE)

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the State and County named above, to take acknowledgements, personally appeared James E. Pisher, well known to me to be the Vice President, and he/she acknowledges executing this Agreement freely and voluntarily under authority duly vested in him by said corporation and that the seal affixed hereto is the true corporate seal of said corporation.

WITNESS my hand and official seal in the County and State named above this 3rd day of March, 1995.

(SEAL)

Donna J. Brown
NOTARY PUBLIC
My Commission Expires: _____



DONNA J. BROWN
COMMISSION # CC 356326
EXPIRES MAR 16, 1998
BONDED THRU
ATLANTIC BONDING CO., INC.

FOR UTILITY

STATE OF FLORIDA)
COUNTY OF LEE)

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the State and County named above to take acknowledgements, personally appeared Michael Orsato, well known to me to be the Vice President of FLORIDA CITIES WATER COMPANY, and he/she acknowledges executing this Agreement freely and voluntarily under authority duly vested in him by said corporation and that the seal affixed hereto is the true corporate seal of said corporation.

WITNESS my hand and official seal in the County and State named above this 3rd day of March, 1995.

(SEAL)

Donna J. Brown
NOTARY PUBLIC
My Commission Expires: _____



DONNA J. BROWN
COMMISSION # CC 356326
EXPIRES MAR 16, 1998
BONDED THRU
ATLANTIC BONDING CO., INC.

00332

EXHIBIT "B"

EXCLUSIVE AND PERPETUAL RECLAIMED WATER PIPELINE EASEMENT GRANT 3760410

THIS INDENTURE, made and entered into this 3 day of

March, 1995 between James E. Bishop of Lochmoor Country Club, Resort Enterprises Inc N Ft Myers FL 33903

hereinafter referred to as Grantors; and FLORIDA CITIES WATER COMPANY, 4837 Swift Road, Suite 100, Sarasota, Florida 34231, a FLORIDA corporation, hereinafter referred to as Grantee:

WITNESSETH

- 1. For and in consideration of the sum of One Dollar and other good and valuable consideration, receipt of which is hereby acknowledged, Grantor does hereby grant to the Grantee, its successors and assigns an exclusive and perpetual 20 foot wide permanent easement situated in Lee County, Florida and located and described as shown on the attached plat or legal survey marked Exhibit "A" and as follows:

COMPLETE LEGAL DESCRIPTION HERE OR ATTACHED AS EXHIBIT "A" (Please so state here accordingly)

ALSO SEE ATTACHED LEGAL SURVEY OF THE SAME ABOVE DESCRIBED EASEMENT AS EXHIBIT "A" ATTACHED

Documentary Tax Pd. \$ 70
Marginal Tax Pd.
Notary Public in and for the State of Florida
Notary Public in and for the State of Florida

UK2592 PG1710

RECORD VERIFIED - CHARLIE GREEN, CLERK BY: G. JALWOOD, D.C.

UAC 092 191 / 11

2. Grantee, its successors, appointees and assigns, are granted the right, privilege, and authority to construct, replace, renew and maintain a RECLAIMED WATER LINE, MAIN or FACILITY together with necessary connections, valves, and other appurtenances, to be located on, under, across and through the above described property with the additional right, privilege and authority to remove, replace, repair and enlarge said line, and to trim and remove roots, shrubs, bushes and plants which affect the operation of this said main, line or facility.
3. This 20 foot wide permanent easement will not be limited to any one (1) diameter size, type and/or number of connections to the reclaimed water main for providing reclaimed water service to this and adjacent properties. The area of this 20 foot wide permanent, exclusive and perpetual easement is restricted and reserved for the reclaimed water line, main, or facility, except it may be used for farming, roadways, streets, walkways, fences, or similar uses; however, houses, barns, buildings, patios, carports, garages, warehouses, and other similar type structures may not be ever built on this easement.
4. Title to the Utilities constructed hereunder shall remain in the name of the Grantee, Grantee's successors, appointees and assigns.
5. Grantors covenant to and with Grantee that subject to existing easements, if any, for public highways or roads, railroads, laterals, ditches, pipelines and electrical transmission or distribution lines and telephone and telegraph lines covering the land herein described, Grantors are lawfully seized and possessed of said lands, having good and lawful right and power to sell and convey them, and that they are free and clear of all liens and encumbrances, except as herein stated; and Grantors herewith furnish and attach as Exhibit "D" a Certified Title Opinion from Pavese, Garner, Everfield, Dalton, Harrison, & Jensen, and accordingly, Grantors will forever warrant and defend the title and terms to this said easement and the quiet possession thereof against the lawful claims and demands of all persons whomever.
6. This Agreement shall be binding upon the parties hereto, their successors and assigns.

00334

WITNESSES:

Julie L. Karlsent
[Signature]

GRANTOR OR GRANTORS:

James E. Bishop
Type Name of Owner or Trustee
James E. Bishop
Owner or Trustee sign here
Type Name of Owner or Trustee
Owner or Trustee sign here

UK2592 PG1772

STATE OF FLORIDA
COUNTY OF

Before me personally appeared James E. Bishop,
known to me to be the person described in and who executed the
foregoing instrument, and acknowledged to and before that _____
James E. Bishop executed this said instrument for
purposes therein expressed.

WITNESS my hand and official seal, this 21 day of March

1995.



DONNA J. BROWN
COMMISSION # CC 356326
EXPIRES MAR 16, 1998
BONDED THRU
ATLANTIC BONDING CO., INC.

Donna J. Brown
Notary Public
State of Florida at Large

My Commission expires: _____.

THIS EASEMENT DOCUMENT WAS PREPARED BY THE GRANTOR AND LEGAL
DESCRIPTION AND SURVEY PREPARED BY THE GRANTOR AS DESCRIBED AND
ATTESTED TO.

00335

PAVESE, GARNER, HAVERFIELD, DALTON, HARRISON & JENSEN
ATTORNEYS AND COUNSELORS AT LAW

1233 HENDRY STREET
POST OFFICE DRAWER 1807
FORT MYERS, FLORIDA 33902-1507
(813) 334-2155
FAX (813) 332-2243

4625 SOUTH DEL PRADO BOULEVARD
POST OFFICE BOX 88
CAPE CORAL, FLORIDA 33910-0088
(813) 542-3148
FAX (813) 542-8553

APR 13 1995

PETER J. GRAVINA
BOARD CERTIFIED REAL ESTATE LAWYER
(813) 336-6236

April 10, 1995

PLEASE REPLY TO:
FORT MYERS OFFICE

Mr. Gary King
Florida Cities Water Company
7401 College Parkway
P. O. Box 6459, MM
Fort Myers, FL 33911

Re: Title Opinion

Dear Gary:

We have checked title on the referenced property from 1972 forward, as the cost of additional title information pre 1927 would have been expensive. The information obtained was sufficient to determine that the property was deeded in 1972 to Resort Enterprises, Inc., a Florida corporation, its current owner.

With the exception of the remote possibility that there is a title matter that predates the Lochmoor plat and the referenced conveyance, the title is vested in accordance with the attached title opinion.

Very truly yours,


Peter J. Gravina

PJG:dw
Enclosure

UK2592 PG1773

00336

LAW OFFICES
Pavese, Garner, Haverfield, Dalton, Harrison & Jensen
Fort Myers, Florida

OR2592 Pg 1774

OPINION OF TITLE TO REAL ESTATE RENDERED MARCH 21, 1995

TO FLORIDA CITIES WATER COMPANY

based on ATIDS Search from 1/2/74 through 3/21/95 and Brief Chain from 8/8/72 through 1/2/74 prepared by Attorneys' Title Insurance Fund, Inc., describing the following real estate situate in Lee County, Florida, to-wit:

See Exhibit "A" attached hereto

An examination of said search shows the fee simple title to said real estate to be vested in RESORT ENTERPRISES, INC., a Florida corporation, free and clear of all encumbrances and material defects, excepting, however, the following:

1. Taxes for the year of the effective date of this policy and taxes or special assessments which are not shown as existing liens by the public records.
2. Rights or claims of parties in possession not shown by the public records.
3. Encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey and inspection of the premises.
4. Easements or claims of easements not shown by the public records.
5. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
6. Subject to that certain Mortgage between The Lee County Bank and Resort Enterprises, Inc. bearing the date of July 31, 1972 and recorded in Official Records Book 845 at Page 757, Public Records of Lee County, Florida.
7. Subject to that certain Mortgage between The Lee County Bank and Resort Enterprises, Inc. bearing the date of February 12, 1973 and recorded in Official Records Book 904 at Page 179, Public Records of Lee County, Florida.

00337

8. Subject to those matters shown on the plat for Lochmoor Unit 1, a subdivision, as recorded in Plat Book 28, at page 33, Public Records of Lee County, Florida.
9. Subject to that certain Easement Deed recorded in Official Record Book 953, page 694, Public Records of Lee County, Florida.
10. Subject to those certain Deed Restrictions recorded in Official Record Book 852, page 789, Public Records of Lee County, Florida.
11. Subject to those certain Deed Restrictions recorded in Official Record Book 888, page 48, Public Records of Lee County, Florida.

PAVESE, GARNER, HAVERFIELD,
DALTON, HARRISON & JENSEN

By: 

PETER J. GRAVINA

01/19/76 11/5

95 APR 17 PM 2:59

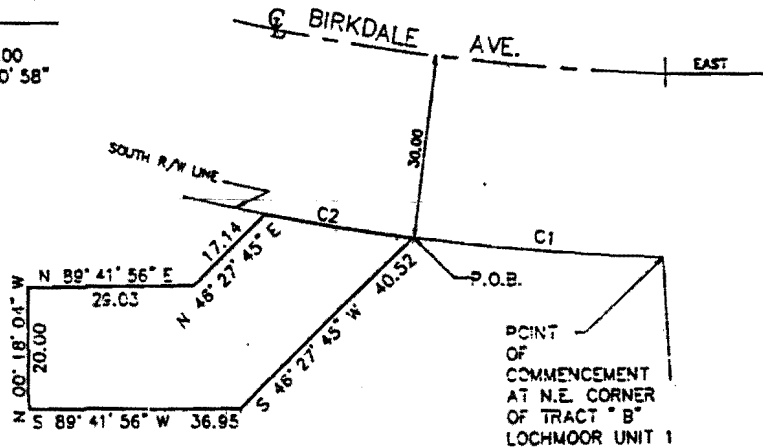
DESCRIPTION: (20' REUSE WATER LINE EASEMENT)

A 20 foot water line easement lying in part of Tract "B" Lochmoor, Unit 1 as recorded in Plat Book 28 at Pages 33 through 37 Office of the Recorder, Lee County, Florida and being more particularly described as follows:

Commencing at the Northeast corner of said Tract "B", said point lying on the South right-of-way line of Birkdale Avenue; thence run Westerly 57.07 feet along said right-of-way line being a curve concave Northeasterly with a radius of 455.00 feet and a delta of 7°11'13" to the point of beginning; thence run S.46°27'45"W. for 40.52 feet; thence run S.89°41'56"W. for 36.95 feet; thence run N.00°18'04"W. for 20.00 feet; thence run N.89°41'56"E. for 29.03 feet; thence run N.46°27'45"E. for 17.14 feet to said South right-of-way line; thence run Easterly 25.27 feet along said South right-of-way line being a curve concave Northeasterly with a radius of 455.00 feet and a delta of 3°10'58" to the point of beginning.

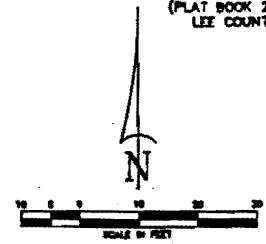
CONTAINS 1,233.37 ± SQ. FT.

C1
ARC=57.07
RADIUS=455.00
DELTA=07° 11' 13"
C2
ARC=25.28
RADIUS=455.00
DELTA=03° 10' 58"



A SKETCH OF
REUSE WATER LINE EASEMENT LYING IN

SECTION 21, TOWNSHIP 44 SOUTH, RANGE 24 EAST
(PLAT BOOK 28, PAGE 37)
LEE COUNTY, FLORIDA



- LEGEND:
- SET 1/2" IRON ROD (CAP #4831)
 - FOUND IRON ROD (FND. I.R.)
 - CONCRETE MONUMENT (C.M.)
 - P.U.E. PUBLIC UTILITY EASEMENT
 - D.E. DRAINAGE EASEMENT
 - CONC. CONCRETE (CONC.)
 - P.R.M. PERMANENT REFERENCE MONUMENT
 - P.C.P. PERMANENT CONTROL POINT
 - (P) AS PER PLAT
 - (D) AS PER DEED
 - (S) AS PER SURVEY
 - (M) AS PER MEASURED
 - Δ DELTA
 - C.B.S. CONCRETE BLOCK STRUCTURE
 - EL ELEVATION
 - FND. FOUND
 - B.M. BENCHMARK
 - C CENTERLINE
 - R/W RIGHT-OF-WAY
 - N/D NAIL & DISK
 - O.R. OFFICIAL RECORDS BOOK
 - A/C AIR CONDITIONER
 - O/H OVERHEAD LINES
 - TYPICAL ELEVATION
- LEGEND: con't
- P.O.B. POINT OF BEGINNING
 - P.C. POINT OF CURVATURE
 - O/H DRILL HOLE
 - N/T NAIL & TINTAB
 - C CURVE NUMBER
 - A ARC OF CURVE
 - R RADIUS OF CURVE
 - P.P. POWER POLE
 - W.M. WATER METER
 - UTS TELEPHONE BOX

- SURVEY NOTES:
- 1: BASIS OF BEARINGS SHOWN HEREON TAKEN FROM THE CENTERLINE OF BIRKDALE AVENUE, ASSUMED TO BEAR EAST
 - 2: FIELD NOTES IN LOCHMOOR UNIT 1
 - 3: SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.
 - 4: THIS CERTIFICATION IS ONLY FOR LANDS DESCRIBED HEREON. IT IS NOT A CERTIFICATION OF TITLE, ZONING OR FREEDOM OF ENCUMBRANCES.
 - 5: THIS SKETCH DOES NOT CONSTITUTE A TITLE OR EASEMENT SEARCH.
 - 6: UNDERGROUND STRUCTURES AND UTILITIES, IF ANY, ARE NOT INCLUDED.
 - 7: REPRODUCTIONS OF THIS DRAWING ARE VOID UNLESS SEALED WITH SIGNERS EMBOSSED SURVEYOR'S SEAL.

THIS SKETCH FOR:
FLORIDA CITIES WATER COMPANY

JOB # 95-147	
SKETCH DATE: 3-10-95	JORGENSEN-HARRIS & ASSOCIATES 2706 SE SANTA BARBARA PLACE CAPE CORAL, FLORIDA PHONE: (813) 772-9939

00339