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March 5, 1998

980341-SU

Ms. Blanca S. Bayó  
Director, Records & Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Application for Transfer of Certificate

Dear Ms. Bayó:

Enclosed for filing on behalf of K.W. Resort Utilities Corporation, are the original and 5 copies of KW Resort Utilities Corporations' Application for Transfer of Certificate.

Very truly yours,

*Rio D. M.*

*Cheryl G. Stuart*

CGS/clp  
Enclosures

Check received with filing and forwarded to Fiscal for deposit. Fiscal to forward a copy of check to RAR with proof of deposit.

Initials of person who forwarded check:

*A.G.*

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

02913 MAR-5 98

FPSC-RECORDS/REPORTING

APPLICATION FOR SALE, ASSIGNMENT OR TRANSFER  
OF CERTIFICATE OR FACILITIES

(Pursuant to Section 367.071, Florida Statutes)

TO: Director, Division of Records and Reporting  
Florida Public Service Commission  
2540 Stumard Oak Blvd.  
Tallahassee, Florida 32399-0850

980341-SU

The undersigned hereby makes application for the sale,  
assignment or transfer of (all or ~~both~~) of Water Certificate No.  
\_\_\_\_\_ and/or Wastewater Certificate No. 168 S or facilities in  
Monroe County, Florida, and submits  
the following information:

PART I APPLICANT INFORMATION

A) The full name (as it appears on the certificate), address  
and telephone number of the applicant:

KW Resort Utilities Corporation

Name of utility

( 305 ) 294-9578

Phone No.

( 305 ) 294-9579

Fax No.

6630 Front Street

Office street address

Stock Island, FL 33040-6050

City

State

Zip Code

c/o Davis Water Analysis - Post Office Box 2125, Key West, FL 33045

Mailing address if different from street address

Internet address if applicable

- B) The name, address and telephone number of the person to contact concerning this application:

Cheryl G. Stuart 850) 222-7500  
Name Phone No.  
Hopping Green Sams & Smith, P.A. Post Office 6526  
Street address  
Tallahassee, FL 32314  
City State Zip Code

- C) The full name (as it will appear on the certificate), address and telephone number of the buyer:

\*KW Resort Utilities Corporation  
Name of utility  
( 305 ) 294-9578 ( 305 ) 294-5979  
Phone No. Fax No.  
6630 Front Street  
Office street address  
Stock Island, Florida 33040-6050  
City State Zip Code  
c/o WS Utility, Inc. 6450 Junior College Road, Key West, FL 33040  
Mailing address if different from street address  
Internet address if applicable

- D) Indicate the organizational character of the buyer: (circle one)

Corporation

Partnership

Sole Proprietorship

Other: \_\_\_\_\_

(specify)

- E) The date and state of incorporation or organization of the buyer:

\* WS Utility, Inc. was incorporated in Florida on January 20, 1998

- F) If the buyer is a corporation, list the names, titles, and addresses of corporate officers and directors. (Use additional sheet if necessary).

William L. Smith, Jr.

President & Director

6450 Junior College Road

Key West, FL 33040

- G) If the buyer is not a corporation, list the names, titles, and addresses of all persons owning an interest in the organization. (Use additional sheet if necessary.)

N/A

**PART II FINANCIAL AND TECHNICAL INFORMATION**

- A) Exhibit 1 - A statement indicating how the transfer is in the public interest, including a summary of the buyer's experience in water and/or wastewater utility operations, a showing of the buyer's financial ability to provide service and a statement that the buyer will fulfill the commitments, obligations and representations of the seller with regard to utility matters.

- B) List the names and locations of other water and/or wastewater utilities owned by the buyer and PSC certificate numbers, if any.

NONE

C) Exhibit 2 - A copy of the contract for sale and all auxiliary or supplemental agreements, which shall include, if applicable:

- (1) Purchase price and terms of payment.
- (2) A list of and the dollar amount of the assets purchased and liabilities assumed or not assumed, including those of nonregulated operations or entities.
- (3) A description of all consideration between the parties, for example, promised salaries, retainer fees, stock, stock options, assumption of obligations.

The contract for sale shall also provide for the disposition, where applicable, of the following:

- (a) Customer deposits and interest thereon;
- (b) Any guaranteed revenue contracts;
- (c) Developer agreements;
- (d) Customer advances;
- (e) Debt of the utility; and
- (f) Leases.

D) Exhibit 3 - A statement regarding the disposition of any outstanding regulatory assessment fees, fines or refunds owed.

E) Exhibit 4 - A statement describing the financing the purchase.

F) Exhibit 5 - A list of all entities upon which the applicant is relying to provide funding to the buyer, and an explanation of the manner and amount of such funding, which shall include their financial statements and copies of any financial agreements with the utility. This requirement shall not apply to any person or entity holding less than 10 percent ownership interest in the utility.

G) Exhibit 6 - The proposed net book value of the system as of the date of the proposed transfer. If rate base (or net book value) has been established previously by this Commission, state the Order No. and date issued. \_\_\_\_\_ Identify all adjustments made to update this rate base (or net book value) to the date of the proposed transfer.

H) Exhibit 7 - A statement setting forth the reasons for the inclusion of an acquisition adjustment, if one is requested. (An acquisition adjustment results when the purchase price of the utility differs from the original cost calculation.)

- I) The full name, address and telephone number of the person who has possession of the books and records of the seller:

Barry Frank (attorney for seller) (305) 577-3210  
Name Phone No.

Weil Gotshal & Manges, LLP at 701 Brickell Avenue, Suite 2100  
Street address

Miami, Florida 33131  
City State Zip Code

- J) Exhibit 8 - If the books and records of the seller are not available for inspection by the Commission or are not adequate for purposes of establishing the net book value of the system, a statement by the buyer that a good faith, extensive effort has been made to obtain such books and records for inspection by the Commission and detailing the steps taken to obtain the books and records.

- K) Exhibit 9 - A statement from the buyer that is has obtained or will obtain copies of all of the federal income tax returns of the seller from the date the utility was first established, or rate base was last established by the Commission or, if the tax returns have not been obtained, a statement from the buyer detailing the steps taken to obtain the returns.

- L) Exhibit 10 - A statement from the buyer that after reasonable investigation, the system being acquired appears to be in satisfactory condition and in compliance with all applicable standards set by the Department of Environmental Protection (DEP)

If the system is in need of repair or improvement, has any outstanding Notice of Violation of any standard set by the DEP or any outstanding consent orders with the DEP, the buyer shall provide a list of the improvements and repairs needed and the approximate cost to make them, a list of the action taken by the utility with regard to the violation, a copy of the Notice of Violation(s), a copy of the consent order and a list of the improvements and repairs consented to and the approximate cost to make them.

### **PART III NOTICE OF ACTUAL APPLICATION**

- A) Exhibit 11 - An affidavit that the notice of actual application was given in accordance with Section 367.045(1)(a), Florida Statutes, and Rule 25-30.030, Florida Administrative Code, by regular mail to the following:

- (1) the governing body of the municipality, county, or counties in which the system or the territory proposed to be served is located;
- (2) the privately owned water and wastewater utilities that hold a certificate granted by the Public Service Commission and that are located within the county in which the utility or the territory proposed to be served is located;
- (3) if any portion of the proposed territory is within one mile of a county boundary, the utility shall notice the privately owned utilities located in the bordering counties and holding a certificate granted by the Commission;
- (4) the regional planning council;
- (5) the Office of Public Counsel;
- (6) the Public Service Commission's Director of Records and Reporting;
- (7) the appropriate regional office of the Department of Environmental Protection; and
- (8) the appropriate water management district.

Copies of the Notice and a list of entities noticed shall accompany the affidavit. THIS MAY BE A LATE-FILED EXHIBIT.

- B) Exhibit 12 - An affidavit that the notice of actual application was given in accordance with Rule 25-30.030, Florida Administrative Code, by regular mail or personal delivery to each customer of the system being transferred. A copy of the Notice shall accompany the affidavit. THIS MAY BE A LATE-FILED EXHIBIT.
- C) Exhibit 13 - Immediately upon completion of publication, an affidavit that the notice of actual application was published once in a newspaper of general circulation in the territory in accordance with Rule 25-30.030, Florida Administrative Code. A copy of the proof of publication shall accompany the affidavit. THIS MAY BE A LATE-FILED EXHIBIT.

**PART IV FILING FEE**

Indicate the filing fee enclosed with the application:

\_\_\_\_\_ (for water) and     X     (for wastewater).

Note: Pursuant to Rule 25-30.020, Florida Administrative Code, the amount of the filing fee as follows:

- (1) For applications in which the utility to be transferred has the capacity to serve up to 500 ERC's, the filing fee shall be \$750.
- ✓(2) For applications in which the utility to be transferred has the capacity to serve from 501 to 2,000 ERC's the filing fee shall be \$1,500.
- (3) For applications in which the utility to be transferred has the capacity to serve from 2,001 ERC's to 4,000 ERC's the filing fee shall be \$2,250.
- (4) For applications in which the utility to be transferred has the capacity to serve more than 4,000 ERC's the filing fee shall be \$3,000.

**PART V OTHER**

- A) Exhibit 14 - Evidence that the utility owns the land where the utility treatment facilities are located. Or, where the utility does not own the land, a copy of the agreement which provides for the long term, continuous use of the land, such as a 99-year lease. The Commission may consider a written easement or other cost-effective alternative.
- B) Exhibit 15 - The original and two copies of sample tariff sheets reflecting the new name of the utility, the existing rates and charges and territorial description of the water and/or wastewater systems. **Sample tariff(s) are attached.**
- C) Exhibit 16 - The utility's current certificate(s) or, if not available, an explanation of the steps the applicant took to obtain the certificate(s).



PART VI AFFIDAVIT

I William L Smith Jr (applicant) do solemnly swear or affirm that the facts stated in the foregoing application and all exhibits attached thereto are true and correct and that said statements of fact thereto constitute a complete statement of the matter to which it relates.

BY:

William L Smith Jr

Applicant's Signature

William L. Smith, Jr., President

Applicant's Name (Typed)

President

Applicant's Title \*

Subscribed and sworn to before me this 4th

of March 19 98.



Barbara C. Sullivan

Notary Public

\* If the applicant is a corporation, the affidavit must be made by the president or other officer authorized by the by-laws of the corporation to act for it. If the applicant is a partnership or association, a member of the organization authorized to make such affidavit shall execute same.

**EXHIBIT 1**

The transfer of the utility will take place through a stock purchase in which WS Utility, Inc. will purchase all of the stock of KW Resort Utilities, Inc. from KW Resort Holdings Corp.

The transfer of the utility is in the public interest because the buyer is interested in continuing the operation of the utility and intends to seek to expand the service territory to serve adjacent properties presently not served by central sewer service.

The buyer does not own any other water and/or wastewater utilities. The buyer presently intends to have Davis Water Analysis continue its day to day operation of the system. In addition, buyer's brother is a Florida-licensed engineer who consults frequently on water/wastewater matters.

Buyer will finance approximately \$600,000 of the purchase through Barnett Bank (or its successor in interest), and use \$210,000 of its own cash to complete the transaction.

KW Resort Utilities, Inc. will continue to fulfill the commitments, obligations and representations of the utility with regard to utility matters.

**EXHIBIT 2**

**The Stock Purchase Agreement between KW Resort Holdings Corp. and  
WS Utility, Inc. is attached.**

CRE/Key West/Utility  
01/15/98

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**STOCK PURCHASE AGREEMENT**

between

**KW RESORT HOLDINGS CORP.**  
a Florida corporation,  
as Seller

and

**WS UTILITY, INC. AND GWENSMITH**  
as Purchaser

Dated as of January 22 1998

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<b>EXHIBIT "D"</b>	List of Other Assets of the Corporation
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**LIST OF SCHEDULES**

- SCHEDULE 11.7**            Confidentiality Agreement
- SCHEDULE 11.8**            Form of Assignment and Assumption Agreement

## STOCK PURCHASE AGREEMENT

THIS STOCK PURCHASE AGREEMENT is made and entered into as of the 22 day of January, 1998 (the "Effective Date"), by and between KW RESORT HOLDINGS CORP., a Florida corporation ("Seller") and WS UTILITY, INC., a Florida corporation ("WS") and GWEN SMITH, an individual ("GS"; WS and GS are sometimes collectively hereinafter referred to as the "Purchaser").

### Statement of Purpose

Seller is the owner of 200 shares of common stock, no par value (the "Shares"), of KW Resort Utilities Corp., a Florida corporation (the "Corporation"), which Shares constitute all of the issued and outstanding capital stock of the Corporation.

Purchaser desires to purchase, and Seller desires to sell, all of the Shares. The purpose of this Agreement is to set forth the terms and conditions upon which Seller has agreed to sell to Purchaser, and Purchaser has agreed to purchase and pay for, the Shares.

NOW, THEREFORE, in consideration of the Statement of Purpose and the mutual agreements contained herein, Seller and Purchaser do hereby agree as follows:

## ARTICLE I.

### DEFINITIONS AND RULES OF CONSTRUCTION.

Section 1.1. Definitions. In addition to the terms defined elsewhere in this Agreement, as used in this Agreement, including any Schedule or Exhibit hereto (unless such Schedule or Exhibit provides for a different definition), the following terms shall have the following meanings:

"Acquisition" means the purchase and sale of the Shares and the other transactions contemplated by this Agreement.

"Affiliate" means any Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the Person specified.

"Agreement" means this Stock Purchase Agreement, together with the Schedules and Exhibits attached hereto.

"Approved Investment" means (i) any interest-bearing demand account or money market fund in Citibank, N.A. or in any other financial institution selected by the Escrow Agent or (ii) any other investment approved by both Seller and Purchaser. The rate of interest or yield may not be the maximum available and deposits, withdrawals, purchases, reinvestment of any matured investments and sales shall be made in the sole discretion of Escrow Agent or Seller (as applicable), which shall have no liability whatsoever therefor, except for the failure to invest or reinvest in Approved Investments. Discounts earned shall be deemed interest for the purposes hereof.

"Assignee" shall have the meaning assigned in Section 11.8 hereof.

"Assignment Election" shall have the meaning assigned in Section 11.8 hereof.

"Assignment Notice" shall have the meaning assigned in Section 11.8 hereof.

"Citicorp" means Citicorp, a Delaware corporation.

"Claims" means any and all suits, litigation, claims, demands, offsets, defenses, counterclaims, actions or proceedings.

"Closing" means the actions carried out on the Closing Date as described in Article VIII.

"Closing Date" shall have the meaning assigned in Section 8.2 hereof.

"Code" means the Internal Revenue Code of 1986 (including without limitation any successor Code), and the rules and regulations promulgated thereunder.

"Corporation" means KW Resort Utilities Corp., a Florida corporation.

"CRE" means Citicorp Real Estate, Inc.

"Downpayment" as such term is defined in Section 2.2.

"Due Diligence" as such term is defined in Section 8.1.

"Due Diligence Period" as such term is defined in Section 8.1.

"Effective Date" as such term is defined at the outset hereof.

"Escrow Agent" means Weil, Gotshal & Manges, LLP, the escrow agent hereunder.

"Government Approvals" means orders, approvals, consents, authorizations, clearances and waivers of all governmental and regulatory authorities and agencies.

"Indemnified Party" means a Person asserting an Indemnity Claim under Article IX.

"Indemnifying Party" means a Person against whom an Indemnity Claim is being asserted under Article IX.

"Investigations" is defined in Section 11.1(b).

"Indemnity Claim" is defined in Section 9.3(a).

"Laws" means all laws, statutes, ordinances, regulations and other pronouncements having the effect of law of the United States of America, or any state, city, county, municipality, territory, protectorate, possession, court, tribunal, agency, government, department, commission, arbitrator, board, bureau or instrumentality thereof, as currently interpreted and administered.

"Lien" means any mortgage, pledge, assessment, security interest, lien, levy, charge, restriction, adverse claim or other encumbrance of any kind, or any conditional sale contract, title retention contract, or other contract to give or to refrain from giving any of the foregoing.

"Loss" means any and all actual liability, damages, losses, fines, fees, penalties, interest obligations, deficiencies and out-of-pocket expenses (including without limitation punitive, treble, or other exemplary or extra contractual damages, amounts paid in settlement, interest, court costs, costs of investigation, reasonable fees and

expenses of attorneys, accountants, actuaries, and other experts, and other expenses of litigation or of any claim, default or assessment).

"Management Agreement" means the Management Agreement between the Corporation and the Manager.

"Manager" means Davis Water Analysis, Inc.

"Notice of Claim" is defined in Section 9.3(a).

"Permitted Exceptions" shall mean those agreements, easements, and documents described in Exhibit "A" annexed hereto.

"Person" means any individual, corporation, general partnership, limited partnership, proprietorship, trust, union, association, court, tribunal, agency, government, department, commission, self-regulatory organization, arbitrator, board, bureau, instrumentality, or other entity, enterprise, authority or business organization.

"Project Information" is defined in Section 11.1(a).

"Property" means, collectively, any and all real estate owned or leased by the Corporation, and all facilities, systems, buildings, improvements and other real and personal property located thereon, including without limitation, the Real Property.

"PSC" means the State of Florida Public Service Commission.

"PSC Condition" means the approval or consent of the PSC to the Acquisition.

"Purchase Price" is defined in Section 2.2.

"Purchaser's Representatives" shall mean Purchaser, its directors, officers, employees, affiliates, partners, brokers, agents or other representatives, including, without limitation, attorneys, accountants, contractors, consultants, engineers, financial advisors, and the Assignee, if Purchaser has exercised the Assignment Election.

"Purchaser's Extension Notice" shall have the meaning assigned in Section 8.2 hereof.

"Purchaser's Extension Option" shall have the meaning assigned in Section 8.2 hereof.

"Purchaser's Nullification Notice" shall have the meaning assigned in Section 8.2 hereof.

"Real Property" means the real property described in Exhibit "B" annexed hereto.

"Seller Related Debt" means, collectively, all debt owed by the Corporation to Seller or any Affiliate of Seller.

"Seller's Knowledge" means the actual (as distinguished from implied, imputed or constructive) knowledge of Paul Chronis or Gerard Staudt, without inquiry or investigation.

"Seller's Termination Notice" shall have the meaning assigned in Section 8.2 hereof.

"Seller's Termination Option" shall have the meaning assigned in Section 8.2 hereof.

"Shares" as such term is defined in the Recitals hereto.

"Surviving Obligations" as such term is defined in Section 8.1(b) hereof.

"Tax" or "Taxes", with respect to a particular tax, includes the tax together with all governmental fees, assessments, charges, interest, penalties, fines and additions thereto.

"Third Party Claim" is defined in Section 9.3(b).

"Title Commitment" is defined in Section 3.1(i).

"Title Policy" is defined in Section 8.3.

"Utility" means the sanitary sewage collection, treatment and disposal system forming part of the Property and currently owned by the Corporation.

Section 1.2. Rules of Construction. The captions or headings in this Agreement are for convenience only and in no way to define, limit or describe the scope or intent of any provisions or Sections of this Agreement. Unless the context of this Agreement otherwise requires, (i) words of any gender are deemed to include each other gender; (ii) words using

the singular or plural number also include the plural or singular number, respectively; (iii) the terms "hereof," "herein," "hereby," "hereto," and derivative or similar words refer to this entire Agreement; (iv) the terms "Article" or "Section" refer to the specified Article or Section of this Agreement; (v) the term "party" means Seller or Purchaser, as the case may be; and (vi) all references to "dollars" or "\$" refer to currency of the United States of America.

## ARTICLE II.

### PURCHASE AND SALE OF SHARES

Section 2.1. Agreement. Subject to the terms and conditions, and in reliance upon the representations and warranties set forth in this Agreement, Seller agrees to sell the Shares to Purchaser at the Closing and Purchaser agrees to purchase the Shares from Seller at the Closing. Purchaser further acknowledges that the Shares and the assets represented thereby, are in an "AS-IS-WHERE-IS AND WITH ALL FAULTS" condition, and except as expressly set forth herein, Seller has made no representations or warranties to Purchaser regarding the Shares or the assets of the Corporation.

Section 2.2. Purchase Price for the Shares. The purchase price for the Shares (the "Purchase Price") is \$810,000, plus or minus the adjustments expressly provided in this Agreement. The Purchase Price shall be paid as follows:

(a) \$50,000 (the "Downpayment"), shall be paid simultaneously with the execution and delivery of this Agreement, by delivery to the Escrow Agent by a bank wire transfer of immediately available funds to the following account of the Escrow Agent:

Citibank, F.S.B.  
Miami, Florida  
Weil, Gotshal & Manges Trust Account #3  
Account No. 9537000231  
ABA No. 266086554.

The Downpayment shall be invested by Escrow Agent in Approved Investments under Purchaser's Federal Tax I.D. Number. For the purposes of this Agreement, Purchaser's Federal Tax I.D. Number shall be deemed 347-38-6138. If the Closing shall occur, Seller shall be entitled to receive the Downpayment, and all interest accrued thereon, if any, and the same shall be credited against the portion of the Purchase Price payable pursuant to Section 2.2(b); and

(b) the balance of the Purchase Price, after giving credit to the Purchaser for any adjustments and proration made in accordance with the express terms and provisions of this Agreement, shall be paid at the Closing by bank wire transfer of immediately available funds to Seller's account or to the account or accounts of such other party or parties as may be designated by Seller on or before the Closing Date.

**Section 2.3. Delivery of Share Certificates, Etc.** Against receipt of the Purchase Price payable to Seller, Seller shall deliver to Purchaser (i) the certificate(s) for the Shares, together with all such stock powers and endorsements as will entitle Purchaser to immediate registration of transfer of the Shares in its name and as will convey the Shares to Purchaser free and clear of all Liens (other than transfer restrictions imposed by applicable securities Laws), (ii) all minute books, stock record books and corporate seals of the Corporation in the possession of Seller or its Affiliates, and (iii) the resignations of all officers and directors of the Corporation which resignations shall be effective as of the Closing.

**Section 2.4. Certain Tax Matters.**

(a) **Section 338(h)(10) Election.** Purchaser will make and Seller will cause Citicorp to make an election under Sections 338(g) and 338(h)(10) of the Code (and any corresponding elections under applicable state and local tax law) (collectively a "Section 338(h)(10) Election") with respect to the purchase and sale of the Shares hereunder, including without limitation, timely filing Form 8023 and any other applicable forms or schedules with the Internal Revenue Service (and, where applicable, appropriate state or local revenue or other governmental authorities). Purchaser agrees that it and its shareholders will cooperate with Seller and will not take any action which adversely affects the Section 338(h)(10) Election. Seller and its Affiliates (other than the Corporation) will pay any federal, state and local Tax of Seller and its Affiliates (including the Corporation) resulting from the making of the Section 338(h)(10) Election. Seller and its Affiliates (other than the Corporation) will also pay state and local Taxes of Seller and its Affiliates (including the Corporation) resulting from an election under state or local tax law similar to the election available under Section 338(g) of the Code (or which results from the making of an election under Section 338(g) of the Code) with respect to the purchase and sale of the Shares hereunder, where the state or local tax jurisdiction (i) does not provide or recognize a Section 338(h)(10) Election or (ii) does not apply its provisions corresponding to Section 338(h)(10) of the Code to the purchase and sale of the Shares.

(b) **Allocation of Purchase Price.** The parties hereto agree that the Purchase Price and the liabilities of the Corporation (and other relevant items) (the "Section 338(h)(10) Purchase Price") will be allocated exclusively to the Real Property and Utility (the "Allocation") for all purposes (including tax accounting purposes). Purchaser and Seller



acknowledge that the Allocation has been based upon the fair market values of the assets of the Corporation assuming arms-length negotiations, and each hereby agrees to adhere to the Allocation in all reports, returns and other documents filed with any governmental authority for tax purposes (including, without limitation, any required by Section 338(h)(10) of the Code); provided, however, that nothing contained herein shall require Purchaser, Seller, the Corporation or any Affiliate of Seller to contest or to litigate in any form any proposed deficiency or adjustment by any taxing or revenue authority or agency that challenges the Allocation.

(c) Books and Records. Following the Closing, Purchaser shall retain the books and records of the Corporation for the period prior to the Closing Date for the benefit of Seller and, unless otherwise consented to in writing by Seller, Purchaser shall not destroy or otherwise dispose of such books and records of the Corporation except as provided in Section 2.4(f).

(d) Tax Returns. (i) Seller (and, after the Closing Date, Purchaser) shall cause the Corporation:

(1) to the extent permitted by law, (x) to join, for all taxable periods ending on or prior to the Closing Date, in the consolidated federal income Tax returns of Seller or Citicorp and any combined returns including the Corporation and Seller or Citicorp, and (y) to prepare and submit to Seller the portions of such returns and any schedules, information and documentation pertaining to the Corporation so permitted for inclusion in such returns; and

(2) to prepare and file all required separate state, local and foreign income Tax returns for the Corporation for all taxable periods ending on or prior to the Closing Date.

(ii) All such Tax returns shall, insofar as they relate to the Corporation, be on a basis consistent with the last such returns as have been previously filed in respect to the Corporation.

(iii) Seller shall have no responsibility or liability and Purchaser shall be solely responsible and liable for the preparation and filing of all other Tax returns required of the Corporation for the period commencing as of the Closing Date, and Purchaser shall have no responsibility or liability for any of the Taxes accruing prior to the Closing Date while Seller shall have no responsibility or liability for any of the Taxes accruing on and after the Closing Date.

(iv) Seller agrees that it will be obligated to file (or cause to be filed) all necessary consolidated federal income Tax returns and reports of its affiliated group for all taxable periods beginning on or before the Closing Date. Seller will pay, for its own account, any Florida and federal income Taxes with respect to the returns and reports it is obligated to file and all Taxes with respect to income earned by the Corporation prior to the Closing.

(e) Cooperation. Purchaser and Seller mutually agree to cooperate fully with each other with respect to the preparation of all returns, the filing and prosecution of any Tax refund claims, the furnishing of any document, record or other relevant information relating to any Tax liability or refund and all other Tax matters. Seller shall have the right to exercise, at Seller's expense, complete control at any time over the disposition and/or settlement of any issue raised in any inquiry, examination or proceeding with respect to Taxes of the Corporation that could affect Seller, and Purchaser or the Corporation shall promptly notify Seller in writing upon learning that any such issue has been raised. Purchaser shall cooperate with Seller, as Seller may reasonably request, in any such inquiry, examination or proceeding. The failure of any party to cooperate or give notice in a manner provided for in this Section 2.4(e) shall not impair such party's rights under this Agreement, unless such failure prejudices the interests of the party that was to receive such cooperation or notice. If the failure by Purchaser or Seller to cooperate directly causes a loss of refund or any other benefit or directly causes a liability, the party failing to cooperate will be responsible to the other party for such loss of a refund or benefit or the cost of such liability.

(f) Access. In connection with any matter relating to any period prior to, or any period ending on, the Closing Date, (i) each party (including the Corporation) shall, upon the request and at the expense of the other, permit the other party and its representatives full access at all reasonable times to the books and records, including, without limitation, Tax returns of the Corporation or Seller which are in the physical possession of the party to whom the request is made, and (ii) each party shall execute (and in the case of Purchaser, shall cause the Corporation to execute) such documents as the other party may reasonably request to enable the other party to file any required reports or Tax returns (including amended Tax returns) relating to the Corporation. Notwithstanding the foregoing, in no event shall Purchaser (or the Corporation from and after the Closing) have any right to receive or review the consolidated Tax returns of Citicorp or any of its Affiliates (other than the Corporation). Neither party shall dispose of such books and records during the ten-year period beginning with the Closing Date without the other party's consent.

(g) Refunds. Seller shall be entitled to retain and receive immediate payment from the Purchaser and the Corporation, of any Tax refund (including, without limitation, refunds arising by reason of amended return filed after the Closing Date) or credit of federal, state, local or foreign Taxes (plus any interest thereon received with respect thereto

from the applicable taxing authority) relating to the Corporation that were paid with respect to the period ending on or prior to the Closing Date (whether or not constituting the close of a taxable year). The Corporation shall be entitled to the benefit of any refund or credit of federal, state, local or foreign taxes (plus any interest thereon received with respect thereto from the applicable taxing authority) relating to the Corporation that were paid with respect to a period ending after the Closing. Purchaser and Seller agree to cooperate, and Purchaser agrees to cause the Corporation to cooperate with Seller, with respect to claiming any refund referred to in this Section 2.4(g), including providing Seller or Purchaser, as the case may be, with information that could constitute a reasonable basis for claiming such a refund when requested to do so, providing all relevant information available to Seller or Purchaser (through the Corporation or otherwise, as the case may be) with respect to any such claim, filing and diligently pursuing such claim (including by litigation, if appropriate), paying over to Seller or the Corporation, as the case may be, and in accordance with this Section, any amount received by Purchaser, the Corporation or Seller, as the case may be, with respect to such claim, consulting with the other party prior to agreeing to any disposition of such claim. The party that is to enjoy the economic benefit of a refund under this Section 2.4(g) shall bear the third-party expenses of the other party reasonably incurred in seeking such refund.

(h) Transfer Taxes. Purchaser shall be responsible for all transfer and similar Taxes assessed or payable in connection with the transfer of the Shares (or deemed transfer of assets by reason of an actual or deemed election under Section 338 of the Code) pursuant to this Agreement.

Section 2.5. Downpayment and Obligations of Escrow Agent.

(a) Escrow Agent shall hold the Downpayment and all interest accrued thereon, if any in escrow and shall dispose of the Downpayment only in accordance with the following provisions:

Escrow Agent shall deliver the Downpayment to Seller or Purchaser, as the case may be, as follows:

- (i) to Seller, upon completion of the Closing; or
- (ii) to Seller, after receipt of Seller's demand in which Seller certifies either that (1) Purchaser has defaulted under this Agreement, or (2) this Agreement has been otherwise terminated or cancelled, and Seller is thereby entitled to receive the Downpayment; or

(iii) to Purchaser, after receipt of Purchaser's demand in which Purchaser certifies either that (1) Seller has defaulted under this Agreement, or (2) this Agreement has been otherwise terminated or cancelled, and Purchaser is thereby entitled to receive the Downpayment.

Upon delivery of the Downpayment, Escrow Agent shall be relieved of all liability hereunder and with respect to the Downpayment. Escrow Agent shall deliver the Downpayment, at the election of the party entitled to receive the same, by (i) an unendorsed official bank or cashier's check payable to the order of such party, or (ii) a bank wire transfer of immediately available funds to an account designated by such party.

(b) Notwithstanding anything to the contrary contained herein, in the event that Escrow Agent receives (i) a copy of a final judgment or order of a court of competent jurisdiction, certified by the clerk of such court or other appropriate official, and (ii) an opinion of counsel, acceptable to the Escrow Agent, of the party to whom the Downpayment is to be delivered to the effect that such judgment or order is final within the meaning of this Agreement, the Escrow Agent shall, within three Business Days, deliver the Downpayment as set forth in such judgment or order. A judgment or order under this Agreement shall not be deemed to be final until the time within which to take an appeal therefrom has expired and no appeal has been taken, or until the entry of a judgment or order from which no appeal may be taken.

(c) Escrow Agent shall be entitled to rely upon, and shall be fully protected from all liability, loss, cost, damage or expense in acting or omitting to act pursuant to, any instruction, order, judgment, certification, affidavit, demand, notice, opinion, instrument or other writing delivered to it hereunder without being required to determine the authenticity of such document, the correctness of any fact stated therein, the propriety of the service thereof or the capacity, identity or authority of any party purporting to sign or deliver such document.

(d) The duties of Escrow Agent are only as herein specifically provided, and are purely ministerial in nature. Escrow Agent shall neither be responsible for, or under, nor chargeable with knowledge of, the terms and conditions of any other agreement, instrument or document in connection herewith, including, without limitation, any agreements referred to in this Agreement and shall be required to act in respect of the Downpayment only as provided in this Agreement. This Agreement sets forth all the obligations of Escrow Agent with respect to any and all matters pertinent to the escrow contemplated hereunder and no additional obligations of Escrow Agent shall be implied from the terms of this Agreement or any other agreement. Escrow Agent shall incur no liability in connection with the discharge of its obligations under this Agreement or otherwise in connection therewith, except such liability as may arise from the willful misconduct of Escrow Agent.

(e) Escrow Agent may consult with counsel of its choice, which may include attorneys in the firm of Weil, Gotshal & Manges, LLP, and shall not be liable for any action taken or omitted to be taken by Escrow Agent in accordance with the advice of such counsel.

(f) Escrow Agent shall not be bound by any modification, cancellation or rescission of this Agreement unless in writing and signed by Escrow Agent.

(g) Escrow Agent shall have no tax reporting duties with respect to the Downpayment or income thereon, such duties being the responsibility of the party or parties which receive, or have the right to receive, any taxable income hereunder. Notwithstanding the foregoing, Escrow Agent has the authority to comply with the provisions of Section 468B(g) of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder. Such authority shall include, without limitation, (i) the filing of tax returns (including information returns) with respect to the Downpayment or income thereon, (ii) the payment of any tax, interest or penalties imposed thereon, (iii) the withholding of any amounts which are required to be withheld and (iv) the payment over of such withheld amounts to the appropriate taxing authority. The parties to this Agreement, other than the Escrow Agent, shall provide the Escrow Agent with all information necessary to enable Escrow Agent to comply with the foregoing. Escrow Agent may withdraw from the Downpayment amounts necessary to pay all applicable income or withholding taxes (plus interest and penalties thereon) that are required to be paid.

(h) Escrow Agent is acting as a stakeholder only with respect to the Downpayment. If any dispute arises as to whether Escrow Agent is obligated to deliver the Downpayment or as to whom the Downpayment is to be delivered or the amount thereof, Escrow Agent shall not be required to make any delivery, but in such event Escrow Agent may hold the Downpayment until receipt by Escrow Agent of instructions in writing, signed by all parties which have, or claim to have, an interest in the Downpayment, directing the disposition of the Downpayment or in the absence of such authorization, Escrow Agent may hold the Downpayment until receipt of a certified copy of a final judgment of a court of competent jurisdiction providing for the disposition of the Downpayment. Escrow Agent may require, as a condition to the disposition of the Downpayment pursuant to written instructions, indemnification and/or opinions of counsel, in form and substance satisfactory to Escrow Agent, from each party providing such instructions. If such written instructions, indemnification and opinions are not received, or proceedings for such determination are not commenced, within 30 days after receipt by Escrow Agent of notice of any such dispute and diligently continued, or if the Escrow Agent is uncertain as to which party or parties are entitled to the Downpayment, Escrow Agent may either (i) hold the Downpayment until receipt of (X) such written instructions and indemnification or (Y) a certified copy of a final

judgment of a court of competent jurisdiction providing for the disposition of the Downpayment, or (ii) deposit the Downpayment in the registry of a court of competent jurisdiction; provided however, that notwithstanding the foregoing, Escrow Agent may, but shall not be required to, institute legal proceedings of any kind.

(i) Purchaser and Seller, jointly and severally, agree to reimburse Escrow Agent on demand for, and to indemnify and hold Escrow Agent harmless against and with respect to, any and all loss, liability, damage, or expense (including, without limitation, attorneys' fees and costs, whether at trial, on appeal or otherwise) that Escrow Agent may suffer or incur in connection with the entering into of this Agreement and performance of its obligations under this Agreement or otherwise in connection therewith, except to the extent such loss, liability, damage or expense arises from the willful misconduct of Escrow Agent.

(j) Escrow Agent and any successor escrow agent may at any time resign as such by delivering the Downpayment to either (i) any successor escrow agent designated by all the parties hereto (other than Escrow Agent) in writing, or (ii) any court having competent jurisdiction. Upon its resignation and delivery of the Downpayment as set forth in this paragraph, Escrow Agent shall be discharged of, and from, any and all further obligations arising in connection with the escrow contemplated by this Agreement.

(k) Escrow Agent shall have the right to represent any party hereto with respect to this Agreement or any of the transactions contemplated herein in any dispute between the parties hereto with respect thereto, to the Downpayment or otherwise.

(l) The rights of Escrow Agent contained in this Agreement, including without limitation the right to indemnification, shall survive the Closing, resignation of Escrow Agent and the termination of the escrow contemplated hereunder.

(m) Survival of Provisions. The provisions of this Section 2 shall survive the termination of this Agreement and the Closing.

Section 2.6. Release of Seller Related Debt. At or prior to the Closing, Seller will cause all Seller Related Debt, if any, to be satisfied or released without expense to either the Purchaser or the Corporation.

Section 2.7. Adjustments to Purchase Price. The Purchase Price shall be adjusted in the manner hereinafter prescribed. Purchaser shall pay to Seller at Closing, or Purchaser shall receive a credit against the Purchase Price, as the case may be, computed on the difference between the following specified assets and liabilities of the Corporation adjusted to and prorated as of midnight as of the day immediately preceding the Closing Date:

(a) **Assets:**

- (i) accounts receivable relating to the use and/or operation of the Property arising or accruing for the calendar month in which the Closing shall occur;
- (ii) prepaid real estate taxes, personal property taxes and regulatory assessment fees; and
- (iii) prepaid charges and fees on any transferable service and maintenance contracts or permitted renewals or replacements thereof.

(b) **Liabilities:**

- (i) accrued and unpaid real estate taxes, personal property taxes and regulatory assessment fees on the basis of the fiscal year for which assessed at the greatest discount available, except if the Closing shall occur before the rate is fixed, then the apportionment shall be upon the basis of the tax rate for the next preceding year at the greatest discount rate;
- (ii) accrued and unpaid fees from customers in respect of the Utility for the calendar month in which the Closing shall occur;
- (iii) all deposits and accrued interest, if any, on customer's accounts in connection with the operation of the Utility;
- (iv) unpaid charges and fees on any transferable service and maintenance contracts or permitted renewals or replacements thereof; and
- (v) all unpaid special assessments and liens for public improvements or similar liens against the Property which are, as of the date of this Agreement, certified liens.

Without limiting the foregoing, (1) Seller shall have the right prior to or simultaneous with the Closing to close-out and withdraw all of the cash from the Corporation's bank accounts (including any certificates of deposit, capacity reservation fees and cash management accounts), (2) Seller shall be solely responsible for the payment of regulatory assessment fees

for the Corporation for the calendar year 1997 due or payable to the PSC and such tax for the calendar year 1998 shall be adjusted in accordance with the above provisions, and (3) the parties acknowledge that the customer's accounts of the Utility will only be adjusted for the calendar month in which the Closing shall occur.

**Section 2.8. Operations Prior to Closing.** During the period from the Effective Date through the Closing Date, except to the extent expressly permitted or contemplated by this Agreement or otherwise expressly consented to in writing by Purchaser: (a) Seller covenants and agrees that the Corporation shall operate its business in the ordinary and usual course and consistent with past practices, and (b) the Corporation shall not without the prior written approval of Purchaser, which approval shall not be unreasonably withheld or delayed (i) dispose of any assets or other property owned by the Corporation, (ii) increase the liabilities of the Corporation in any material way, or (iii) enter into any new contracts with respect to any aspect of the Property unless (x) any such contract may be terminated without penalty upon not less than 30 days' prior written notice, or (y) any such contract is entered into in the ordinary course of business of the Corporation. In the case of any contract satisfying (x) and (y) above, Purchaser's prior approval shall not be required. If Purchaser's approval is required under this Section 2.8, Purchaser shall within ten days of receiving any request from the Corporation or Seller requesting such approval, notify Seller of its approval or disapproval. If Purchaser shall disapprove any matter under this Section 2.8, Purchaser shall specify in writing the reason or reasons for such disapproval. If Purchaser fails to respond within ten days of the receipt of any request for approval, such failure to respond shall conclusively be deemed an approval on the part of the Purchaser with respect to the matter under this Section 2.8 for which Purchaser failed to timely respond.

### ARTICLE III.

#### **REPRESENTATIONS AND WARRANTIES OF SELLER**

**Section 3.1. Representations and Warranties.** To induce Purchaser to enter into this Agreement and to consummate the Acquisition hereunder, subject to Section 9.5, Seller hereby represents and warrants to Purchaser as follows:

(a) **Ownership of Shares.** Seller will at the Closing be the owner of the Shares, free and clear of all Liens (other than restrictions on transfer imposed by applicable securities Laws). Seller will at the Closing have full power and authority to sell and assign the Shares to Purchaser at the Closing pursuant hereto, and upon the delivery to Purchaser of the certificate(s) representing the Shares and accompanying instruments at the Closing pursuant to Sections 2.3 and 8.1, Purchaser will have acquired good, valid and exclusive title



to the Shares free and clear of all Liens (other than transfer restrictions imposed by applicable securities Laws).

(b) Corporate Organization and Authority. Each of Seller and the Corporation is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation, with full corporate power and authority to conduct their businesses as now conducted and, in the case of Seller, to enter into and perform its obligations under this Agreement.

(c) Authority. The execution and delivery of this Agreement by Seller and the performance by Seller of its obligations under this Agreement have been duly and validly authorized by all necessary corporate action on the part of Seller. This Agreement constitutes a legal, valid and binding obligation of Seller and is enforceable against Seller in accordance with its terms, except to the extent that (i) enforcement may be limited by or subject to any bankruptcy, insolvency, reorganization, moratorium or similar Laws now or hereafter in effect relating to or limiting creditors' rights generally and (ii) the remedy of specific performance and injunctive and other forms of equitable relief are subject to certain equitable defenses and to the discretion of the court or other similar Person before which any proceeding therefor may be brought.

(d) No Conflicts or Violations. The execution and delivery of this Agreement by Seller does not, and the performance by Seller of its obligations under this Agreement will not (i) violate any term or provision of any Law or any writ, judgment, decree, injunction or similar order applicable to Seller; (ii) conflict with or result in a violation or breach of, or constitute (with or without notice or lapse of time or both) a default under, any terms, conditions or provisions of its articles or certificate of incorporation or bylaws; (iii) result in the creation or imposition of any Lien upon Seller or any of its assets; or (iv) conflict with or result in a violation or breach of, or constitute (with or without notice or lapse of time or both) a default under, or give to any Person any right of termination, cancellation, acceleration or modification in or with respect to, any contract or other agreement to which Seller is a party or by which any of its assets may be bound, except any such conflicts, violations, breaches, defaults, or rights that individually or in the aggregate do not have or cannot reasonably be expected to have a material adverse effect on the validity or enforceability of this Agreement or on the ability of Seller to perform its obligations under this Agreement.

(e) Capitalization of the Corporation. The authorized capital stock of the Corporation consists solely of 200 shares of common stock, no par value, of which the Shares are issued and outstanding. The Shares are duly authorized, validly issued, fully paid and nonassessable. There are no outstanding options, warrants, conversion rights or other rights

which could entitle any Person to acquire, or require the Corporation to issue, any shares of its capital stock in addition to the Shares.

(f) Litigation. Except for those matters described in Exhibit "F" annexed hereto, there are no actions, suits, investigations, arbitrations or proceedings pending, or to Seller's knowledge overtly threatened, against Seller or its Affiliates (other than the Corporation), at law or in equity, in, before, or by any Person that individually or in the aggregate have or may reasonably be expected to have a material adverse effect on the validity or enforceability of this Agreement or on the ability of Seller to perform its obligations under this Agreement.

(g) To Seller's Knowledge, there are no pending Liens encumbering the Property except for the Permitted Exceptions.

(h) The Corporation has duly filed all federal and state tax returns required to be filed prior to the Effective Date, and has paid all such taxes for the periods covered in those returns. To Seller's Knowledge, the Corporation has no tax deficiencies proposed or assessed against it.

(i) The Corporation owns the real property described in the title commitment ("Title Commitment") issued by Lawyers Title Insurance Corporation annexed hereto as Exhibit "C". The other properties and assets of the Corporation include, without limitation, those reflected on Exhibit "D" annexed hereto. The properties listed on Exhibit "D" are not subject to any mortgage, pledge, lien, charge, security or other encumbrance.

(j) The Corporation holds a valid certificate from the PSC, a copy of which is annexed hereto as Exhibit "E". To Seller's Knowledge, such certificate is in full force and effect.

(k) The Corporation has no subsidiaries and its sole business has been the ownership and operation of the Utility.

(l) Except as disclosed on Exhibit "F" annexed hereto, there are no legal actions, suits, arbitrations or other legal, administrative or other governmental proceedings currently pending or, to Seller's Knowledge, threatened against the Corporation, its properties, assets, business or shareholders, at law or in equity.

(m) The Corporation has not received any written notice which has not been remedied or otherwise satisfied of any violation of any existing applicable local, state, regional or federal environmental law, rule, regulation, standard or permit and, to Seller's

Knowledge, there are no enforcement actions or consent decrees in effect or pending by any such regulatory body.

#### ARTICLE IV.

#### **REPRESENTATIONS AND WARRANTIES OF PURCHASER**

To induce Seller to enter into this Agreement and to consummate the Acquisition hereunder, Purchaser hereby represents and warrants to Seller as follows:

Section 4.1. **Organization and Authority.** Bart is a corporation duly organized and validly existing in good standing under the Laws of the State of Florida and has full corporate power and authority to enter into and perform its obligations under this Agreement.

Section 4.2. **Authority.** The execution and delivery of this Agreement by Purchaser and the performance by Purchaser of its obligations under this Agreement have been duly and validly authorized by all necessary corporate action on the part of Bart. This Agreement constitutes a legal, valid and binding obligation of Purchaser and is enforceable against Purchaser in accordance with its terms, except to the extent that (i) enforcement may be limited by or subject to any bankruptcy, insolvency, reorganization, moratorium or similar Laws now or hereafter in effect relating to or limiting creditors rights generally and (ii) the remedy of specific performance and injunctive and other forms of equitable relief are subject to certain equitable defenses and to the discretion of the court or other similar Person before which any proceeding therefor may be brought.

Section 4.3. **No Conflicts or Violations.** The execution and delivery of this Agreement by Purchaser does not, and the performance by Purchaser of its obligations under this Agreement will not: (i) violate any term or provision of any Law or any writ, judgment, decree, injunction or similar order applicable to Purchaser; (ii) conflict with or result in a violation or breach of, or constitute (with or without notice or lapse of time or both) a default under, any of the terms, conditions or provisions of its articles or certificate of incorporation or bylaws applicable to Bart; (iii) result in the creation or imposition of any Lien upon Purchaser or any of its assets; or (iv) conflict with or result in a violation or breach of, or constitute (with or without notice or lapse of time or both) a default under, or give to any Person any right of termination, cancellation, acceleration or modification in or with respect to, any contract or other agreement to which Purchaser is a party or by which any of its assets may be bound, except any such conflicts, violations, breaches, defaults, or rights that individually or in the aggregate do not have or cannot reasonably be expected to have a

material adverse effect on the validity or enforceability of this Agreement or on the ability of Purchaser to perform its obligations under this Agreement.

Section 4.4. Litigation. There are no actions, suits, investigations, arbitrations or proceedings pending, or to Purchaser's knowledge overtly threatened, against Purchaser or Bart's Affiliates, at law or in equity, in, before or by any Person that individually or in the aggregate have or may reasonably be expected to have a material adverse effect on the validity or enforceability of this Agreement or on the ability of Purchaser to perform its obligations under this Agreement.

Section 4.5. Purchase for Investment.

(a) Acquisition for Own Account. Purchaser is acquiring the Shares for its own account, and not with a view to any public distribution thereof which would violate applicable securities Laws.

(b) Independent Examination. Purchaser has made or will, prior to the Closing, make such independent examination, review and investigation of the facts and circumstances necessary to evaluate the Shares as it deems necessary or appropriate.

(c) No Investment Advice or Other Opinion. Purchaser acknowledges that Seller has not given any investment advice or rendered any opinion as to whether the purchase of the Shares is prudent, and that Purchaser is not relying on any representation or warranty by Seller except as expressly contained in this Agreement or in any instrument or document delivered by Seller pursuant to this Agreement.

(d) Extent of Reliance. Purchaser has made its own credit evaluation of the Shares and the Corporation and has not relied on any representations or warranties by Seller, express or implied, other than the representations and warranties of Seller contained in this Agreement or in any instrument or document executed and delivered by Seller pursuant to this Agreement. Purchaser is aware that the amount ultimately received by Purchaser in respect of the Shares and/or its investment in the Corporation may be less than the consideration paid to Seller therefor.

(e) Risks. Purchaser has fully considered, for purposes of its investment in the Shares and the Corporation, the risks of such investment, and that (i) the Shares involve a high degree of risk of loss by Purchaser of its investment therein, and (ii) there are substantial restrictions on the transferability of, and there will be no public market for, the Shares, and accordingly, it may not be possible for Purchaser to liquidate its investment in the Shares in case of emergency.

(f) Accredited Investor. Purchaser is an "Accredited Investor" as defined in Section 2(15) of the Federal Securities Act of 1933, and is a sophisticated investor.

(g) WS. WS is and at all times will be 100% owned and/or controlled by William L. Smith, Jr. or an Affiliate of William L. Smith, Jr.

## ARTICLE V.

### COVENANTS OF SELLER

Seller covenants and agrees with Purchaser that, at all times before the Closing, Seller will comply with all covenants and provisions of this Article V, except to the extent (i) that Purchaser may otherwise consent in writing, or (ii) otherwise required or permitted by this Agreement.

Section 5.1. Contract and Regulatory Approvals. Seller will cooperate with Purchaser in obtaining, as promptly as practicable, all Government Approvals and all approvals, authorizations and clearances from other Persons required of Purchaser or the Corporation to consummate the Acquisition.

Section 5.2. No Charter Amendments. Except for any amendments that are necessary or desirable in order to make any of the representations and warranties of Seller true and correct on the Closing Date, Seller shall not permit the amendment of the articles or certificate of incorporation or bylaws of any of the Corporation or take any action with respect to any such amendment.

Section 5.3. No Issuance of Securities. Except for any acts and actions as shall be necessary or desirable in order to make any of the representations and warranties of Seller true and correct on the Closing Date, Seller shall not authorize, or authorize the issuance of, any shares of the capital stock or other equity securities of the Corporation or enter into any contract or grant any option, warrant or right calling for the authorization or issuance of any such shares or other equity securities of the Corporation, or create or issue any securities directly or indirectly or indirectly convertible into or exchangeable for any such shares or other equity securities of the Corporation, or issue any options, warrants or rights to purchase any such convertible securities.

Section 5.4. No Acquisitions. Seller shall not authorize the Corporation to (i) merge, consolidate or otherwise combine or agree to merge, consolidate or otherwise combine with any other Person, (ii) acquire or agree to acquire blocks of business of all or

substantially all the assets or capital stock or other equity securities of any other Person, or (iii) otherwise acquire or agree to acquire control or ownership of any other Person.

Section 5.5. Commercially Reasonable Efforts to Satisfy Closing Conditions, Etc. Seller will use all commercially reasonable efforts to cause the representations and warranties made by Seller in this Agreement to be true and correct in all material respects at all times before the Closing Date, provided however, Seller shall not be obligated to expend more than \$50,000 in the aggregate (including, without limitation, the fees and expenses of any attorneys and consultants, filing fees, and any similar or dissimilar expenses).

Section 5.6. Notice and Cure. On or before the Closing Date, Seller will notify Purchaser promptly in writing of, and contemporaneously will provide Purchaser with true and complete copies of, any and all information or documents relating to, any event, transaction or circumstance occurring after the date hereof that causes or will cause any covenant or agreement of Seller under this Agreement to be materially breached or that renders or will render materially untrue any representation or warranty of Seller contained in this Agreement as if the same were made on or as of the date of such event, transaction or circumstance. Seller will use all commercially reasonable efforts to cure, before the Closing, (i) any such breach or misrepresentation, and (ii) any violation or breach of any representation, warranty, covenant or agreement made by it in this Agreement, whether occurring or arising before or after the date hereof, provided however, Seller shall not in connection with curing (i) or (ii) above be obligated to expend more than \$50,000 in the aggregate (including, without limitation, the fees and expenses of any attorneys and consultants, filing fees, and any similar or dissimilar expenses).

Section 5.7. Termination of Management Agreement. Seller shall as of the Closing cause the Management Agreement to be terminated without expense to either Purchaser or the Corporation.

Section 5.8. Resignations of Officers and Directors. Seller will cause each of the existing officers and director(s) of the Corporation to have resigned their positions effective as of the Closing Date without expense to either Purchaser or the Corporation.

## ARTICLE VI.

### COVENANTS OF PURCHASER

Purchaser covenants and agrees with Seller that, at all times before the Closing, Purchaser will comply with all covenants and provisions of this Article VI, except to the

extent (i) Seller may otherwise consent in writing, or (ii) otherwise required or permitted by this Agreement.

Section 6.1. Regulatory Approvals. Purchaser will (i) take all commercially reasonable steps necessary or desirable, and proceed diligently and in good faith and use all commercially reasonable efforts, to obtain as promptly as practicable all Government Approvals and all approvals, authorizations and clearances from other Persons required of Purchaser to consummate the Acquisition, (ii) provide such other information and communications to such governmental and regulatory authorities as Seller or such authorities may reasonably request, and (iii) cooperate with Seller and the Corporation in obtaining, as promptly as practicable, all Government Approvals and all approvals, authorizations and clearances from other Persons required of Seller or the Corporation to consummate the Acquisition.

Section 6.2. Commercially Reasonable Efforts to Satisfy Closing Conditions, Etc. Purchaser will use all commercially reasonable efforts to cause the representations and warranties made by Purchaser in this Agreement to be true and correct in all material respects at all times before the Closing Date. Without limiting the generality of the foregoing, Purchaser agrees not to initiate or otherwise cause to occur any action, suit, proceeding or investigation described in Section 7.1(b).

Section 6.3. Notice and Cure. On or before the Closing Date, Purchaser will notify Seller promptly in writing of, and contemporaneously will provide Seller with true and complete copies of any and all information or documents relating to, any event, transaction or circumstance occurring after the date hereof that causes or will cause any covenant or agreement of Purchaser under this Agreement to be materially breached or that renders or will render materially untrue any representation or warranty of Purchaser contained in this Agreement as if the same were made on or as of the date of such event, transaction or circumstance. Purchaser will use all commercially reasonable efforts to cure, before the Closing, any violation or breach of any representation, warranty, covenant or agreement made by it in this Agreement, whether occurring or arising before or after the date hereof.

## ARTICLE VII.

### CONDITIONS PRECEDENT

Section 7.1. Conditions Precedent to Purchaser's Obligations. The obligations of Purchaser to complete the Closing are contingent upon the fulfillment of each of the following conditions on or before the Closing Date (except to the extent that Purchaser (i)

may, in its absolute discretion, waive any one or more thereof in whole or in part, or (ii) shall conclusively be deemed to waive any such condition in accordance with the terms and conditions of this Agreement) that (a) no action, suit or proceeding before any court or any governmental or regulatory authority shall have been commenced which could have a material adverse effect upon the Acquisition or the Corporation, (b) no action, suit or proceeding by any governmental or regulatory authority shall have been overtly threatened against the Corporation or any of the parties to this Agreement, or any of the principals, officers or directors of any of them, or any of the assets of the Corporation seeking to restrain, prevent or change the Acquisition or questioning the validity or legality of any part of the Acquisition or seeking damages in connection with the Acquisition, in each case, the effect of which would have a material adverse effect on the Acquisition, the business or operations of the Corporation taken as a whole or any of the parties to this Agreement, or any of the principals, officers or directors of any of them, and (c) the PSC Condition has been satisfied.

Section 7.2. Conditions Precedent to Seller's Obligations. The obligations of Seller to complete the Closing are contingent upon the fulfillment of each of the following conditions on or before the Closing Date (except to the extent that Seller (i) may, in its absolute discretion, waive any one or more thereof in whole or in part, or (ii) shall conclusively be deemed to waive any such condition in accordance with the terms and conditions of this Agreement) that (a) no action, suit or proceeding before any court or any governmental or regulatory authority shall have been commenced which could have a material adverse effect upon the Acquisition or the Corporation, and (b) no action, suit or proceeding by any governmental or regulatory authority shall have been overtly threatened, against the Corporation or any of the parties to this Agreement, or any of the principals, officers or directors of any of them, or any of the assets of the Corporation, seeking to restrain, prevent or change the Acquisition or questioning the validity or legality of any part of the Acquisition or seeking damages in connection with the Acquisition, in each case the effect of which would have a material adverse effect on the Acquisition, the business or operations of the Corporation taken as a whole or any of the parties to this Agreement, or any of the principals, officers or directors of any of them.

Section 7.3. Utility Approval. Seller and Purchaser shall cooperate with one another and use due diligence in order to satisfy the PSC Condition. Seller and Purchaser's Representatives shall after the Effective Date commence all appropriate actions and execute all applications and other documents which may be necessary in order to secure the PSC Condition. It shall be the responsibility of Purchaser to satisfy the PSC Condition although Seller shall fully cooperate in all aspects in connection therewith. Purchaser shall pay and be responsible for all of the costs and expenses of satisfying the PSC Condition, including but not limited to, all filing fees and the fees of any counsel or special counsel in connection with the securing of the PSC Condition. Purchaser shall at its sole cost and expense cause all



applications which are necessary to satisfy the PSC Condition to be completed and filed with the PSC no later than 45 days after the Effective Date. Seller shall cause the Corporation to supply such information and execute such applications and forms as Purchaser may reasonably request from time to time in order to satisfy the PSC Condition. If the PSC Condition shall for any reason not have been satisfied by the Closing Date and Purchaser has elected or deemed to have elected to proceed with the Closing in accordance with this Agreement, the sale and purchase of the Shares shall proceed in accordance with the terms and conditions hereof without any abatement or reduction of the Purchase Price and Purchaser shall agree (pursuant to a document in form and content reasonably satisfactory to Seller) to indemnify Seller and hold Seller harmless from any damage, expense or claim arising out of or connected with the failure to satisfy the PSC Condition and the operation of the Utility from and after the Closing Date. If the Closing of the Shares takes place prior to the satisfaction of the PSC Condition, Seller and Purchaser shall continue to cooperate in order to satisfy the PSC Condition after the Closing Date at the sole cost and expense of Purchaser. This Section 7.3 shall survive the Closing. Purchaser shall also be permitted after the expiration of the Due Diligence Period to file with the PSC an application for the expansion of the Utility's certified territory ("Utility Expansion"), provided (a) any such filing or application shall not adversely affect or delay the satisfaction of the PSC Condition, (b) Purchaser shall pay and be responsible for all of the costs and expenses in connection with the Utility Expansion, and (c) the filing for the Utility Expansion does not materially increase the obligations or liabilities of the Corporation. Subject to (a), (b) and (c) above, Seller shall cooperate with Purchaser in connection with any filing in connection with the Utility Expansion. If this Agreement shall terminate in accordance with the terms and conditions hereof, the benefit of any applications or filings for the Utility Expansion shall be deemed a Surviving Obligation and shall inure to the benefit of the Corporation without any further or additional expense to the Purchaser. The Corporation shall be responsible for all of the expenses in connection with the Utility Expansion arising or accruing from and after the termination of this Agreement, however, Purchaser shall be liable for all of such expenses arising or accruing prior to the termination of this Agreement.

## ARTICLE VIII.

### CLOSING

#### Section 8.1. Due Diligence Period.

(a) Notwithstanding anything to the contrary contained herein, Purchaser shall have a period commencing on the date hereof and ending at 4:00 p.m. (EDT) on March 13, 1998 (the "Due Diligence Period") to examine title to the Shares, to inspect the

physical and financial condition of the Utility, to inspect the financial condition of the Corporation, to review the Project Information, and to perform any reasonable examinations and inspections of the Utility and the Project Information. Purchaser's right (i) to undertake its due diligence activities, including the review of all Project Information, and (ii) to enter upon the Property for the purpose of making inspections and tests, shall at all times be subject to Purchaser's compliance with the provisions of Sections 11.1 and 11.2 (including, without limitation, Purchaser's obligations contained therein to obtain and maintain insurance, indemnify Seller and keep confidential all Project Information obtained by Purchaser). Neither Purchaser nor Purchaser's Representatives shall contact any Governmental Authority, any representative of any Governmental Agency in his or her official capacity, any of Seller's customers, vendors, employees, consultants or contractors, or any other entity or person concerning the Utility or the Corporation prior to the Closing without prior notice to Seller and obtaining Seller's prior written consent in each instance, and the provisions of this sentence shall survive the termination of this Agreement, provided however, subject to the requirements of this Section 8.1(a), Seller's prior consent shall not be required and Purchaser may contact the PSC, Monroe County Health Department and the Florida Department of Environmental Services in connection with Purchaser's due diligence activities, the PSC Condition, and the Utility Expansion. If Purchaser desires to contact or meet with any Governmental Authority or any representative of any Governmental Authority in his or her official capacity in connection with the due diligence, Purchaser shall be permitted to do so provided (1) Purchaser shall first give Seller not less than two days' notice prior to contacting or meeting with any Governmental Authority or any representative of any Governmental Authority in his or her official capacity, (2) Seller's designated representative shall have the right to attend all meetings with Governmental Authorities or any representative of any Governmental Authority in his or her official capacity, and (3) Purchaser shall take no action which could be detrimental or adversely affect in any manner the Premises or Seller. Except in connection with satisfying the PSC Condition, in no event shall Purchaser prior to the Closing make any commitment (oral or written) to any Governmental Authority or any representative of any Governmental Authority in his or her official capacity in respect of the Utility or the Corporation. Purchaser shall also have the right to meet with Seller's tenants provided, that, in each instance, a representative of Seller shall be present during the time that any such meeting takes place.

(b) Purchaser shall have the right, in its sole and absolute discretion, to elect to terminate this Agreement by giving written notice ("Purchaser's Termination Notice") of such election to Seller at any time prior to the expiration of the Due Diligence Period. If Purchaser shall timely elect to so terminate this Agreement, this Agreement shall be terminated and neither party shall have any further rights, obligations or liabilities hereunder, except as otherwise expressly provided in Sections 7.3, 10.4, 11.1, 11.2, 11.3, 11.4, 11.7, 11.11 and 11.12 (collectively, the "Surviving Obligations"), and except that Purchaser shall be

entitled to a return of the Down Payment (together with all interest accrued thereon, if any) provided Purchaser is not otherwise in default hereunder. If for any reason whatsoever Purchaser fails to give the Purchaser's Termination Notice in accordance with the notice provisions set forth in Section 11.16 hereof prior to the expiration of the Due Diligence Period, Purchaser shall be deemed to have irrevocably waived the right of termination granted under this Section 8.1(b), and such right of termination shall be of no further force or effect.

**Section 8.2. Time and Place of Closing.** The consummation of the Acquisition (the "Closing") shall be held at the offices of the Utility in Key West, Florida, commencing at 10:00 A.M., local time, on the earlier of (a) 15 days after the satisfaction of the PSC Condition, or (b) July 15, 1998, provided however, if the PSC Condition has not been satisfied (through no fault of the Purchaser) on or before July 1, 1998, Purchaser may by notifying Seller in writing ("Purchaser's Extension Notice") no later than July 1, 1998 elect to extend ("Purchaser's Extension Option") the Closing Date until the earlier of (i) five days after the satisfaction of the PSC Condition, or (ii) August 13, 1998. If the PSC Condition has not been satisfied on or before July 15, 1998, unless Purchaser has exercised Purchaser's Extension Option in which case the Closing Date shall be extended as provided above, Seller may, at its sole option, elect to terminate this Agreement ("Seller's Termination Option") by notifying ("Seller's Termination Notice") Purchaser of Seller's Termination Option on or after July 15, 1998. If Seller exercises Seller's Termination Option, this Agreement shall terminate and be of no further force or effect, except for the Surviving Obligations, and provided Purchaser is not otherwise in default under this Agreement, Purchaser shall receive a refund of the Downpayment plus any interest actually earned thereon. If Seller shall send Seller's Termination Notice, Purchaser shall have the right by notifying Seller ("Purchaser's Nullification Notice") in writing within five days after the receipt of Seller's Termination Notice to nullify Seller's Termination Option and elect to close the Acquisition notwithstanding the failure to satisfy the PSC Condition. If Purchaser shall send Purchaser's Nullification Notice, the Closing Date shall be the seventh day after the receipt of Seller's Termination Notice, in which case the PSC Condition shall be deemed waived in all respects as a condition to the obligations of the Purchaser under this Agreement. The date on which the Closing occurs is referred to herein as the "Closing Date."

**Section 8.3. Deliveries at Closing.** At the Closing, subject to the fulfillment or waiver of the conditions set forth in Article VII, (a) Seller shall convey the Shares to Purchaser, (b) Purchaser shall pay to Seller the Purchase Price, (c) Seller shall cause all Seller Related Debt to be satisfied and released without expense to either Purchaser or the Corporation, (d) Seller shall cause CRE to release any interest it may have in any capital stock of any of the Corporation, all as provided in Article II, and (e) Seller shall cause a title insurance policy ("Title Policy") to be issued in favor of the Corporation in substantial accordance with the Title Commitment without expense to either Purchaser or the

Corporation. Seller agrees to cooperate with any lender providing any financing to Purchaser at the Closing, provided however, the foregoing is not intended to create any financing contingency or condition for the benefit of Purchaser and the same shall not delay or otherwise adversely affect the Closing.

## ARTICLE IX.

### INDEMNIFICATION

Section 9.1. Indemnification by Seller. Subject to Section 9.5, Seller hereby agrees that it will indemnify, defend and hold harmless Purchaser from and against any and all Loss incurred by Purchaser or any of the Corporation arising after the Closing out of any of the following:

(a) Representations and Warranties. The falsity or incorrectness in any material respect of any representation or warranty made by Seller in this Agreement or in any instrument or document delivered by Seller to Purchaser pursuant to this Agreement;

(b) Covenants. Seller's failure to duly perform any covenant or agreement to be performed by it under this Agreement or under any instrument or document delivered by Seller to Purchaser pursuant to this Agreement, including without limitation, the obligations of the Seller and the Corporation respecting the operation of the Corporation and the Utility for the period between the Effective Date and Closing Date pursuant to Section 2.8 hereof; and

(c) Taxes. Any liability of the Corporation for any federal or state income Taxes, intangibles Taxes or franchise Taxes for any period prior to the Closing or in connection with the Tax election by Citicorp described in Section 2.4, and any Liens on assets of the Corporation arising as a result of the non-payment of any of the same.

Section 9.2. Indemnification by Purchaser. Purchaser hereby agrees that it will indemnify, defend and hold harmless Seller and its Affiliates (other than the Corporation) from and against any and all Loss incurred by Seller and/or its Affiliates (other than the Corporation) arising after the Closing out of any of the following:

(a) Representations and Warranties. The falsity or incorrectness in any material respect of any representation or warranty made by Purchaser in this Agreement or in any instrument or document delivered by Purchaser to Seller pursuant to this Agreement;

(b) Covenants. Purchaser's failure to duly perform any covenant or agreement to be performed by it under this Agreement or under any instrument or document delivered by Purchaser to Seller pursuant to this Agreement;

(c) Post-Closing Claims. Claims by Persons other than Seller and its Affiliates relating to the business or operations of the Corporation and the Utility after the Closing Date; and

(d) Utility Expansion. Claims by Persons other than Seller and its Affiliates relating to the Utility Expansion.

### Section 9.3. Indemnification Procedure.

(a) Notice of Claim. If an Indemnified Party becomes aware of any matter which, in its opinion, constitutes or may give rise to a Loss subject to indemnification by an Indemnifying Party as provided herein (an "Indemnity Claim"), the Indemnified Party shall promptly give written notice (a "Notice of Claim") of such Indemnity Claim to the Indemnifying Party. The Notice of Claim will (i) provide (with reasonable specificity) the basis on which indemnification is being asserted, (ii) set forth the actual or estimated amount of Loss for which indemnification is being asserted, if known, and (iii) be accompanied by copies of all relevant pleadings, demands and other papers served on the indemnified Party. The failure to give notice as required by this Section 9.3(a) in a timely fashion shall not result in a waiver of any right to indemnification hereunder except to the extent that the Indemnifying Party's ability to defend against the matter with respect to which indemnification is sought is materially and adversely affected by the failure of the Indemnified Party to give notice in a timely fashion as required by this Section 9.3(a).

(b) Third Party Claims. If any Indemnity Claim is based upon any claim, demand, suit or action of any third party (that is, any Person not a party to this Agreement) against the Indemnified Party (a "Third Party Claim"), then the Indemnified Party, at the time it gives the Indemnifying Party the Notice of Claim with respect to such Third Party Claim, shall offer the following options to the Indemnifying Party:

(1) The Indemnifying Party shall have the option to assume the defense of such Third Party Claim, which option shall be exercised by the Indemnifying Party (if the Indemnifying Party elects to exercise this option) by written notice to the Indemnified Party within 15 days after the Indemnified Party gives a Notice of Claim to the Indemnifying Party with respect to such Indemnity Claim. If the Indemnifying Party so exercises such option, then the Indemnifying Party shall, at its own expense, assume the defense of such Third Party Claim, and shall upon the

final determination thereof fully discharge at its own expense all liability of the Indemnified Party with respect to such Third Party Claim. The Indemnifying Party shall not be entitled to settle, compromise, decline to appeal, or otherwise dispose of any such action, proceeding or claim without the consent or agreement of the Indemnified Party (which consent will not be unreasonably withheld or delayed), provided that if such consent is withheld the Indemnifying Party's liability shall be limited to the amount for which the Indemnifying Party agreed with the third party claimant to settle and the Indemnifying Party shall remain responsible for its costs and attorneys' fees to the date such settlement was rejected by the Indemnified Party. From the time the Indemnifying Party so assumes such defense and while such defense is pursued diligently and in good faith, the Indemnifying Party shall have no further liability for attorneys' fees or other costs of defense thereafter incurred by the Indemnified Party in connection with such Third Party Claim.

OR

(2) The Indemnifying Party shall have the option to have the Indemnified Party undertake to defend such Third Party Claim, which option shall be exercised by the Indemnifying Party (if the Indemnifying Party elects to exercise this option) by written notice to the Indemnified Party within 15 days after the Indemnified Party gives a Notice of Claim to the Indemnifying Party with respect to such Indemnity Claim. If the Indemnifying Party so exercises such option, then the Indemnified Party shall conduct such defense as would a reasonable and prudent person to whom no indemnity were available, shall permit the Indemnifying Party (at the Indemnifying Party's sole expense) to participate in (but not control) such defense, and shall not settle or compromise such Third Party Claim without the Indemnifying Party's consent, which consent shall not be unreasonably withheld or delayed. If the Indemnifying Party does not exercise the option to assume the defense of a Third Party Claim as provided in Section 9.3(b)(1) within the time and in the manner therein provided, then the Indemnified Party shall undertake such defense in accordance with this Section 9.3(b)(2).

(c) Recoveries from Third Parties. If an Indemnified Party receives payment from any third party in respect of an Indemnity Claim that was previously the subject of an indemnification payment by an Indemnifying Party, such Indemnified Party shall pay to such Indemnifying Party an amount equal to the corresponding indemnification payment.

(d) Access to Information. In the event that an Indemnity Claim is made by an Indemnified Party, the Indemnifying Party, its representatives and agents, shall have

access to the premises, books and records of the Indemnified Party making such Indemnity Claim to the extent reasonably necessary to assist it in defending or settling any such Indemnity Claim; provided, however, that such access shall be conducted in such manner as not to interfere unreasonably with the operation of the business of the Indemnified Party and shall only take place in the presence of a representative of the Indemnified Party unless otherwise so agreed, and the Indemnified Party shall not be required to disclose any information with respect to itself or any of its Affiliates (or former Affiliates), other than the Corporation, and shall not be required to participate in the defense of any Indemnity Claim (except as otherwise expressly set forth herein), unless otherwise required or reasonably necessary in the defense of any Indemnity Claim.

Section 9.4. Survival of Warranties, Etc. The representations, warranties and covenants of Seller and Purchaser made in this Agreement or in any instrument or document delivered pursuant to this Agreement shall survive the Closing to the extent, but only to the extent, of the liability of each party for indemnity with respect thereto as provided in this Article IX.

Section 9.5. Limitations on Seller's Liability. Notwithstanding any provision of this Agreement to the contrary, the liability of Seller to Purchaser arising under this Agreement (including without limitation any representations and warranties made by Seller in this Agreement) shall be limited as follows:

(a) Exclusive Remedy. Seller shall not be liable or responsible in any manner whatever to Purchaser under this Agreement, whether for indemnification or otherwise, except for (i) indemnity as expressly provided in this Article IX, and (ii) except as otherwise expressly provided in Section 10.1.

(b) Limitation on Amount. Except for Indemnity Claims based on Section 9.1(c), Seller shall not have any such liability for any Loss otherwise indemnifiable hereunder in a cumulative aggregate amount in excess of \$100,000. The limitation on amount set forth in this Section 9.5(b) shall not apply to any Indemnity Claims based on Section 9.1(c), and such Indemnity Claims may be made without regard to such limitation on amount.

(c) Time Limit on Indemnity Claims. Seller shall not have any such liability for any Loss otherwise indemnifiable hereunder with respect to which a Notice of Claim has not been given to Seller:

(1) on or before the first anniversary of the Closing Date in the case of an Indemnity Claim based on either the falsity or incorrectness of any representation or warranty made by Seller in Section 3.1(a) or 3.1(e); and

(2) on or before the first anniversary of the Closing Date for all other Indemnity Claims, except for Indemnity Claims based upon Section 9.1(c).

The time limits set forth in this Section 9.5(c) shall not apply to any Indemnity Claims based on Section 9.1(c), and such Indemnity Claims may be made at any time after the Closing.

Section 9.6. Continued Liability for Indemnity Claims. The liability of an Indemnifying Party hereunder with respect to Indemnity Claims shall continue for so long as any Indemnity Claims may be made hereunder and, with respect to any such Indemnity Claim duly and timely made, thereafter until the Indemnifying Party's liability therefor is finally determined and satisfied. Seller covenants and agrees that, at all times during a period of one year immediately following the Closing Date, it shall maintain its corporate existence and not be liquidated or dissolved.

Section 9.7. Limitation on Purchaser's Liability. Except for claims based on Section 2, notwithstanding any provision of this Agreement to the contrary, Purchaser shall not have any liability for any Loss indemnifiable hereunder in a cumulative aggregate amount in excess of \$100,000 with respect to any claim arising or accruing from and after the Closing Date.

## ARTICLE X.

### REMEDIES

Section 10.1. Seller's Default. If the Closing fails to occur by reason of Seller's failure to perform its obligations under this Agreement, then Purchaser, as its sole remedies for such failure of Seller, may (a) terminate this Agreement by notice to Seller, or (b) seek specific performance by Seller of its obligations hereunder. If Purchaser shall elect to terminate pursuant to (a) above, then Purchaser, as its sole other remedy, may seek recovery from Seller of Purchaser's actual damages suffered as a result of Seller's failure to perform its obligations hereunder, provided however, Purchaser's maximum recovery of actual damages shall be limited to and never be permitted to exceed the sum of \$75,000, it being acknowledged by Purchaser that such sum is fair and equitable and will reasonably compensate Purchaser for its actual damages if Seller fails to perform its obligations under this Agreement. Except as set forth in this Section 10.1, Purchaser hereby expressly waives, relinquishes and releases any other right or remedy available to it at law, in equity or otherwise by reason of Seller's failure to perform its obligations hereunder, including, without limitation, the right to recover additional consequential, punitive, statutory or any other damages. If Purchaser elects to terminate this Agreement pursuant to this Section 10.1, then



this Agreement shall be terminated and neither party shall have any further rights, obligations or liabilities hereunder, except (i) for the Surviving Obligations, (ii) Purchaser shall be entitled to a return of the Downpayment (together with all accrued interest thereon, if any), provided Purchaser is not otherwise in default hereunder, and (iii) Purchaser may seek to recover the limited amount of damages specified above.

Section 10.2. Purchaser's Default. In the event of a default hereunder by Purchaser or if the Closing fails to occur by reason of Purchaser's failure or refusal to perform its obligations hereunder, then Seller may terminate this Agreement by notice to Purchaser. If Seller elects to terminate this Agreement pursuant to this Section 10.2, then this Agreement shall be terminated and Seller shall retain the entire Downpayment (together with all interest actually earned thereon, if any) as liquidated damages for all loss, damage and expenses suffered by Seller (other than losses resulting from or relating to the Surviving Obligations), it being acknowledged that (a) Seller's damages are impossible to ascertain, (b) neither party shall have any further rights, obligations or liabilities hereunder, except for the Surviving Obligations, and (c) the amount of liquidated damages is fair and equitable due to the various options granted to the Purchaser under this Agreement and the extended time period for Closing provided under this Agreement. In no event shall Purchaser be entitled to any grace period or notice respecting the requirement on the part of Purchaser to close the transactions contemplated under this Agreement on the Closing Date. Except as set forth in this Section 10.2, Seller hereby expressly waives, relinquishes and releases any other right or remedy available to it at law, in equity or otherwise by reason of Purchaser's failure to perform its obligations hereunder, including without limitation, the right to recover additional consequential, punitive, statutory or any other damages.

Section 10.3. Survival of Certain Sections. The provisions of Section 2.5 and Article XI will continue to apply following any such termination (which provisions shall also survive the Closing).

Section 10.4. Return of Project Information. If this Agreement is terminated for any reason, Purchaser, its officers, directors, employees, agents and other representatives, shall promptly deliver to Seller at no cost, charge or expense to Seller (a) all agreements, documents, contracts, instruments and other books and records and Project Information provided by Seller and its Affiliates or the Corporation or their representatives or agents in connection with the Acquisition and (b) all surveys, title reports and commitments, environmental studies and reports, and engineering reports and studies secured by or at the direction of Purchaser and its Affiliates or agents.

Section 10.5. Failure of Conditions. If the Closing fails to occur as a result of the non-fulfillment of any of the conditions precedent set forth in Section 7.1, then this

Agreement shall be terminated and neither party shall have any further rights, obligations or liabilities hereunder, except for the Surviving Obligations and Purchaser shall be entitled to a return of the Downpayment (together with all interest actually earned thereon, if any), provided Purchaser is not otherwise in default hereunder.

## ARTICLE XI.

### MISCELLANEOUS

Section 11.1. Investigation by Purchaser. Unless and until the earlier of (i) the termination of this Agreement, or (ii) the default by Purchaser under this Agreement:

(a) Access to Project Information. Purchaser and Purchaser's Representatives shall have full access to examine and inspect any books, records, architectural and engineering plans, drawings, records, all leases and service agreements affecting the Property, surveys, title insurance commitments and policies (and any notes related thereto), environmental reports or other matters pertaining to the Corporation or its assets, to the extent they are in the physical possession of the Corporation, Seller, CRE or their Affiliates (all such foregoing information or documents are sometimes collectively referred to herein as the "Project Information"). The Project Information shall be provided to Purchaser in accordance with a schedule to be agreed upon between the Corporation and Purchaser. Purchaser shall have the right to make copies of the Project Information at the sole cost and expense of Purchaser. Purchaser shall keep the Project Information in strict confidence in accordance with Section 11.7. Notwithstanding the foregoing, Project Information shall not include, and Purchaser shall have no right to examine or inspect, the internal records, Tax returns of Citicorp or its Affiliates (other than the Corporation), appraisals or any other information, in each case which is of a confidential nature, in the possession of Seller or any Affiliate of Seller (inclusive of the Corporation), agent, employee or independent contractor of Seller.

(b) Right to Enter Property. Purchaser and its representatives shall have the right to enter upon the Property for the sole purpose of inspecting the Property and making surveys, soil borings, engineering tests and other investigations, inspections and tests (collectively, "Investigations"); provided (i) Purchaser shall give prior notice to Seller and the Corporation before such entry, and (ii) such notice shall include sufficient information to permit Seller and the Corporation to review the scope of the proposed Investigations. Any entry upon the Property and all Investigations shall be during the normal business hours of the Corporation, at the sole risk and expenses of Purchaser and its representatives, and shall not interfere with or disrupt the activities on or about the Property, or any tenants and their employees and invitees. Purchaser shall:

(1) promptly repair any damage to the Property resulting from any such Investigations and replace, refill and regrade any holes made in, or excavations of, any portion of the Property used for such Investigations so that the Property shall be in the same condition that it existed in prior to such Investigations;

(2) fully comply with all Laws applicable to the Investigations and all other activities undertaken in connection therewith;

(3) permit Seller to have one or more representatives present during all Investigations undertaken hereunder;

(4) take all actions and implement all protections necessary to ensure that all actions taken in connection with the Investigations, and the equipment, materials and substances generated, used or brought onto the Property pose no threat to the safety or health of Persons or the environment, and cause no damage to the Property or other assets of the Corporation or other Persons;

(5) furnish to Seller, at no cost or expense to Seller, copies of all surveys, soil test results, engineering, asbestos, environmental and other studies and reports relating to the Investigations which Purchaser shall obtain promptly after Purchaser's receipt of same;

(6) maintain or cause to be maintained, at Purchaser's expense, a policy of comprehensive general public liability insurance, with a broad form contractual liability endorsement covering Purchaser's indemnification obligations contained in Article XI and Sections 11.1(b)(8), 11.1(c)(vi) and 11.11 hereof, and with a combined single limit of not less than \$1,000,000 per occurrence for bodily injury and property damage, automobile liability coverage including owned and hired vehicles with a combined single limit of \$1,000,000 per occurrence for bodily injury and property damage and \$5,000,000 excess umbrella liability, all of which shall be written on an "occurrence form" insuring Purchaser, and naming Seller and the Corporation, Manager and their Affiliates as additional insureds, against any injuries or damages to persons or property that may result from or are related to (i) Purchaser's and/or its representatives' entry upon the Property, (ii) any Investigations or other activities conducted thereon, and (iii) any and all other activities undertaken by Purchaser and/or its representatives in connection with the Property in such forms and with an insurance company acceptable to Seller, and deliver to Seller prior to the first entry on the Property a copy of such insurance policy or certificates evidencing the insurance requirements hereof;

(7) not allow the Investigations or any and all other activities undertaken by Purchaser or its representatives to result in any Liens being filed or recorded against the Property or the Corporation and Purchaser shall, at its sole cost and expense, promptly discharge of record any such Liens that are so filed or recorded (including, without limitation, Liens for services, labor or materials furnished); and

(8) indemnify, defend and hold harmless Seller and its Affiliates from and against any Loss suffered or incurred by Seller or its Affiliates arising out of or in connection with (i) Purchaser's and/or its representatives' entry upon the Property, (ii) any Investigations or other activities conducted thereon by Purchaser or its representatives, (iii) any Liens filed or recorded against the Property or the Corporation as a consequence of the Investigations or any and all other activities undertaken by Purchaser or its representatives, and/or (iv) any and all other activities undertaken by Purchaser or its representatives with respect to the Property.

Section 11.2. Condition of Property. Purchaser expressly acknowledges that Seller is providing to Purchaser the full opportunity to inspect the Property, will become thoroughly acquainted with its condition, and will review, to the extent necessary in its discretion, all of the Project Information. Anything to the contrary contained in this Agreement notwithstanding, Seller and its Affiliates have not made and do not make any representations, warranties (express or implied), guarantees, promises, statements, inducements or information as to the Property or any part thereof, or as to the physical condition, expenses, operation, maintenance, profit, rents, loss or use to which the Property, or any part thereof, may be put, or any other matter or thing affecting or pertaining to the Property except as herein expressly set forth. Further, Purchaser acknowledges that it will have the opportunity to independently investigate, analyze and appraise the value and potential profitability of the Corporation. Seller and its Affiliates shall not be liable or bound in any manner by any verbal or written agreements, representations, "set-ups" or information pertaining to the operation, lay-out, expenses, condition, income, profits or loss furnished by any broker, agent, employee, consultant or servant of Seller or its Affiliates or any other Person, unless the same are specifically set forth in this Agreement. Without limiting the generality of the foregoing, Purchaser has not relied on any representations or warranties, and neither Seller nor any of Seller's Affiliates, nor any of their agents or representatives has or is willing to make any representations or warranties, express or implied (other than as may be expressly set forth herein), as to (i) the status of title to the Property, (ii) the current or future real estate tax liability, assessment or valuation of the Property, (iii) the potential qualification of the Property for any and all benefits conferred by any Laws whether for subsidies, special real estate tax treatment, insurance, mortgages or any other benefits, whether similar or dissimilar to those enumerated, (iv) the present or future condition and operating state of any of the Property and the present and future structural, non-structural and other condition of any

improvements in respect of the Property, (v) the compliance of the Property in its current or any future state with applicable Laws or any violations thereof, including, without limitation, those relating to environmental laws, development orders (including, if applicable, development of regional impact requirements, concurrency requirements or other comparable matters), access by the handicapped, zoning laws and the ability to obtain a change in the zoning or a variance with respect to the Property' non-compliance, if any, with zoning laws, (vi) the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, condition or otherwise in respect of the Property, (vii) the availability of any financing for the alteration, rehabilitation or operation of the Property from any source, including, without limitation, any government authority or any lender, (viii) the current or future use of the Property, including, without limitation, the Property' use for residential, commercial, manufacturing or general office purposes, (ix) the actual or projected income or operating expenses of the Property or (x) the absence of environmentally hazardous, toxic or dangerous substances, or any other conditions (whether patent, latent or otherwise) affecting the Property. Purchaser acknowledges that Purchaser will be afforded the opportunity for full and complete investigations, examinations and inspections of the Property and all Project Information. Purchaser further acknowledges and agrees that (A) the Project Information delivered or made available to Purchaser and Purchaser's representatives by Seller or Seller's Affiliates, or any of their agents or representatives may have been prepared by third parties and may not be the work product of Seller and/or any of Seller's Affiliates; (B) neither Seller nor any of Seller's Affiliates has made any independent investigation or verification of, or has any knowledge of, the accuracy or completeness of, the Project Information; (C) the Project Information delivered or made available to Purchaser and Purchaser's representatives is furnished to each of them at the request, and for the convenience of, Purchaser; (D) Purchaser is relying solely on its own investigations, examinations and inspections of the Property and those of Purchaser's representatives and is not relying in any way on the Project Information furnished by Seller or any of Seller's Affiliates, or any of their agents or representatives; (E) Seller expressly disclaims any representations or warranties with respect to the accuracy or completeness of the Project Information and Purchaser releases Seller and Seller's Affiliates, and their agents and representatives, from any and all liability with respect thereto; and (F) the 1997 real estate and personal property taxes in respect of the Property may have not been paid but will be paid on or prior to the Closing. **SELLER DOES HEREBY DISCLAIM ANY AND ALL WARRANTIES OF MERCHANTABILITY AND FITNESS THAT MAY BE DUE FROM SELLER OR ITS AFFILIATES TO PURCHASER WHETHER IN REGARD TO THE PROPERTY OR THE PERSONAL PROPERTY USED IN CONNECTION WITH THE PROPERTY.**

Notwithstanding anything else to the contrary herein, no casualty loss or condemnation (whether partial or total) of the Property on or prior to the Closing shall in any way or manner affect the obligations of the parties as set forth herein, except, however, if, prior to

the Closing, all or any portion of the Property are damaged by fire, vandalism, acts of God or other casualty or cause which results in damage to the Property of \$150,000 or greater from a risk not fully covered by insurance (exclusive of any deductible), Purchaser shall have the option to terminate this Agreement in which event the Downpayment and all interest earned thereon, if any, shall be promptly delivered to Purchaser and the parties hereto shall be released from all further obligations and liabilities hereunder, except for the Surviving Obligations. Purchaser shall exercise its right to terminate no later than ten days after the damage is incurred or Purchaser shall conclusively be deemed to have waived this right to terminate.

**Section 11.3. No Claims Against Seller's Affiliates.** Purchaser agrees that it does not and will not have any claims or causes of action against any disclosed or undisclosed officer, director, employee, trustee, shareholder, partner, principal, parent, subsidiary or other Affiliate of Seller, including, without limitation, Citicorp, Citibank, N.A., CRE or Aspiration, Inc. (collectively, "Seller's Affiliates", provided that "Seller's Affiliates" for this purpose shall not include a successor to Seller or the officers and directors of the Corporation) arising out of or in connection with this Agreement or the Acquisition. Purchaser agrees to look solely to Seller and its assets for the satisfaction of any liability or obligation arising under this Agreement or the Acquisition, or for the performance of any of the covenants, warranties or other agreements contained herein, and further agrees not to sue or otherwise seek to enforce any personal obligation against any of Seller's Affiliates with respect to any matters arising out of or in connection with this Agreement or the Acquisition. Without limiting the generality of the foregoing provisions of this Section 11.3, Purchaser hereby unconditionally and irrevocably waives any and all claims and causes of action of any nature whatsoever it may now or hereafter have against Seller's Affiliates from any and all liability whatsoever that may now or hereafter accrue in favor of Purchaser against Seller's Affiliates, in connection with or arising out of this Agreement or the Acquisition and hereby unconditionally and irrevocably releases and discharges Seller's Affiliates from any and all liability whatsoever that may now or hereafter accrue in favor of Purchaser against Seller's Affiliates, in connection with or arising out of this Agreement or the Acquisition. Notwithstanding anything to the contrary contained in this Section 11.3, this Section 11.3 shall not apply to any claims by Purchaser after the Closing against Seller's Affiliates pursuant to Section 2.4.

**Section 11.4. Entire Agreement.** All prior statements, understandings, representations and agreements (including, without limitation, the Letter of Intent dated September 3, 1997 ["Letter of Intent"]) between the parties, oral or written, are superseded by and merged in this Agreement, which alone fully and completely expresses the agreement between them in connection with the subject matter hereof and which is entered into after full investigation, none of the parties relying upon any statement, understanding, representation or agreement

made by the other not expressly set forth in this Agreement. Without limiting the foregoing, upon the execution of this Agreement by all of the parties hereto, this Agreement shall be deemed to supersede the Letter of Intent. This Agreement shall be given a fair and reasonable construction in accordance with the intentions of the parties hereto, and without regard to or aid of canons requiring construction against the party drafting this Agreement.

Section 11.5. Expenses. Except as otherwise expressly provided in this Agreement, each party hereto will pay its own costs and expenses (including, but not limited to, the legal fees and expenses of any counsel retained by each party in connection with this Agreement and the Acquisition) in connection with this Agreement and the Acquisition. Purchaser shall be responsible for all of the expenses in connection with satisfying the PSC Condition and Seller shall be responsible for the title insurance premium in connection with the Title Policy. Recording costs and fees, if any, and any escrow fees or costs in connection with the Acquisition shall be divided on a 50%-50% basis between Purchaser and Seller.

Section 11.6. Public Announcements. At all times at or before the Closing, Seller, on the one hand, and Purchaser, on the other hand, will each consult with the other before issuing or making any reports, statements or releases to the public with respect to this Agreement or the Acquisition and will use good faith efforts to agree on the text of any such report, statement or release. If Seller and Purchaser are unable to agree on or approve any such public report, statement, or release, then such report, statement or release may not be issued or made, unless and except to the extent that such report, statement or release is, in the opinion of legal counsel to a party, required by Law to be made at such time, in which case the legally required report, statement or release may be made; provided, however, that any party releasing such a legally required report, statement or release shall use its best efforts to obtain and maintain the confidentiality of such report, statement or release, unless the other party agrees otherwise.

Section 11.7. Confidentiality.

(a) Purchaser agrees that, prior to the Closing, all Project Information shall be kept strictly confidential and shall not, without the prior consent of Seller, be disclosed by Purchaser or Purchaser's Representatives, in any manner whatsoever, in whole or in part, and will not be used by Purchaser or Purchaser's Representatives, directly or indirectly, for any purpose other than evaluating the Property. Moreover, Purchaser agrees that, prior to the Closing, the Project Information will be transmitted only to Purchaser's Representatives (i) who need to know the Project Information for the purpose of evaluating the Property, and who are informed by the Purchaser of the confidential nature of the Project Information and (ii) who agree in writing to be bound by the terms of Sections 11.7 and 11.2. Prior to the delivery or disclosure of any Project Information to Purchaser's Representatives at any time

prior to the Closing, Purchaser agrees to notify Seller as to their identity and to furnish Seller with their written assumption and adoption of the terms of Section 11.7 and 11.2, all in the form annexed hereto as Schedule 11.7 and made a part hereof. The provisions of this Section 11.7 shall in no event apply to (1) Project Information which is a matter of public record and shall not prevent Purchaser from complying with Laws, including, without limitation, governmental regulatory, disclosure, tax and reporting requirements, (2) bona fide institutional lenders to which Purchaser shall apply for financing in respect of the Corporation, Shares or the Property, provided however, in no event shall the fact that Purchaser may seek financing deem to create any limitation or condition on Purchaser's obligations under this Agreement, or (3) the transmittal of Project Information to the PSC in connection with satisfying the PSC Condition.

(b) Purchaser shall indemnify and hold Seller and Seller's Affiliates harmless from and against any and all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including, without limitation, attorneys' fees and disbursements) suffered or incurred by Seller or any of Seller's Affiliates and arising out of or in connection with a breach by Purchaser and Purchaser's Representatives of the provisions of this Section 11.7.

Section 11.8. Assignment. Except as expressly provided herein, this Agreement may not be assigned by Purchaser in whole or in part and any assignment or attempted assignment by Purchaser shall constitute a default by Purchaser hereunder and shall be null and void. For the purposes of this Section, any transfer prior to the Closing of any outstanding capital stock of Purchaser if Purchaser is a corporation or of any partnership interests if Purchaser is a partnership shall be deemed to be an assignment and prohibited by the terms of this Section. Without limiting any of Purchaser's obligations under this Agreement, Purchaser shall have the right (the "Assignment Election") upon not less than 15 days prior written notice to the Seller prior to the Closing (the "Assignment Notice") to (a) assign this Agreement between WS and GS, or (b) designate another entity (the "Assignee"), to receive an assignment of this Agreement and all of the Purchaser's rights and obligations hereunder, provided in the case of an assignment pursuant to (b) above, (i) the Assignee is either (x) a limited partnership of which WS or an Affiliate of William L. Smith, Jr. is the sole general partner and the limited partners are approved by Seller within the reasonable exercise of Seller's discretion, or (y) a corporation, the stock of which has been issued to William L. Smith, Jr. and such other stockholders as are approved by Seller within the reasonable exercise of Seller's discretion and, provided further, in the case of an assignment pursuant to (a) or (b) above, the Assignee shall assume in writing all of the obligations of Purchaser hereunder. The Assignment Notice shall (i) indicate the name, address, and the information described above with respect to the Assignee, and (ii) be accompanied by (1) a confidentiality agreement in the form of Schedule 11.7 annexed hereto executed by the Assignee, (2) copies of any agreements executed



between the Purchaser and Assignee, and (3) at least one fully executed counterpart of the Assignment and Assumption Agreement executed by Purchaser and the Assignee in the form of Schedule 11.8 annexed hereto. No Assignment of this Agreement shall relieve the original Purchaser or any successor purchaser from any of its obligations, liabilities or responsibilities under this Agreement.

Section 11.9. Further Assurances. Seller and Purchaser agree that, from time to time after the Closing, upon the reasonable request of the other, they will cooperate and will cause their Affiliates to cooperate with each other to effect the orderly transition of the business, operations and affairs of the Corporation. Without limiting the generality of the foregoing, (i) Purchaser and the Corporation will provide representatives of Seller and its Affiliates reasonable access to all pre-closing books and records of the Corporation reasonably requested by Seller or its Affiliates in the preparation of any post-Closing financial statements, reports or tax returns of Seller or its Affiliates; and (ii) each party hereto will execute such documents and instruments as the other party hereto may reasonably request containing terms and conditions mutually satisfactory to each party hereto to further effectuate the terms hereof.

Section 11.10. Prohibition of Recording. Any attempt to record this Agreement or any memorandum thereof or any reference hereto by Purchaser or any agent or representative of Purchaser shall, at the sole option of Seller, render this Agreement null and void; and in the event Seller so elects, Seller shall be under no further liability or obligation to Purchaser hereunder. Purchaser hereby indemnifies and exonerates Seller from all Loss arising out of or in connection with the improper or unauthorized recordation of this Agreement or any memorandum thereof or any reference hereto by Purchaser or any agent or representative of Purchaser in any recorded document.

Section 11.11. Attorneys' Fees. In the event of any litigation arising out of or connected in any manner with this Agreement, the non-prevailing party shall pay the costs of the prevailing party, including its reasonable counsel and paralegal fees and other costs incurred in connection therewith through and including all other legal expenses and the costs of any appeals and appellate costs relating thereto. Wherever in this Agreement it is stated that one party shall be responsible for the attorneys' fees and expenses of another party, the same shall automatically be deemed to include the fees and expenses in connection with all appeals and appellate proceedings relating or incidental thereto.

Section 11.12. Brokerage. Purchaser represents and warrants to Seller that Purchaser has not dealt with any real estate broker, firm, person or other finder in connection with the Acquisition or any other transaction contemplated under this Agreement, nor has Purchaser been introduced to the Property or to Seller by any real estate broker, firm, person or other

finder. Purchaser does hereby agree to indemnify and save Seller harmless from and against any and all claims, suits, demands or liabilities of any kind or nature whatsoever (including, but not limited to, all attorneys' fees and all other court costs, including any appellate proceedings and appeals) arising out of the breach by Purchaser of any of the foregoing representations and warranties. In reliance upon the representation and warranty made by Purchaser in this Section 11.12, Seller represents and warrants to Purchaser that Seller has not dealt with any real estate broker, firm, person or other finder in connection with the Acquisition or any other transaction contemplated under this Agreement, nor has Seller been introduced to Purchaser by any real estate broker, firm, person or other finder. Seller does hereby agree to indemnify and save Purchaser harmless from and against any and all claims, suits, demands or liabilities of any kind or nature whatsoever (including, but not limited to, all attorneys' fees and all other court costs, including any appellate proceedings and appeals) arising out of the breach by Seller of the foregoing representations and warranties. The provisions of this Section 11.12 shall survive the Closing or other termination of this Agreement. Notwithstanding the foregoing, Seller shall be responsible to pay any fees due to the Manager in connection with the Management Agreement.

Section 11.13. Title Insurance. Seller shall be obligated to furnish the Title Policy in accordance with the terms and conditions of this Agreement.

Section 11.14. Waiver. Any term or condition of this Agreement may be waived at any time by the party that is entitled to the benefit thereof. Such waiver must be in writing and must be executed by an officer of such party. A waiver on one occasion will not be deemed to be a waiver of the same or any other breach or nonfulfillment on a future occasion. All remedies, either under this Agreement, or by Law or otherwise afforded, will be cumulative and not alternative. The consummation of the Acquisition will constitute a waiver of all breaches of representations, warranties and covenants of each party hereto that are expressly disclosed in writing on or before the Closing Date to the other party hereto.

Section 11.15. Amendment. This Agreement may be modified or amended only by a writing duly executed by or on behalf of Seller and Purchaser.

Section 11.16. Notices. All notices, offers, acceptances, rejections, consents, requests and other communications under this Agreement shall be in writing and shall be deemed to have been given (a) when sent by telecopier (with receipt confirmed), or (b) when sent by first class certified or registered mail, postage prepaid, return receipt requested, or (c) on receipt after being sent by a nationally recognized delivery service guaranteeing overnight delivery, in each case addressed as follows:

**If to Seller:**

**KW Resort Holdings Corp.  
c/o Citicorp Real Estate, Inc.  
599 Lexington Avenue  
20th Floor, Zone 1  
New York, New York 10043  
Attention: Paul Chronis  
Telephone No. (212) 559-0434  
Telecopier No. (212) 371-5747**

**with mandatory copies to:**

**Citicorp Real Estate, Inc.  
Legal Department  
599 Lexington Avenue  
20th Floor  
New York, New York 10043  
Attention: Michael W. Broido, Esq.  
Telephone No. (212) 559-0818  
Telecopier No. (212) 793-6766**

**- and -**

**Weil Gotshal & Manges, LLP  
701 Brickell Avenue  
Suite 2100  
Miami, Florida 33131  
Attention: Barry Frank, Esq.  
Telephone No. (305) 577-3210  
Telecopier No. (305) 374-7159**

**If to Purchaser:**

**c/o Smith Hemmesch and Burke  
11 East Adams, Suite 1400  
Chicago, Illinois 60603-6304  
Attention: William L. Smith, Jr., Esq.  
Telephone No. (312) 939-0100  
Telecopier No. (312) 939-7765**

with a copy to:

Hopping Green Sams & Smith  
123 South Calhoun Street  
Tallahassee, Florida 32314  
Attention: Cheryl Stuart, Esq.  
Telephone No. (904) 222-7500  
Telecopier No. (904) 224-8551

If to Escrow Agent:

Weil, Gotshal & Manges, LLP  
701 Brickell Avenue, Suite 2100  
Miami, Florida 33131  
Attention: Barry Frank, Esq.  
Telephone No. (305) 577-3210  
Telecopier No. (305) 374-7159

Section 11.17. Time of the Essence. The parties agree that, if wherever this Agreement provides that Seller or Purchaser must send or give any notice, make an election or take some other action with a specific time period in order to exercise a right or remedy it may have hereunder, time shall be of the essence with respect to the taking of such action, and failure of Seller or Purchaser, as the case may be, to take such action within the applicable time period shall be deemed to be an irrevocable waiver by Seller or Purchaser, as applicable, of such right and remedy.

Section 11.18. WAIVER OF JURY TRIAL. SELLER AND PURCHASER DO HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVE ANY RIGHT ANY PARTY MAY HAVE TO A JURY TRIAL IN EVERY JURISDICTION IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY HERETO AGAINST ANY OTHER PARTY HERETO OR THEIR RESPECTIVE AFFILIATES, SUCCESSORS OR ASSIGNS IN RESPECT OF ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER DOCUMENT EXECUTED AND DELIVERED BY ANY PARTY IN CONNECTION HEREWITH (INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT, AND ANY AND ALL CLAIMS OR DEFENSES ASSERTING THAT THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR OTHERWISE VOID OR VOIDABLE).

**Section 11.19. Contingency Sale.** Following the date of this Agreement and until the Closing, Seller may solicit other purchasers for the Shares or the Property solely as a precaution against a business contingency that Purchaser might fail to close as required hereunder. In the event that Seller shall find other contingent purchasers, and if Seller shall enter into such Agreements, such agreements shall specifically recite that any rights arising thereunder are contingent upon the failure of Purchaser hereunder to close under this Agreement. Nothing contained herein shall be deemed, in any manner, to constitute an expectancy by Seller of a failure of any kind on the part of Purchaser to close in accordance with the terms of this Agreement.

**Section 11.20. Stipulation of Jurisdiction.** The parties hereto do unconditionally and irrevocably hereby submit themselves to the jurisdiction of the courts of the State of Florida and the exclusive venue of the Eleventh Judicial Circuit in and for Dade County, Florida for the purpose of litigating any matter arising by, through or under this Agreement.

**Section 11.21. No Third Party Beneficiary.** The terms and provisions of this Agreement are intended solely for the benefit of the parties hereto and their respective successors and permitted assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other Person.

**Section 11.22. Governing Law.** This Agreement will be governed by and construed and enforced in accordance with the Laws of the State of Florida (without regard to the principles of conflicts of law) applicable to a contract executed and performable in such State.

**Section 11.23. Binding Effect.** Subject to Section 11.9, this Agreement is binding upon and will inure to the benefit of the parties and their respective successors and permitted assigns.

**Section 11.24. Invalid Provisions.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations under this Agreement of Seller and Purchaser will not be materially and adversely affected thereby, (i) such provision will be fully severable; (ii) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof; (iii) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom; and (iv) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms and effect to such illegal, invalid or unenforceable provision as may be possible.

Section 11.25. Submission of Agreement Not an Offer. The submission or transmittal of this Agreement shall not create any liability on the part of Seller nor shall Seller have any obligation to Purchaser unless and until such time as Seller shall have executed a counterpart of this Agreement and unconditionally delivered it to Purchaser.

Section 11.26. Radon Gas. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health unit.

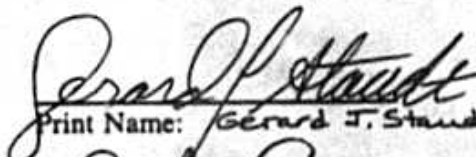
Section 11.27. Exercise of Approval Rights. Any party entitled to approve or disapprove any document, instrument, or other item or matter pursuant to the terms or provisions of this Agreement shall be entitled to exercise such approval or disapproval in the reasonable judgment and discretion of such party.

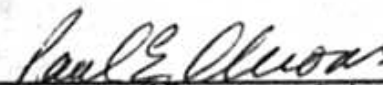
Section 11.28. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together which together constitute one Agreement. This Agreement may be executed and delivered by facsimile signature, which facsimile signature shall for all purposes be and constitute an original signature.


IN WITNESS WHEREOF, this Agreement had been duly executed and delivered as of the date first above written by the duly authorized officers of the undersigned.

Signed, sealed and delivered  
in the presence of:


KW RESORT HOLDINGS CORP., a Florida  
corporation

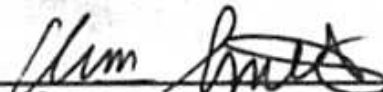
  
Print Name: Gerard J. Standt

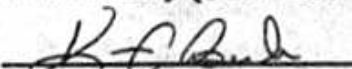
By:   
Name: PAUL E. CHIODO  
Title: VICE PRESIDENT


  
Print Name: Jonathan Cigno

WS UTILITY, INC., a Florida corporation

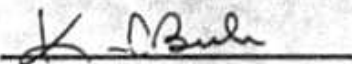
  
Print Name: Robin Sikora

By:   
Name: Dese  
Title: Dese

  
Print Name: Kevin Burke

  
Print Name: Robin Sikora

  
GWEN SMITH, an individual

  
Print Name: Kevin Burke

AGREEMENT BY ESCROW AGENT

Weil, Gotshal & Manges, LLP has joined in the execution of the foregoing Acquisition Agreement solely for the purpose of agreeing to serve as an Escrow Agent thereunder and to be bound by all of the obligations of Escrow Agent set forth therein.

WEIL, GOTSHAL & MANGES, LLP

By: Bay T. M. By  
Partner

Date: January 16, 1998



## EXHIBIT "A"

### Permitted Exceptions

1. Taxes and assessments for the year 1998 and subsequent years.
2. The nature and extent of the Riparian and Littoral Rights.
3. Any land described in Exhibit "B" which is artificially filled land in what was formerly navigable waters, is subject to the rights of the United States government, arising by said government's control over navigable waters involving navigation and commerce.
4. Easements or claims of easements not shown by the public records, boundary line disputes, overlaps, encroachments, and any matters not of record which would be disclosed by an accurate survey and inspection of the Real Property.
5. Statute and Regulations recorded in O.R. Book 668, Page 43.
6. Interest of Board of County Commissioners of Monroe County, pursuant to Quit Claim Deed recorded in O.R. Book 1363, Page 2022.
7. Oil and Mineral Reservations in favor of the State of Florida, as set forth in the deed from the Trustees of the Internal Improvement Fund, recorded in Official Records Book 53, Page 238.
8. Easement(s) in favor of Utility Board of the City of Key West set forth in instrument(s) recorded in Official Records Book 687, Page 834 and Official Records Book 244, Page 401.
9. Easement(s) in favor of the City of Key West set forth in instrument(s) recorded in Official Records Book 359, Page 89; Official Records Book 326, Page 139; Official Records Book 359, Page 79 and in Official Records Book 139, Page 520.
10. Easement Agreement recorded in O.R. Book 866, Page 2469.
11. Oil and Minerals Reservations in favor of the State of Florida, as set forth in the deed from the Trustees of the Internal Improvement Fund, recorded in Official Records Book 380, Page 381.

12. Any loss or damage occasioned by or resulting from the failure to obtain fill permits.
13. Easement Agreement recorded in O.R. Book 866, Page 2456.
14. Reservations in favor of the State of Florida; as set forth in the deed from the Trustees of the Internal Improvement Fund, recorded in Official Records Book G-65, Page 82.
15. Ingress-Egress Easement recorded in O.R. Book 313, Page 53. (Affects Parcel E Only)
16. Easement recorded in O.R. Book 193, Page 272, corrected in Official Records Book 310, Page 323, as assigned in Official Records Book 547, Page 147. (Affects Parcel E Only)
17. Easement in Warranty Deed recorded in O.R. Book 728, Page 4. (Affects Parcel E Only)
18. Easement in Warranty Deed recorded in O.R. Book 792, Page 37 and in Official Records Book 742, Page 49. (Affects Parcel E Only)
19. Easements recorded in O.R. Book 780, Page 1169; Official Records Book 782, Page 1363; Official Records Book 788, Page 662 and Official Records Book 728, Page 1. (Affects Parcel E Only)
20. Rights of ingress-egress in Warranty Deed recorded in O.R. Book 375, Page 646.
21. Easement recorded in O.R. Book 351, Page 192, assigned in Official Records Book 866, Page 2474.
22. Easements as shown on the Plat recorded in Plat Book 5, Page 89.
23. Restrictions as shown on the Plat recorded in Plat Book 5, Page 89.
24. Protective Covenants recorded in O.R. Book 139, Page 144.
25. Easements as shown on the Plat recorded in Plate Book 4, Page 57.
26. Restrictions as shown on the Plat recorded in Plat Book 4, Page 57.
27. Terms and conditions of Utility Easement recorded in O.R. Book 878, Page 2318.

28. Easement recorded in O.R. Book 879, Page 392.
29. Supplementary Agreement recorded in O.R. Book 53, Page 241.
30. Lease Agreement recorded in O.R. Book 169, Page 115.
31. Deed referencing lease agreement recorded in O.R. Book 286, Page 270.
32. Easement in Deed recorded in O.R. Book 742, Page 49.
33. Easement recorded in O.R. Book 375, Page 62.

**EXHIBIT "B"**

**Legal Description of Real Property**

**Parcel A**

A parcel of filled submerged land on Stock Island, Monroe County, Florida, being a portion of that certain submerged land described in T.I.I.F. Deed No. 19837-A; said parcel being more particularly described by "metes and bounds" as follows:

Commence at the intersection of the southeasterly right-of-way line of Fourth Avenue and the southwesterly right-of-way line of Front Street; then S47°13'30" E along said southwesterly right-of-way line for 1003.76 feet to the westerly right-of-way line of a 50 foot wide access easement; thence S6°01'50" W along said westerly right-of-way line for 313.78 feet to the Point of Beginning of the hereinafter described parcel of land; thence S70°27'50" W for 240.30 feet; thence N57°15'03" W for 234.83 feet; thence N9°16'30" E for 304.20 feet to an intersection with a line 251.44 feet southwesterly of as measured at right angles and parallel to said southwesterly right-of-way of Front Street; thence S47°13'30" E along said parallel line for 510.80 feet to the Point of Beginning. Said parcel contains 2.00 acres more or less.

Together with a Non-Exclusive Drainage Easement, the legal description of which is below:

An area being 15 feet in width, the southerly line thereof being more particularly described as follows: begin at the most southerly corner of the property described in the parcel described above, thence south 70 degrees, 27 minutes 50 seconds west along the southwesterly prolongation of the southeasterly boundary line of said above parcel for 250 feet more or less, to the easterly shore line of the existing harbor and the point of termination of said southerly line.

Together with a Non-Exclusive Access Easement, the legal description of which is below:

An area having a minimum width of 25.00 feet and being more particularly described as follows:

Commence at the intersection of the southeasterly right-of-way line of Fourth Avenue and the southwesterly right-of-way line of Front Street; thence S47°13'30" E along said southwesterly right-of-way line for 1003.76 feet to the westerly right-of-way line of an existing 50 foot wide access easement; thence

S6°01'50" W along said westerly right-of-way line for 313.78 feet to the most easterly corner of the proposed S.T.P. site, said corner being the Point of Beginning of the hereinafter described non-exclusive access easement; thence N47°13'30" W along the northeasterly boundary of said proposed S.T.P. site for 76.71 feet; thence N42°46'30" E for 25.00 feet; thence N69°24'10" E for 24.07 feet to an intersection with a line that is 25.00 feet westerly of, as measured at right angles and parallel to said westerly right-of-way line of the aforementioned 50 foot wide access easement; thence N6°01'50" E along said parallel line for 255.73 feet to an intersection with said southwesterly right-of-way line of the aforementioned Front Street; thence S47°13'30" E along said southwesterly right-of-way line for 31.20 feet to an intersection with said westerly right-of-way line of the aforementioned 50 foot wide access easement; thence S6°01'50" W along said westerly right-of-way line for 313.78 feet to the Point of Beginning.

Parcel B (Intentionally Omitted)

Parcel C

A Parcel of land on Stock Island, Monroe County, Florida, being a portion of the filled submerged lands as described in T.I.I.F. Deed No. 24078, lying Southerly of Lots 2 through 4 inclusive and portion of Lots 1 and 5, Block 57, as shown on George L. McDonald's Plat of a part of Stock Island, according to the Plat thereof, as recorded in Plat Book 1, at Page 55, of the Public Records of Monroe County, Florida; being more particularly described as follows:

Commence at the intersection of the center line of Fifth Street, as described in Official Records Book 152, at Page 414, of the Public Records of Monroe County, Florida and the center line of Seventh Avenue, as shown on the Plat of Lincoln Gardens No. 1, according to the Plat thereof, as recorded in Plat Book 5, at Page 89, of the Public Records of Monroe County, Florida; thence South 89 degrees, 41 minutes, 04 seconds East along the Easterly prolongation of said center line of Seventh Avenue for 50.00 feet to an intersection with the Easterly Right-of-Way line of said Fifth Street; thence South 0 degrees, 18 minutes, 56 seconds West along said Easterly Right-of-Way line for 0.57 feet to the point of beginning of the following described parcel of land; thence South 89 degrees, 41 minutes, 04 seconds East for 15.00 feet; thence South 0 degrees, 18 minutes, 56 seconds West for 16.50 feet; thence North 89 degrees, 41 minutes, 04 seconds West for 15.00 feet to an intersection with said Easterly Right-of-

Way line; thence North 0 degrees, 18 minutes, 56 seconds East along said Easterly Right-of-Way line for 16.50 feet to the point of beginning.

Parcel D

A Parcel of land on Stock Island, Monroe County, Florida, being a portion of the filled submerged lands as described in T.I.I.F. Deed No. 24078, lying Southerly of Lots 2 through 4 inclusive and portion of Lots 1 and 5, Block 57, as shown on George L. McDonald's Plat of a part of Stock Island, according to the plat thereof, as recorded in Plat Book 1, at Page 55, of the Public Records of Monroe County, Florida; being more particularly described as follows:

Commencing at the intersection of the center line of Fifth Street, as described in Official Records Book 152, at Page 414, of the Public Records of Monroe County, Florida and the center line of Ninth Avenue, as shown on the Plat of Lincoln Gardens No. 1, according to the Plat thereof, as recorded in Plat Book 5, at Page 89, of the Public Records of Monroe County, Florida; thence South 89 degrees, 41 minutes, 04 seconds East along the Easterly prolongation of said center line of Ninth Avenue for 50.00 feet to an intersection with the Easterly Right-of-Way line of said Fifth Street; thence South 0 degrees, 18 minutes, 56 seconds West along said Easterly Right-of-Way line for 49.80 feet to the point of Beginning of the following described parcel of land; thence South 89 degrees, 41 minutes, 04 seconds East for 10.00 feet; thence South 0 degrees, 18 minutes, 56 seconds West for 20.00 feet; thence North 89 degrees, 41 minutes, 04 seconds West for 10.00 feet to an intersection with said Easterly Right-of-Way line; thence North 0 degrees, 18 minutes, 56 seconds East along said Easterly Right-of-Way line for 20.00 feet to the point of beginning.

Together with the following described real property and all of Borrower's right, title, and interest now or hereafter acquired or benefiting any one (1) or more of the parcels described above as Parcel A, Parcel B, Parcel C and Parcel D, to wit:

- A. All property and rights, if any, which are, by the express provisions of the Mortgage, required to be subjected to the lien thereof and any additional property and rights that may from time to time hereafter, by instrument or writing of any kind, be subjected to the lien hereof by Borrower or by anyone authorized on Borrower's behalf.
- B. All rights to and to access roads on adjacent properties heretofore granted to Borrower and after-acquired title or reversion in and to the beds of any ways,

roads, streets, avenues and alleys adjoining the property described as Parcels A, B, C, and/or D.

- C. The following described sewer easement granted by Riviera Drive-in Theatre, a Florida corporation ("Riviera") to Nu-Age Utility Corp., a Florida corporation ("Nu-Age") for the purpose of laying or causing to be laid sewer pipes and mains and conduits on, under, through, over and across the following described land, to-wit:

The North six (6) feet of the South Half of Block A of "LINCOLN GARDENS NO. 1," as recorded in Plat Book 5, Page 89 of the Public Records of Monroe County, Florida.

ALSO

The North six (6) feet of the South Half of Block B of "LINCOLN GARDENS NO. 1," as recorded in Plat Book 5, Page 89 of the Public Records of Monroe County, Florida.

ALSO

1. The North 6.0 feet of the South 90 feet of Block "C" of "LINCOLN GARDENS NO. 2," as recorded in Plat Book 5, at Page 90 of the Public Records of Monroe County, Florida.
2. The North 6.0 feet of the South 90 feet of Block "D" of "LINCOLN GARDENS NO. 2," as recorded in Plat Book 5, at Page 90 of the Public Records of Monroe County, Florida.
3. The North 6.0 feet of the South 90 feet of Block "E" of "LINCOLN GARDENS NO. 2," as recorded in Plat Book 5, at Page 90 of the Public Records of Monroe County, Florida.
4. The North 6.0 feet of Lots 8 and 55, Block "G" of "LINCOLN GARDENS NO. 2," as recorded in Plat Book 5, at Page 90 of the Public Records of Monroe County, Florida.
5. The North 15.0 feet of Lot 8, Block "F" of "LINCOLN GARDENS NO. 2," as recorded in Plat Book 5, at Page 90 of the Public Records of Monroe County, Florida.

6. The North 6.0 feet of Lots 23 and 38, Block "G" of "LINCOLN GARDENS NO. 2," as recorded in Plat Book 5, at Page 90 of the Public Records of Monroe County, Florida.
7. The North 15.0 feet of Lot 23, Block "G" of "LINCOLN GARDENS NO. 2," as recorded in Plat Book 5, at Page 90 of the Public Records of Monroe County, Florida.

TOGETHER WITH the right of ingress and egress over property of Riviera so as to afford Nu-Age complete use and enjoyment of this easement, including the right to cut and trim, from time to time, trees, brush, overhanging branches and other natural obstructions on the above described land, which may injure or interfere with the full and complete use of the aforesaid easement.

- E. An easement for installation and maintenance for utilities and drainage reserved in Protective Covenant dated October 1, 1958, by Charley Toppino & Sons, Inc., a Florida corporation, and Joe Balido and Yeleana Balido, his wife, recorded in December 8, 1958, in Monroe County, Florida Official Records Book 139, Pages 144-145 over the following described real property, to wit:

The rear five (5) feet of all Lots comprising Sections 1 and 2 of BALIDO SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 4, page 57 of the Public Records of Monroe County, Florida, being a resubdivision of Lots 11 through 30 inclusive, Block 52, Stock Island, according to the Plat thereof, recorded in Plat Book 1, Page 55, of the Public Records of Monroe County, Florida.

- F. Any and all rights in favor of Stock Island Utility Company or the fee owners or lessees of the above described Parcels A, B, C, and D presently existing or hereafter acquired, including, without limitation, rights acquired by lapse of time, adverse possession or prescription, allowing the installation, use, maintenance, repair or replacement of any and all pipes, conduits, lift stations or other facilities comprising the Sewage Treatment Phase, as presently existing or as hereafter modified, supplemented or expanded, including without limitation, any and all pipes, conduits, lift stations or other facilities shown on those certain Engineering Plans, dated May 9, 1966 (Job No. 66-£12) comprised of three (3) sheets, prepared by Bailey, Mooney, Post Associates, entitled Site Plan, Plan and Profile and Plan and Profile Detail prepared for B. Bernstein.



Parcel E

TOGETHER WITH an easement for construction, maintenance, operation, use, repair, replacement or relocation of sewer lines and equipment and access to and from such sewer lines and equipment as granted in Utility Easement Agreement dated March 30, 1983 by and between Keys Racing Association, Ltd. and Stock Island Utility Company more particularly described as follows:

An easement (15 ft. in width and 120 ft. in length) on a part of Stock Island, Monroe County, Florida, and being more particularly described as follows:

Commence at the intersection of the southerly right-of-way line of Fifth Avenue with the easterly right-of-way line of Fifth Street of the Plat of Stock Island, recorded in Plat Book 1, Page 55 of the Public Records of Monroe County, Florida, bear S. 83 degrees 56 minutes east for 500.00 feet, thence bear S. 06 degrees 04 minutes west for 700.00 feet to the POINT OF BEGINNING of this description; said POINT OF BEGINNING also being the southwest corner of land conveyed to Tourist Attraction, Inc. (O.R. 228, P. 334, etc.), run thence east along the south line of land so conveyed to Tourist Attraction, Inc., a distance of 120.00 feet; thence N. 06 degrees 04 minutes E. 15.00 feet; thence west and parallel with the south line of land so conveyed to Tourist Attraction, Inc., a distance of 120.00 feet; thence south 06 degrees 04 minutes west 15.00 feet to the POINT OF BEGINNING.

Tax Folio Numbers: 00123600 8642113 Utility  
00123850 8648821 Utility

EXHIBIT "C"

Title Commitment

**Lawyers Title Insurance Corporation**

**NATIONAL HEADQUARTERS**

Richmond, Virginia

**COMMITMENT FOR TITLE INSURANCE**

LAWYERS TITLE INSURANCE CORPORATION, A Virginia corporation, herein called the Company, for valuable consideration, hereby commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest covered hereby in the land described or referred to in Schedule A, upon payment of the premiums and charges therefor; all subject to the provisions of Schedule A and B and to the Conditions and Stipulations hereof.

This Commitment shall be effective only when the identity of the proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A hereof by the Company, either at the time of the issuance of this Commitment or by subsequent endorsement.

This Commitment is preliminary to the issuance of such policy or policies of title insurance and all liability and obligations hereunder shall cease and terminate six (6) months after the effective date hereof or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue such policy or policies is not the fault of the Company. This Commitment shall not be valid or binding until countersigned by an authorized officer or agent.

IN WITNESS WHEREOF, the Company has caused the Commitment to be signed and sealed, to become valid when countersigned by an authorized officer or agent of the Company, all in accordance with its By-Laws. This Commitment is effective as of the date shown in Schedule A as "Effective Date."

**CONDITIONS AND STIPULATIONS**

1. The term "mortgage," when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquires actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in under taking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and Stipulations and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.

**Lawyers Title Insurance Corporation**

By:

*Janet A. Alpert*

President

Attest:

*John H. Smith*

Secretary



LAWYERS TITLE  
INSURANCE CORPORATION

NATIONAL HEADQUARTERS  
RICHMOND, VIRGINIA

Parcel A

Schedule "A" Lands

FEE

A parcel of filled submerged land on Stock Island, Monroe County, Florida, being a portion of that certain submerged land described in T.L.P. Deed No. 19837-A; said parcel being more particularly described by "metes and bounds" as follows:

Commence at the intersection of the southeasterly right-of-way line of Fourth Avenue and the southwesterly right-of-way line of Front Street; thence S47° 13' 30" E along said southwesterly right-of-way line for 1003.76 feet to the westerly right-of-way line of a 50-foot wide access easement; thence S6° 01' 50" W along said westerly right-of-way line for 313.78 feet to the Point of Beginning of the hereinafter described parcel of land; thence S70° 27' 50" W for 240.30 feet; thence N57° 15' 03" W for 234.83 feet; thence N9° 16' 30" E for 304.20 feet to an intersection with a line 251.44 feet southwesterly of as measured at right angles and parallel to said southwesterly right-of-way of Front Street; thence S47° 13' 30" E along said parallel line for 510.80 feet to the Point of Beginning. Said parcel contains 2.00 acres more or less.

Together with a Non-Exclusive Drainage Easement, the legal description of which is below:

An area being 15 feet in width, the southerly line thereof being more particularly described as follows: begin at the most southerly corner of the property described in the parcel described above, thence south 70 degrees, 27 minutes 50 seconds west along the southwesterly prolongation of the southeasterly boundary line of said above parcel for 250 feet more or less, to the easterly shore line of the existing harbor and the point of termination of said southerly line.

Together with a Non-Exclusive Access Easement, the legal description of which is below:

An area having a minimum width of 25.00 feet and being more particularly described as follows:  
Commence at the intersection of the southeasterly right-of-way line of Fourth Avenue and the southwesterly right-of-way line of Front Street; thence S47° 13' 30" E along said southwesterly right-of-way line for 1003.76 feet to the westerly right-of-way line of an existing 50 foot wide access easement; thence S6° 01' 50" W along said westerly right-of-way line for 313.78 feet to the most easterly corner of the proposed S.T.P. site, said corner being the Point of Beginning of the hereinafter described non-exclusive access easement; thence N47° 13' 30" W along the northeasterly boundary of said proposed S.T.P. site for 76.71 feet; thence N42° 46' 30" E for 25.00 feet; thence N69° 24' 10" E for 24.07 feet to an intersection with a line that is 25.00 feet

LAWYERS TITLE  
INSURANCE CORPORATION

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RICHMOND, VIRGINIA

Schedule "A" Lands

Westerly of said measured at right angles and parallel to  
said westerly right-of-way line of the aforementioned 50  
foot wide access easement; thence  $N6^{\circ}01'50''$  along said  
parallel line for 215.73 feet to an intersection with said  
southwesterly right-of-way line of the aforementioned front  
lot; thence  $S75^{\circ}23'30''$  E along said southwesterly  
right-of-way line for 31.20 feet to an intersection with  
said westerly right-of-way line of the aforementioned 50  
foot wide access easement; thence  $S6^{\circ}01'50''$  along said  
westerly right-of-way line for 313.78 feet to the point of  
beginning.

Parcel B (Intentionally Omitted)

LAWYERS TITLE  
INSURANCE CORPORATION

NATIONAL HEADQUARTERS  
RICHMOND, VIRGINIA

Schedule "A" Lands

Parcel C

FEE

Parcel of land on Stock Island, Monroe County, Florida, being a portion of the submerged lands as described in T.I.F. Deed No. 24078, lying southerly of Lots 2 through 4 inclusive and portion of Lots 1 and 5, Block 57, as shown on George McDonald's Plat of a part of Stock Island, according to the Plat thereof, as recorded in Plat Book 1, at Page 35, of the Public Records of Monroe County, Florida, being more particularly described as follows:

Commence at the intersection of the center line of Fifth Street, as described in Public Records Book 151, at Page 414, of the Public Records of Monroe County, Florida, and the center line of Seventh Avenue, as shown on the Plat of Lincoln Avenue No. 11, according to the Plat thereof, as recorded in Plat Book 5, at Page 39, of the Public Records of Monroe County, Florida; thence South 89 degrees, 41 minutes, 04 seconds East along the Easterly prolongation of said center line of Seventh Avenue for 50.00 feet to an intersection with the Easterly Right-of-Way line of said Fifth Street; thence South 0 degrees, 18 minutes, 36 seconds East along said Easterly Right-of-Way line for 0.57 feet to the point of beginning of the following described parcel of land; thence South 89 degrees, 41 minutes, 04 seconds East for 15.00 feet; thence South 0 degrees, 18 minutes, 36 seconds West for 16.50 feet; thence North 89 degrees, 41 minutes, 04 seconds West for 15.00 feet to an intersection with said Easterly Right-of-Way line; thence North 0 degrees, 18 minutes, 36 seconds East along said Easterly Right-of-Way line for 16.50 feet to the point of beginning.

LAWYERS TITLE  
INSURANCE CORPORATION

NATIONAL HEADQUARTERS  
RICHMOND, VIRGINIA

Schedule "A" Lands

Parcel D

FEE

A Parcel of land on Stock Island, Monroe County, Florida, being a portion of the filled/submerged lands as described in T.I.F. Dead No. 24078, lying southerly of Lots 2 through 4 inclusive and portion of Lots 1 and 5, Block 37, as shown on George L. McDonald's Plat of a part of Stock Island, according to the plat thereof, as recorded in Flat Book 1, at Page 55, of the Public Records of Monroe County, Florida; being more particularly described as follows:

Commencing at the intersection of the center line of Fifth Street, as described in Official Records Book 152, at Page 414, of the Public Records of Monroe County, Florida and the center line of Ninth Avenue, as shown on the Plat of Lincoln Gardens No. 1, according to the Plat thereof, as recorded in Flat Book 5, at Page 89, of the Public Records of Monroe County, Florida; thence South 89 degrees, 41 minutes, 04 seconds East along the Easterly prolongation of said center line of Ninth Avenue for 50.00 feet to an intersection with the Easterly Right-of-Way line of said Fifth Street; thence South 0 degrees, 18 minutes, 56 seconds West along said Easterly Right-of-Way line for 42.80 feet to the point of beginning of the following described parcel of land; thence South 89 degrees, 41 minutes, 04 seconds East for 10.00 feet; thence South 0 degrees, 18 minutes, 56 seconds West for 20.00 feet; thence North 89 degrees, 41 minutes, 04 seconds West for 10.00 feet to an intersection with said Easterly Right-of-Way line; thence North 0 degrees, 18 minutes, 56 seconds East along said Easterly Right-of-Way line for 20.00 feet to the point of beginning.

Together with the following described real property and all of Borrower's right, title, and interest now or hereafter required or benefiting any one (1) or more of the parcels described above as Parcel A, Parcel B, Parcel C and Parcel D, to wit:

A. All property and rights, if any, which are, by the express provisions of the Mortgage, required to be subjected to the lien thereof and any additional property and rights that may from time to time hereafter, by instrument or writing of any kind, be subjected to the lien hereof by Borrower or by anyone authorized on Borrower's behalf.

B. All rights to and to access roads on adjacent properties heretofore granted to Borrower and after-acquired title or reversion in and to the beds of any ways, roads, streets, avenues and alleys adjoining the property described as Parcels A, B, C, and/or D.

L A W Y E R S T I T L E  
I N S U R A N C E C O R P O R A T I O N

NATIONAL HEADQUARTERS  
RICHMOND, VIRGINIA

Schedule "A" Lands

C. The following described sewer easement granted by Riviera Drive-in Theatre, a Florida corporation ("Riviera") to Nu-Age Utility Corp., a Florida corporation ("Nu-Age") for the purpose of laying or causing to be laid sewer pipes and mains and conduits on, under, through, over and across the following described land, to-wit:

The North six (6) feet of the South Half of Block A of "LINCOLN GARDENS NO. 1," as recorded in Plat Book 5, Page 89 of the Public Records of Monroe County, Florida.

ALSO

The North six (6) feet of the South Half of Block B of "LINCOLN GARDENS NO. 1," as recorded in Plat Book 5, Page 89 of the Public Records of Monroe County, Florida.

ALSO



L A W Y E R S T I T L E  
I N S U R A N C E C O R P O R A T I O N

N A T I O N A L H E A D Q U A R T E R S  
R I C H M O N D , V I R G I N I A

Schedule "A" Lands

1. The North 6.0 feet of the South 90 feet of Block "C" of "LINCOLN GARDENS NO. 2," as recorded in Plat Book 5, at Page 90 of the Public Records of Monroe County, Florida.
2. The North 6.0 feet of the South 90 feet of Block "D" of "LINCOLN GARDENS NO. 2," as recorded in Plat Book 5, Page 90 of the Public Records of Monroe County, Florida.
3. The North 6.0 feet of the South 90 feet of Block "E" of "LINCOLN GARDENS NO. 2," as recorded in Plat Book 5, at Page 90 of the Public Records of Monroe County, Florida.
4. The North 6.0 feet of Lots 8 and 33, Block "C" of "LINCOLN GARDENS NO. 2," as recorded in Plat Book 5, Page 90 of the Public Records of Monroe County, Florida.
5. The North 15.0 feet of Lot 8, Block "F" of "LINCOLN GARDENS NO. 2," as recorded in Plat Book 5, Page 90 of the Public Records of Monroe County, Florida.
6. The North 6.0 feet of Lots 23 and 38, Block "C" of "LINCOLN GARDENS NO. 2," as recorded in Plat Book 5, Page 90 of the Public Records of Monroe County, Florida.
7. The North 15.0 feet of Lot 23, Block "C" of "LINCOLN GARDENS NO. 2," as recorded in Plat Book 5, Page 90 of the Public Records of Monroe County, Florida.

LAWYERS TITLE  
INSURANCE CORPORATION

NATIONAL HEADQUARTERS  
RICHMOND, VIRGINIA

Schedule "A" Lands

TOGETHER WITH the right of ingress and egress over property of Riviera, so as to afford Nu-Age complete use and enjoyment of this easement, including the right to cut and trim from time to time, trees, brush, overhanging branches and other natural obstructions on the above described land, which may injure or interfere with the full and complete use of the aforesaid easement.

E. An easement for installation and maintenance for utilities and drainage reserved in Protective Cave Deed, dated October 1, 1958, by Charley Toppino & Sons, Inc., a Florida corporation, and Joe Balido and Yelena Balido, his wife, recorded on December 8, 1958, in Monroe County, Florida Official Records Book 139, Page 14, over the following described real property, to wit:

The rear five (5) feet of all Lots comprising Sections 1 and 2 of BALIDO'S SUBDIVISION, according to the Plat thereon, as recorded in Plat Book 4, Page 57 of the Public Records of Monroe County, Florida, being a resubdivision of Lots 11 through 30 inclusive, Block 57, Stock Island, according to the Plat thereof, recorded in Plat Book 1, Page 55, of the Public Records of Monroe County, Florida.

F Any and all rights in favor of Stock Island Utility Company or the fee owners or lessees of the above described Parcel A, B, C, and D presently existing or hereafter acquired, including, without limitation rights acquired by lapse of time, adverse possession or prescription, allowing the installation, use, maintenance, repair or replacement of any and all pipes, conduits, lift stations or other facilities comprising the Sewage Treatment Phase, as presently existing or hereafter modified, supplemented or expanded, including without limitation, any and all pipes, conduits, lift stations or other facilities shown on those certain Engineering Plans, dated May 9, 1966 (Job No. 66-812) comprised of three (3) sheets, prepared by Bailey, Mooney, Post Associates, entitled Site Plan, Plan and Profile and Plan and Profile Detail prepared for B. Bernstein.

L A W Y E R S T I T L E  
I N S U R A N C E C O R P O R A T I O N

N A T I O N A L H E A D Q U A R T E R S  
R I C H M O N D , V I R G I N I A

Schedule "A" Lands

Parcel E

TOGETHER WITH an easement for construction, maintenance, operation, use, repair, replacement or relocation of sewer lines and equipment and access to and from such sewer lines and equipment as granted in Utility Easement Agreement dated March 30, 1983 by and between Keys Racing Association, Ltd. and Stock Island Utility Company more particularly described as follows:

An easement (15 ft. in width and 120 ft. in length) on a part of Stock Island, Monroe County, Florida, and being more particularly described as follows:

Commence at the intersection of the southerly right-of-way line of Fifth Avenue with the easterly right-of-way line of Fifth Street of the Plat of Stock Island, recorded in Plat Book 1, Page 53 of the Public Records of Monroe County, Florida, bear S. 83 degrees 56 minutes east for 500.00 feet, thence bear S. 06 degrees 04 minutes west for 700.00 feet to the POINT OF BEGINNING of this description; said POINT OF BEGINNING also being the southwest corner of land conveyed to Tourist Attraction, Inc. (O.R. 118, P. 334, etc.), run thence east along the south line of land so conveyed to Tourist Attraction, Inc., a distance of 120.00 feet; thence N. 06 degrees 04 minutes E. 15.00 feet; thence west and parallel with the south line of land so conveyed to Tourist Attraction, Inc., a distance of 120.00 feet; thence south 06 degrees 04 minutes west 15.00 feet to the POINT OF BEGINNING.

Tax Folio Numbers: 00123600 8642113 Utility  
00123850 8648821 Utility

L A W Y E R S T I T L E  
I N S U R A N C E C O R P O R A T I O N  
N A T I O N A L H E A D Q U A R T E R S  
R I C H M O N D , V I R G I N I A  
S C H E D U L E B - - S E C T I O N 1

Requirements

The following are the requirements to be complied with:

Item (a) Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to be insured.

Item (b) Proper instrument(s) creating the estate or interest to be insured must be executed and duly filed for record to-wit:

Duly authorized Warranty Deed from K.W. Resort Utilities Corp., a Florida Corporation to To Be Determined, together with evidence satisfactory to the Company of the corporation's good standing under the laws of its domicile state.

- Item ( c ) Proof of payment, satisfactory to the Company, of taxes for the year(s) 1997 must be furnished, and any tax certificates issued must be duly cancelled by the tax collector.
- Item ( d ) Proof, satisfactory to the Company, must be furnished that there are no unrecorded assessment liens of any type, including but no limited to these liens imposed by Chapter 159 of the Florida Statutes.
- Item ( e ) Furnish Owner's/Mortgagor's Affidavit establishing that: All sums due for labor and/or materials for any work performed on the property have been paid and that no liens or encumbrances against the property other than as stated herein, are outstanding.
- Item ( f ) Furnish Owner's Affidavit establishing the rights of parties in possession.  
NOTE: Same may be included in the above Affidavit.

This commitment is invalid unless the Insuring Provisions and Schedules A and B are attached.

Case No. 9703894  
Schedule B-Section 1-Page 1  
Form No. 91-88 (B-1)  
035-1-088-0001/4

LAWYERS TITLE  
INSURANCE CORPORATION

NATIONAL HEADQUARTERS  
RICHMOND, VIRGINIA

SCHEDULE B--SECTION 2

Exceptions

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company.

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage covered by this Commitment.
2. Taxes and assessments for the year 1998 and subsequent years.
3. The nature and extent of the Riparian and Littoral Rights.
4. Any land described in Schedule A which is artificially filled land in what was formerly navigable waters, is subject to the rights of the United States government, arising by said government's control over navigable waters involving navigation and commerce.
5. Notwithstanding the legal description in Schedule A, this policy does not insure against rights of the State of Florida based on the doctrine of the state's sovereign ownership of lands lying below the ordinary high water line of any navigable waters.
6. Easements or claims of easements not shown by the public records, boundary line disputes, overlaps, encroachments, and any matters not of record which would be disclosed by an accurate survey and inspection of the premises.
7. Statute and Regulations recorded in O.R. Book 668, Page 43.

continued

NOTE: In accordance with Florida Statutes Section 627.4131, please be advised that the insured hereunder may present inquiries, obtain information about coverage, or receive assistance in resolving complaints, by contacting the Lawyers Title Insurance Corporation Regional Office, 100 North Tampa Street, Suite 2050, Tampa, Florida 33602. Telephone number 813-222-1450.

NOTE: If policy is to be issued in support of a mortgage loan, attention is directed to the fact that the Company can assume no liability under its policy, the closing instructions, or Insured Closing Service for compliance with the requirements of any consumer credit protection or truth in lending law in connection with said mortgage loan.

This commitment is invalid unless  
the Insuring Provisions and  
Schedules A and B are attached.

Case No. 9703894  
Schedule B Section 2 Page 1  
Form No. 91-88 (B-2) 035-1-088-0001/4

L A W Y E R S   T I T L E  
I N S U R A N C E   C O R P O R A T I O N  
N A T I O N A L   H E A D Q U A R T E R S  
R I C H M O N D ,   V I R G I N I A

SCHEDULE B, SECTION II  
EXCEPTIONS CONTINUED

8. Interest of Board of County Commissioners of Monroe County, pursuant to Quit Claim Deed recorded in O.R. Book 7363, Page 2022.
9. Oil and Mineral Reservations in favor of the State of Florida, as set forth in the deed from the Trustees of the Internal Improvement Fund, recorded in Official Records Book 53, Page 238.
10. Easement(s) in favor of Utility Board of the City of Key West set forth in instrument(s) recorded in Official Records Book 687, Page 834 and Official Records Book 244, Page 401.
11. Easement(s) in favor of City of Key West set forth in instrument(s) recorded in Official Records Book 359, Page 89; Official Records Book 326, Page 139; Official Records Book 359, Page 79 and in Official Records Book 139, Page 520.
12. Easement Agreement recorded in O.R. Book 866, Page 2469.
13. Oil and Minerals Reservations in favor of the State of Florida, as set forth in the deed from the Trustees of the Internal Improvement Fund, recorded in Official Records Book 380, Page 381.
14. Any loss or damage occasioned by or resulting from the failure to obtain fill permits.
15. Easement Agreement recorded in O.R. Book 866, Page 2456.
16. Title to the portion lying within public roads and/or highways is not insured hereunder. The rights of the public are specifically reserved.
17. Reservations in favor of the State of Florida, as set forth in the deed from the Trustees of the Internal Improvement Fund, recorded in Deed Book G-65, Page 82.
18. Ingress-Egress Easement recorded in O.R. Book 313, Page 53. (Affects Parcel E Only)
19. Easement recorded in O.R. Book 193, Page 272, corrected in Official Records Book 310, Page 323, as assigned in Official Records Book 547, Page 147. (Affects Parcel E Only)

continued

LAWYERS TITLE  
INSURANCE CORPORATION

NATIONAL HEADQUARTERS  
RICHMOND, VIRGINIA

SCHEDULE B, SECTION II  
EXCEPTIONS CONTINUED

20. Easement in Warranty Deed recorded in O.R. Book 728, Page 4. (Affects Parcel E Only)
21. Easement in Warranty Deed recorded in O.R. Book 792, Page 37 and in Official Records Book 742, Page 49. (Affects Parcel E Only)
22. Easements recorded in O.R. Book 780, Page 1169; Official Records Book 782, Page 1363; Official Records Book 788, Page 662 and Official Records Book 728, page 1. (Affects Parcel E Only)
23. Rights of ingress-egress in Warranty Deed recorded in O.R. Book 375, Page 646.
24. Easement recorded in O.R. Book 351, Page 192, assigned in Official Records Book 866, Page 2474.
25. Easements as shown on the Plat recorded in Plat Book 5, Page 89.
26. Restrictions as shown on the Plat recorded in Plat Book 5, Page 89.  
NOTE: This exception omits any restriction, covenant, or condition based on race, color, religion, sex, handicap, familial status or national origin, if any, unless and only to the extent that the restriction is not in violation of state or federal law, or relates to a handicap, but does not discriminate against handicapped people.
27. Protective Covenants recorded in O.R. Book 139, Page 144.
28. Easements as shown on the Plat recorded in Plat Book 4, Page 57.
29. Restrictions as shown on the Plat recorded in Plat Book 4, Page 57.  
NOTE: This exception omits any restriction, covenant, or condition based on race, color, religion, sex, handicap, familial status or national origin, if any, unless and only to the extent that the restriction is not in violation of state or federal law, or relates to a handicap, but does not discriminate against handicapped people.
30. Terms and conditions of Utility Easement recorded in O.R. Book 878, Page 2318.
31. Easement recorded in O.R. Book 879, Page 392.

continued

LAWYERS TITLE  
INSURANCE CORPORATION

NATIONAL HEADQUARTERS  
RICHMOND, VIRGINIA

SCHEDULE B, SECTION II  
EXCEPTIONS CONTINUED

32. Supplementary Agreement recorded in O.R. Book 53, Page 241.
33. Lease Agreement recorded in O.R. Book 169, Page 115.
34. Deed referencing lease agreement recorded in O.R. Book 286, Page 270.
35. Easement in Deed recorded in O.R. Book 742, Page 49.
36. Easement recorded in O.R. Book 375, Page 62.
37. Access to Parcel E is not insured.



**EXHIBIT "D"**

**List of Other Assets of the Corporation**

**Miscellaneous personal property located on the Real Property and used in connection with the operation of the Utility**

EXHIBIT "E"

Copy of Certificate of Public Service Commission



FLORIDA  
PUBLIC SERVICE COMMISSION

CERTIFICATE  
NUMBER

1888

Upon consideration of the record it is hereby ORDERED that  
authority be and is hereby granted to

E. W. Resort Utilities Corp.

Whose principal address is

6490 E. United College Road

Key West, Florida 33040 (Harrison County)

to provide sewer service in accordance with the  
provisions of Chapter 367, Florida Statutes, the Rules, Regula-  
tions and Orders of this Commission in the territory described  
by the Orders of this Commission.

This Certificate shall remain in force and effect until  
suspended, cancelled or revoked by Orders of this Commission.

ORDER 1888 DATED 7-12-88 DOCKET 85012A-SU

ORDER \_\_\_\_\_ DATED \_\_\_\_\_ DOCKET \_\_\_\_\_

ORDER \_\_\_\_\_ DATED \_\_\_\_\_ DOCKET \_\_\_\_\_

ORDER \_\_\_\_\_ DATED \_\_\_\_\_ DOCKET \_\_\_\_\_

BY ORDER OF THE  
FLORIDA PUBLIC SERVICE COMMISSION

\_\_\_\_\_  
Commission Clerk

\_\_\_\_\_  
Executive Director

**EXHIBIT "F"**

**Schedule of Pending or Threatened Litigation**

1. Dispute by Ruben Iglesias concerning claim for free sewer service due to Mr. Iglesias' claim that the Utility lacks a proper easement to maintain a pump station on his property.

**SCHEDULE 11.7**

**Confidentiality Agreement**

\_\_\_\_\_, 1998

KW Resort Holdings Corp. ("Owner")  
c/o Citicorp Real Estate, Inc.  
599 Lexington Avenue  
New York, New York 10043  
Attention: Paul E. Chronis, Vice President

Re: Land and improvements thereon consisting of approximately two acres of land and .494 MGD extended aeration wastewater treatment plant that is located on Stock Island, Monroe County, Florida (collectively, the "Utility")

Ladies and Gentlemen:

The undersigned would like to secure certain information concerning the Utility and KW Resort Utilities Corp. ("Utility Owner"):

The undersigned shall keep in strictest of confidence (i) any and all materials relating to the Utility and the Utility Owner, surveys, title information, service contracts, management contracts, underlying agreements respecting the Utility, architectural drawings and plans, and any other information relating to the Utility or the Utility Owner, and (ii) any and all other data, facts, knowledge, discussions and information of any kind whatsoever that the undersigned learns or becomes aware of that relate in any way to the Utility or the Utility Owner. The materials referred to in the immediately preceding sentence shall be collectively referred to in this agreement as "Confidential Information". Our agreement to keep all Confidential Information in the strictest of confidence includes, but is not limited to, an obligation not to directly or indirectly reveal, report, publish, disclose or transfer any such Confidential Information. Confidential Information shall not include that type of information furnished by the Owner or discovered by the undersigned, which previously has been

furnished to a governmental agency (i.e., Public Service Commission), or, is otherwise already in the public domain and is, by definition, a public document.

The undersigned acknowledges that any Confidential Information is provided subject to the actual knowledge of Owner and that Owner makes no representations or warranties as to the accuracy or completeness of the Confidential Information.

The undersigned acknowledges and agrees that (a) reports included in the Confidential Information may have been prepared by a third party and are not the work product of Owner; (b) Owner may not have knowledge of the accuracy or completeness of the information contained in such reports; (c) such reports are conveyed to the undersigned at the request, and for the convenience, of the undersigned; and (d) Owner expressly disclaims any representations or warranties with respect to the accuracy or completeness of the information contained in such reports and the undersigned releases Owner from any and all liability with respect thereto.

The undersigned shall and hereby does agree to irrevocably indemnify and forever hold harmless Owner and its affiliates, officers, attorneys, directors, employees and shareholders (the "Indemnified Persons") from and against any losses, costs, damages, liabilities and expenses (including attorneys' fees and disbursements) that the Indemnified Persons, or any of them, may or do suffer, caused by, relating to or arising out of, directly or indirectly, the undersigned's failure to comply with the terms of this agreement.

This agreement may not be modified, changed or discharged in whole or in part, except by an agreement in writing signed by the undersigned and Owner. This agreement will be binding upon the undersigned, the Representatives and all of their respective successors, assigns, executors and administrators and will inure to the benefit of Owner and its successors, assigns and affiliates. No delay or omission by Owner in exercising any right under this agreement will operate as a waiver of that or any other right. A waiver or consent given by Owner on any one occasion is effective only in that instance and will not be construed as a bar to or waiver of any right on any other occasion. This agreement shall be governed by and in accordance with the laws of the State of Florida. Delivery of an executed counterpart of this agreement by facsimile transmission shall be effective as delivery of a manually executed counterpart of this agreement. This agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which taken together shall constitute one agreement. The parties hereto knowingly, voluntarily, unconditionally, irrevocably and intentionally forever waive any right either party may have to trial by jury in respect of any litigation based on, or arising out of, under or in connection with, this agreement or any course of conduct, course of dealing, statements (verbal or written) or actions of any party or

**SCHEDULE 11.8**

**Assignment and Assumption of Stock Purchase Agreement**

KNOW ALL MEN BY THESE PRESENTS that \_\_\_\_\_  
a \_\_\_\_\_ ("Assignor"), in consideration of Ten Dollars and other good and  
valuable consideration paid by \_\_\_\_\_, a  
\_\_\_\_\_ ("Assignee"), the receipt of which is hereby acknowledged by  
Assignor,

DOES HEREBY ASSIGN unto the Assignee all of the right, title and interest of the  
Assignor in and to the Stock Purchase Agreement dated January \_\_, 1998, as heretofore  
amended (collectively, the "Agreement"), between KW Resort Holdings Corp., as Seller, and  
WS Utility, Inc. and Gwen Smith, as Purchaser, respecting the sale and purchase of 100% of  
the outstanding stock of KW Resort Utilities Corp.

Together with, and for the benefit of, all of the Assignor's right, title and interest in  
and to all representations, covenants, warranties and indemnifications, if any, made by the  
Seller under the Agreement;

Together with all rights, claims and causes of action which the Assignor now has or at  
any time may hereafter have against the Seller and any other parties by reason of the  
Agreement or any representations, covenants, warranties or indemnities or the breach thereof,  
or for any other reason, arising out of the transactions provided in the Agreement;

Together with any and all deposits and downpayments paid under the Agreement and  
any interest earned thereon;

Assignee does hereby accept this Assignment and hereby assumes (jointly and  
severally) and covenants and agrees to perform all of the covenants, conditions and  
obligations on the Purchaser's part to be performed under the Agreement with the same force  
and effect as if the Assignee had executed the Agreement, as Purchaser therein.

TO HAVE AND TO HOLD THE SAME unto the Assignee and the  
successors, heirs, representatives and assigns of the Assignee forever; subject however, to the  
terms, provisions and conditions of the Agreement.

The use of any gender herein shall include all other genders. The singular shall include  
the plural and vice versa.

IN WITNESS WHEREOF, the Assignor and Assignee have executed this Assignment as of this \_\_\_ day of \_\_\_\_\_, 1998.

Signed, sealed and delivered in the presence of:

ASSIGNOR:

\_\_\_\_\_  
a \_\_\_\_\_

\_\_\_\_\_  
Print Name:

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Print Name:

ASSIGNEE:

\_\_\_\_\_  
a \_\_\_\_\_

\_\_\_\_\_  
Print Name:

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Print Name:

**EXHIBIT 3**

In accordance with Section 2.7 of the Stock Purchase Agreement attached as Exhibit 2, KW Resort Holdings Corp. will be responsible for the payment of all outstanding regulatory assessment fees for 1997. Regulatory assessment fees for 1998 will be prorated between the buyer and seller as of the date of closing and will be treated as an adjustment to the purchase price.

There are no outstanding fines or refunds owed.



**EXHIBIT 4**

The \$810,000 purchase of the stock of the utility is being financed through cash of approximately \$210,000 and financing of the remaining \$600,000 through Barnett Bank (or its successor in interest).

**EXHIBIT 5**

See Exhibit 4. The applicant is not relying on any other entities to provide funding to the buyer.

**EXHIBIT 6**

Because the transaction is being accomplished by means of a stock purchase, there will be no change in the net book value of the system as a result of the transfer. The utility's rate base was previously established by the Commission in Order No. 14756 issued on August 22, 1985.

**EXHIBIT 7**

No acquisition adjustment is requested in connection with the transfer.

**EXHIBIT 8**

In accordance with Section 2.4 of the Stock Purchase Agreement, the Corporation or the buyer will have, or have access to, the books and records of the Corporation.

**EXHIBIT 9**

In accordance with Section 2.4 of the Stock Purchase Agreement, the buyer will obtain copies of all federal income tax returns of the utility from the date the rate base was last established by the Commission.

EXHIBIT 10

At the time of this filing, buyer has not yet completed its environmental due diligence and reserves the right to amend this exhibit upon completion of same in accordance with Section 8.1 of the Stock Purchase Agreement. Buyer has engaged SGF Environmental Consultants Inc in Pompano Beach to assist in its environmental due diligence.

As of this time, subject to the foregoing, and to buyer's best knowledge, the buyer states that the system being acquired appears to be in satisfactory condition and in compliance with all applicable standards set by the Department of Environmental Protection (DEP).

**EXHIBIT 11**

To be late-filed.



**EXHIBIT 12**

To be late-filed.

**EXHIBIT 13**

To be late-filed.

**EXHIBIT 14**

A copy of the title commitment from Lawyer's Title Insurance Corporation is attached.

**EXHIBIT "C"**

Title Commitment

**Lawyers Title Insurance Corporation**

**NATIONAL HEADQUARTERS**

Richmond, Virginia

**COMMITMENT FOR TITLE INSURANCE**

LAWYERS TITLE INSURANCE CORPORATION, A Virginia corporation, herein called the Company, for valuable consideration, hereby commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest covered hereby in the land described or referred to in Schedule A, upon payment of the premiums and charges therefor; all subject to the provisions of Schedule A and B and to the Conditions and Stipulations hereof.

This Commitment shall be effective only when the identity of the proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A hereof by the Company, either at the time of the issuance of this Commitment or by subsequent endorsement.

This Commitment is preliminary to the issuance of such policy or policies of title insurance and all liability and obligations hereunder shall cease and terminate six (6) months after the effective date hereof or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue such policy or policies is not the fault of the Company. This Commitment shall not be valid or binding until countersigned by an authorized officer or agent.

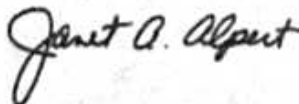
IN WITNESS WHEREOF, the Company has caused the Commitment to be signed and sealed, to become valid when countersigned by an authorized officer or agent of the Company, all in accordance with its By-Laws. This Commitment is effective as of the date shown in Schedule A as "Effective Date."

**CONDITIONS AND STIPULATIONS**

1. The term "mortgage," when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquires actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in under taking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and Stipulations and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.

**Lawyers Title Insurance Corporation**

By:



President

Attest:



Secretary

LAWYERS TITLE  
INSURANCE CORPORATION

NATIONAL HEADQUARTERS  
RICHMOND, VIRGINIA

Nat.Div.No. COMMITMENT FOR TITLE INSURANCE  
Agent No. 35888.0558 SCHEDULE A

1. EFFECTIVE DATE: December 29, 1997 at 8:00 a.m. CASE NO. 9703894 -6-mia  
SECOND REVISED COMMITMENT

2. POLICY OR POLICIES TO BE ISSUED:  
(a) ALTA OWNER'S POLICY (10-17-92) AMOUNT \$ 800,000.00  
with Florida Modifications  
PROPOSED INSURED:  
To Be Determined

(b) ALTA LOAN POLICY (10-17-92) AMOUNT \$ 0.00  
with Florida Modifications  
PROPOSED INSURED:

(c) AMOUNT \$  
with Florida Modifications  
PROPOSED INSURED:

3. TITLE TO THE FEE SIMPLE ESTATE OR INTEREST IN THE LAND DESCRIBED OR REFERRED  
TO IN THIS COMMITMENT IS AT THE EFFECTIVE DATE HEREOF VESTED IN:

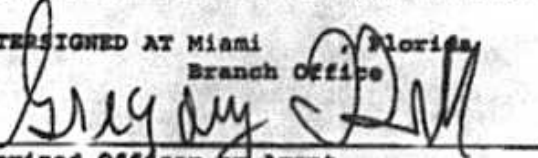
K.W. Resort Utilities Corp., a Florida Corporation

4. THE LAND REFERRED TO IN THIS COMMITMENT IS DESCRIBED AS FOLLOWS:

See Schedule "A" Lands Attached Hereto

COUNTERSIGNED AT Miami, Florida  
Branch Office

Schedule A-Page 1

  
Authorized Officer or Agent  
Form No. 91-88 with Florida Modifications  
035-1-088-0001/11

This commitment is invalid unless  
the insuring Provisions and  
Schedules A and B are attached

LAWYERS TITLE  
INSURANCE CORPORATION  
NATIONAL HEADQUARTERS  
RICHMOND, VIRGINIA

Parcel A

Schedule "A" Lands

FEE

A parcel of filled submerged land on Stock Island, Monroe County, Florida, being a portion of that certain submerged land described in T. L. T. Deed No. 19837-A; said parcel being more particularly described by "water and bounds" as follows:

Commence at the intersection of the southeasterly right-of-way line of Fourth Avenue and the southwesterly right-of-way line of Front Street; thence S47° 13' 30" E along said southwesterly right-of-way line for 1003.76 feet to the westerly right-of-way line of a 50-foot wide access easement; thence S6° 01' 50" W along said westerly right-of-way line for 313.78 feet to the Point of Beginning of the hereinafter described parcel of land; thence S70° 27' 50" W for 240.30 feet; thence S57° 13' 03" W for 234.83 feet; thence N9° 16' 30" E for 304.20 feet to an intersection with a line 251.44 feet southwesterly of as measured at right angles and parallel to said southwesterly right-of-way of Front Street; thence S47° 13' 30" E along said parallel line for 310.80 feet to the Point of Beginning. Said parcel contains 2.00 acres more or less.

Together with a Non-Exclusive Drainage Easement, the legal description of which is below:

An area being 15 feet in width, the southerly line thereof being more particularly described as follows: begin at the most southerly corner of the property described in the parcel described above, thence south 70 degrees, 27 minutes 50 seconds west along the southwesterly prolongation of the southeasterly boundary line of said above parcel for 250 feet more or less, to the easterly shore line of the existing harbor and the point of termination of said southerly line.

Together with a Non-Exclusive Access Easement, the legal description of which is below:

An area having a minimum width of 25.00 feet and being more particularly described as follows: Commence at the intersection of the southeasterly right-of-way line of Fourth Avenue and the southwesterly right-of-way line of Front Street; thence S47° 13' 30" E along said southwesterly right-of-way line for 1003.76 feet to the westerly right-of-way line of an existing 50 foot wide access easement; thence S6° 01' 50" W along said westerly right-of-way line for 313.78 feet to the most easterly corner of the proposed S.T.P. site, said corner being the Point of Beginning of the hereinafter described non-exclusive access easement; thence N47° 13' 30" W along the northeasterly boundary of said proposed S.T.P. site for 76.71 feet; thence N42° 46' 30" E for 25.00 feet; thence N69° 24' 10" E for 24.07 feet to an intersection with a line that is 25.00 feet

Case No. 9703894

LAWYERS TITLE  
INSURANCE CORPORATION  
NATIONAL HEADQUARTERS  
RICHMOND, VIRGINIA

Schedule "A" Lands

...ly of ... measured at right angles and parallel to  
...ly of ... of way line of the aforementioned 50  
... assessment; thence S67°01'50"E along said  
... line of 25.73 feet to an intersection with said  
... of way line of the aforementioned front  
... line of 30' E long said southwesterly  
... line of 31.20 feet to an intersection with  
... of way line of the aforementioned 50  
... assessment; thence S67°01'50"E along said  
... of way line for 313.75 feet to the point of

Parcel B (Intentionally Omitted)

Case No. 9703894

LAWYERS TITLE  
INSURANCE CORPORATION  
NATIONAL HEADQUARTERS  
RICHMOND, VIRGINIA

Schedule "A" Lands

Parcel C

FEE

Parcel of land on Stock Island, Monroe County, Florida, being a portion of the submerged lands as described in T.I.L.F. Deed No. 24078, lying southerly of Lots 2 through 4 inclusive and portion of Lots 1 and 3, Block 57, as shown on McDonald's Plat of a part of Stock Island, according to the Plat thereof, as recorded in Plat Book 1, at Page 55, of the Public Records of Monroe County, Florida, being more particularly described as follows:

Commence at the intersection of the center line of Fifth Street, as described in Public Record Book 152, at Page 414, of the Public Records of Monroe County, Florida, and the center line of Seventh Avenue, as shown on the Plat of Lincoln Block No. 57, according to the Plat thereof, as recorded in Plat Book 3, at Page 10 of the Public Records of Monroe County, Florida; thence South 89 degrees, 04 minutes, 04 seconds East along the Easterly prolongation of said center line of Seventh Avenue for 50.00 feet to an intersection with the Easterly Right-of-Way line of said Fifth Street; thence South 0 degrees, 18 minutes, 56 seconds West along said Easterly Right-of-Way line for 0.57 feet to the point of beginning of the following described parcel of land; thence South 89 degrees, 41 minutes, 04 seconds East for 15.00 feet; thence South 0 degrees, 18 minutes, 56 seconds West for 16.50 feet; thence North 89 degrees, 41 minutes, 04 seconds West for 15.00 feet to an intersection with said Easterly Right-of-Way line; thence North 0 degrees, 18 minutes, 56 seconds East along said Easterly Right-of-Way line for 16.50 feet to the point of beginning.

Case No. 9703894



LAWYERS TITLE  
INSURANCE CORPORATION  
NATIONAL HEADQUARTERS  
RICHMOND, VIRGINIA

Schedule "A" Lands

Parcel D      FEET

A Parcel of land on Stock Island, Monroe County, Florida, being a portion of the titled submerged lands as described in T.I.F. Deed No. 24078, lying southerly of Lots 2 through 4 inclusive and portion of Lots 1 and 5, Block 57, as shown on George L. McDonald's Plat of a part of Stock Island, according to the plat thereof, as recorded in Plat Book 1, at Page 55, of the Public Records of Monroe County, Florida; being more particularly described as follows:

Commencing at the intersection of the center line of Fifth Street, as described in Official Records Book 152, at Page 416, of the Public Records of Monroe County, Florida; and the center line of Ninth Avenue, as shown on the Plat of Lincoln Gardens, No. 1, according to the Plat thereof, as recorded in Plat Book 5, at Page 89 of the Public Records of Monroe County, Florida; thence South 89 degrees, 41 minutes, 04 seconds East along the Easterly prolongation of said center line of Ninth Avenue for 50.00 feet to an intersection with the Easterly Right-of-Way of said Easterly Right-of-Way line for 42.80 feet to the point of beginning of the following described parcel of land; thence South 89 degrees, 41 minutes, 04 seconds East for 10.00 feet; thence South 0 degrees, 18 minutes, 56 seconds East for 20.00 feet; thence North 89 degrees, 41 minutes, 04 seconds West for 10.00 feet to an intersection with said Easterly Right-of-Way line; thence North 0 degrees, 18 minutes, 56 seconds East along said Easterly Right-of-Way line for 20.00 feet to the point of beginning.

Together with the following described real property and all of Borrower's right, title, and interest now or hereafter acquired or benefiting anyone (1) or more of the parcels described above as Parcel A, Parcel B, Parcel C and Parcel D, to wit:

Cubawak

A. All property and rights, if any, which are, by the express provisions of the Mortgage, required to be subjected to the lien thereof and any additional property and rights that may from time to time hereafter, by instrument or writing of any kind, be subjected to the lien hereof by Borrower or by anyone authorized on Borrower's behalf.

B. All rights to and to access roads on adjacent properties heretofore granted to Borrower and after-acquired title or reversion in and to the beds of any ways, roads, streets, avenues and alleys adjoining the property described as Parcels A, B, C, and/or D.

Case No. 9703894

L A W Y E R S T I T L E  
I N S U R A N C E C O R P O R A T I O N

N A T I O N A L H E A D Q U A R T E R S  
R I C H M O N D , V I R G I N I A

Schedule "A" Lands

C. The following described sewer easement granted by Riviera Drive-in Theatre, a Florida corporation ("Riviera") to Nu-Age Utility Corp., a Florida corporation ("Nu-Age") for the purpose of laying or causing to be laid sewer pipes and mains and conduits on, under, through, over and across the following described land, to-wit:

The North six (6) feet of the South Half of Block A of "LINCOLN GARDENS NO. 1," as recorded in Plat Book 5, Page 89 of the Public Records of Monroe County, Florida.

ALSO

The North six (6) feet of the South Half of Block B of "LINCOLN GARDENS NO. 1," as recorded in Plat Book 5, Page 89 of the Public Records of Monroe County, Florida.

ALSO

Case No. 9703894

L A W Y E R S T I T L E  
I N S U R A N C E C O R P O R A T I O N  
N A T I O N A L H E A D Q U A R T E R S  
R I C H M O N D, V I R G I N I A

Schedule "A" Lands

1. The North 6.0 feet of the South 90 feet of Block "C" of "LINCOLN GARDENS NO. 2," as recorded in Plat Book 5, at Page 90 of the Public Records of Monroe County, Florida.
2. The North 6.0 feet of the South 90 feet of Block "D" of "LINCOLN GARDENS NO. 2," as recorded in Plat Book 5, Page 90 of the Public Records of Monroe County, Florida.
3. The North 6.0 feet of the South 90 feet of Block "E" of "LINCOLN GARDENS NO. 2," as recorded in Plat Book 5, at Page 90 of the Public Records of Monroe County, Florida.
4. The North 6.0 feet of Lots 8 and 33, Block "C" of "LINCOLN GARDENS NO. 2," as recorded in Plat Book 5, Page 90 of the Public Records of Monroe County, Florida.
5. The North 15.0 feet of Lot 8, Block "F" of "LINCOLN GARDENS NO. 2," as recorded in Plat Book 5, Page 90 of the Public Records of Monroe County, Florida.
6. The North 6.0 feet of Lots 23 and 38, Block "C" of "LINCOLN GARDENS NO. 2," as recorded in Plat Book 5, Page 90 of the Public Records of Monroe County, Florida.
7. The North 15.0 feet of Lot 23, Block "G" of "LINCOLN GARDENS NO. 2," as recorded in Plat Book 5, Page 90 of the Public Records of Monroe County, Florida.

Case No. 9703894

LAWYERS TITLE  
INSURANCE CORPORATION

NATIONAL HEADQUARTERS  
RICHMOND, VIRGINIA

Schedule "A" Lands

TOGETHER WITH the right of ingress and egress over property of Riviera, so as to afford No-Age complete use and enjoyment of this easement, including the right to cut and trim from time to time, trees, brush, overhanging branches and other natural obstructions on the above described land, which may injure or interfere with the full and complete use of the aforesaid easement.

E. As easement for installation and maintenance for utilities and drainage reserved in Protective Covenant dated October 1, 1958, by Charley Toppino & Sons, Inc., a Florida corporation, and Joe Balido and Yelena Balido, his wife, recorded on December 2, 1972 in Monroe County, Florida Official Records Book 119, Page 14, over the following described real property, to wit:

The rear five (5) feet of all Lots comprising Sections 1 and 2 of MALIBU SUBDIVISION, according to the Plat thereon, as recorded in Plat Book 4, Page 57 of the Public Records of Monroe County, Florida, being a resubdivision of Lots 11 through 30 inclusive, Block 10, Stock Island, according to the Plat thereof, recorded in Plat Book 1, Page 55, of the Public Records of Monroe County, Florida.

F. Any and all rights in favor of Stock Island Utility Company or the fee owners or lessees of the above described Parcels A, B, C, and D presently existing or hereafter acquired, including, without limitation rights acquired by lapse of time, adverse possession or prescription, allowing the installation, use, maintenance, repair or replacement of any and all pipes, conduits, lift stations or other facilities comprising the Sewage Treatment Plant, as presently existing, hereafter modified, supplemented or expanded, including without limitation, any and all pipes, conduits, lift stations or other facilities shown on those certain Engineering Plans, dated May 9, 1966 (Job No. 66-812) comprised of three (3) sheets, prepared by Bailey, Mooney, Post Associates, entitled Site Plan, Plan and Profile and Plan and Profile Detail prepared for B. Bernstein.

Case No. 970494

LAWYERS TITLE  
INSURANCE CORPORATION

NATIONAL HEADQUARTERS  
RICHMOND, VIRGINIA

Schedule "A" Lands

Parcel E

TOGETHER WITH an easement for construction, maintenance, operation, use, repair, replacement or relocation of sewer lines and equipment and access to and from such sewer lines and equipment as granted in Utility Easement Agreement dated March 30, 1983 by and between Keys Racing Association, Ltd. and Stock Island Utility Company more particularly described as follows:

An easement (15 ft. in width and 120 ft. in length) on a part of Stock Island, Monroe County, Florida, and being more particularly described as follows

Commence at the intersection of the southerly right-of-way line of Fifth Avenue with the easterly right-of-way line of Fifth Street of the Plat of Stock Island, recorded in Plat Book 1, Page 55 of the Public Records of Monroe County, Florida, bear S. 63 degrees 56 minutes east for 500.00 feet, thence bear S. 06 degrees 06 minutes west for 700.00 feet to the POINT OF BEGINNING of this description; said POINT OF BEGINNING also being the southwest corner of land conveyed to Tourist Attraction, Inc. (O.R. 228, P. 324, etc.), run thence east along the south line of land so conveyed to Tourist Attraction, Inc., a distance of 120.00 feet; thence N. 06 degrees 06 minutes E. 15.00 feet; thence west and parallel with the south line of land so conveyed to Tourist Attraction, Inc., a distance of 120.00 feet; thence south 06 degrees 06 minutes west 15.00 feet to the POINT OF BEGINNING.

Tax Folio Numbers: 00123600 8642113 Utility  
00123850 8648821 Utility

Case No. 9703894

L A W Y E R S T I T L E  
I N S U R A N C E C O R P O R A T I O N  
N A T I O N A L H E A D Q U A R T E R S  
R I C H M O N D , V I R G I N I A  
S C H E D U L E B - - S E C T I O N 1

**Requirements**

The following are the requirements to be complied with:

Item (a) Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to be insured.

Item (b) Proper instrument(s) creating the estate or interest to be insured must be executed and duly filed for record to-wit:

Duly authorized Warranty Deed from K.W. Resort Utilities Corp., a Florida Corporation to To Be Determined, together with evidence satisfactory to the Company of the corporation's good standing under the laws of its domicile state.

Item ( c ) Proof of payment, satisfactory to the Company, of taxes for the year(s) 1997 must be furnished, and any tax certificates issued must be duly cancelled by the tax collector.

Item ( d ) Proof, satisfactory to the Company, must be furnished that there are no unrecorded assessment liens of any type, including but no limited to these liens imposed by Chapter 159 of the Florida Statutes.

Item ( e ) Furnish Owner's/Mortgagor's Affidavit establishing that: All sums due for labor and/or materials for any work performed on the property have been paid and that no liens or encumbrances against the property other than as stated herein, are outstanding.

Item ( f ) Furnish Owner's Affidavit establishing the rights of parties in possession.  
NOTE: Same may be included in the above Affidavit.

This commitment is invalid unless the Insuring Provisions and Schedules A and B are attached.

Case No. 9703894  
Schedule B-Section 1-Page 1  
Form No. 91-88 (B-1)  
035-1-088-0001/4

L A W Y E R S T I T L E  
I N S U R A N C E C O R P O R A T I O N  
N A T I O N A L H E A D Q U A R T E R S  
R I C H M O N D, V I R G I N I A

SCHEDULE B--SECTION 2

Exceptions

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company.

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage covered by this Commitment.
2. Taxes and assessments for the year 1998 and subsequent years.
3. The nature and extent of the Riparian and Littoral Rights.
4. Any land described in Schedule A which is artificially filled land in what was formerly navigable waters, is subject to the rights of the United States government, arising by said government's control over navigable waters involving navigation and commerce.
5. Notwithstanding the legal description in Schedule A, this policy does not insure against rights of the State of Florida based on the doctrine of the state's sovereign ownership of lands lying below the ordinary high water line of any navigable waters.
6. Easements or claims of easements not shown by the public records, boundary line disputes, overlaps, encroachments, and any matters not of record which would be disclosed by an accurate survey and inspection of the premises.
7. Statute and Regulations recorded in O.R. Book 668, Page 43.

continued

NOTE: In accordance with Florida Statutes Section 627.4131, please be advised that the insured hereunder may present inquiries, obtain information about coverage, or receive assistance in resolving complaints, by contacting the Lawyers Title Insurance Corporation Regional Office, 100 North Tampa Street, Suite 2050, Tampa, Florida 33602. Telephone number 813-222-1450.

NOTE: If policy is to be issued in support of a mortgage loan, attention is directed to the fact that the Company can assume no liability under its policy, the closing instructions, or Insured Closing Service for compliance with the requirements of any consumer credit protection or truth in lending law in connection with said mortgage loan.

This commitment is invalid unless the Insuring Provisions and Schedules A and B are attached.

Case No. 9703894  
Schedule B Section 2 Page 1  
Form No. 91-88 (B-2) 035-1-088-0001/4

L A W Y E R S   T I T L E  
I N S U R A N C E   C O R P O R A T I O N  
  
N A T I O N A L   H E A D Q U A R T E R S  
R I C H M O N D ,   V I R G I N I A

SCHEDULE B, SECTION II  
EXCEPTIONS CONTINUED

8. Interest of Board of County Commissioners of Monroe County, pursuant to Quit Claim Deed recorded in O.R. Book 1363, Page 2022.
9. Oil and Mineral Reservations in favor of the State of Florida, as set forth in the deed from the Trustees of the Internal Improvement Fund, recorded in Official Records Book 53, Page 238.
10. Easement(s) in favor of Utility Board of the City of Key West set forth in instrument(s) recorded in Official Records Book 687, Page 834 and Official Records Book 244, Page 401.
11. Easement(s) in favor of City of Key West set forth in instrument(s) recorded in Official Records Book 359, Page 89; Official Records Book 326, Page 139; Official Records Book 359, Page 79 and in Official Records Book 139, Page 520.
12. Easement Agreement recorded in O.R. Book 866, Page 2469.
13. Oil and Minerals Reservations in favor of the State of Florida, as set forth in the deed from the Trustees of the Internal Improvement Fund, recorded in Official Records Book 380, Page 381.
14. Any loss or damage occasioned by or resulting from the failure to obtain fill permits.
15. Easement Agreement recorded in O.R. Book 866, Page 2456.
16. Title to the portion lying within public roads and/or highways is not insured hereunder. The rights of the public are specifically reserved.
17. Reservations in favor of the State of Florida, as set forth in the deed from the Trustees of the Internal Improvement Fund, recorded in Deed Book G-65, Page 82.
18. Ingress-Egress Easement recorded in O.R. Book 313, Page 53. (Affects Parcel E Only)
19. Easement recorded in O.R. Book 193, Page 272, corrected in Official Records Book 310, Page 323, as assigned in Official Records Book 547, Page 147. (Affects Parcel E Only)

continued

Case Number 9703894



LAWYERS TITLE  
INSURANCE CORPORATION

NATIONAL HEADQUARTERS  
RICHMOND, VIRGINIA

SCHEDULE B, SECTION II  
EXCEPTIONS CONTINUED

20. Easement in Warranty Deed recorded in O.R. Book 728, Page 4. (Affects Parcel E Only)
21. Easement in Warranty Deed recorded in O.R. Book 792, Page 37 and in Official Records Book 742, Page 49. (Affects Parcel E Only)
22. Easements recorded in O.R. Book 780, Page 1169; Official Records Book 782, Page 1363; Official Records Book 788, Page 662 and Official Records Book 728, page 1. (Affects Parcel E Only)
23. Rights of ingress-egress in Warranty Deed recorded in O.R. Book 375, Page 646.
24. Easement recorded in O.R. Book 351, Page 192, assigned in Official Records Book 866, Page 2474.
25. Easements as shown on the Plat recorded in Plat Book 5, Page 89.
26. Restrictions as shown on the Plat recorded in Plat Book 5, Page 89.  
NOTE: This exception omits any restriction, covenant, or condition based on race, color, religion, sex, handicap, familial status or national origin, if any, unless and only to the extent that the restriction is not in violation of state or federal law, or relates to a handicap, but does not discriminate against handicapped people.
27. Protective Covenants recorded in O.R. Book 139, Page 144.
28. Easements as shown on the Plat recorded in Plat Book 4, Page 57.
29. Restrictions as shown on the Plat recorded in Plat Book 4, Page 57.  
NOTE: This exception omits any restriction, covenant, or condition based on race, color, religion, sex, handicap, familial status or national origin, if any, unless and only to the extent that the restriction is not in violation of state or federal law, or relates to a handicap, but does not discriminate against handicapped people.
30. Terms and conditions of Utility Easement recorded in O.R. Book 878, Page 2318.
31. Easement recorded in O.R. Book 879, Page 392.

continued

Case Number 9703894

LAWYERS TITLE  
INSURANCE CORPORATION  
NATIONAL HEADQUARTERS  
RICHMOND, VIRGINIA

SCHEDULE B, SECTION II  
EXCEPTIONS CONTINUED

32. Supplementary Agreement recorded in O.R. Book 53, Page 241.
33. Lease Agreement recorded in O.R. Book 169, Page 115.
34. Deed referencing lease agreement recorded in O.R. Book 286, Page 270.
35. Easement in Deed recorded in O.R. Book 742, Page 49.
36. Easement recorded in O.R. Book 375, Page 62.
37. Access to Parcel E is not insured.

Case Number 9703894

**EXHIBIT 15**

Because the transaction is being accomplished by means of a stock purchase, there will be no change in the name of the utility. The utility will continue to operate under its existing tariffs.



FLORIDA  
PUBLIC SERVICE COMMISSION

CERTIFICATE  
NUMBER

168-S

Upon consideration of the record it is hereby ORDERED that authority be and is hereby granted to

K. W. Resort Utilities Corp.

Whose principal address is

6450 E. Junior College Road

Key West, Florida 33040 (Monroe County)

to provide sewer service in accordance with the provisions of Chapter 367, Florida Statutes, the Rules, Regulations and Orders of this Commission in the territory described by the Orders of this Commission.

This Certificate shall remain in force and effect until suspended, cancelled or revoked by Orders of this Commission.

ORDER 15658 DATED 2-12-86 DOCKET 850126-SU

ORDER \_\_\_\_\_ DATED \_\_\_\_\_ DOCKET \_\_\_\_\_

ORDER \_\_\_\_\_ DATED \_\_\_\_\_ DOCKET \_\_\_\_\_

ORDER \_\_\_\_\_ DATED \_\_\_\_\_ DOCKET \_\_\_\_\_

BY ORDER OF THE  
FLORIDA PUBLIC SERVICE COMMISSION



*Steve Fiddle*  
Commission Clerk  
*[Signature]*  
Executive Director

**EXHIBIT 16**

Because the transaction is being accomplished by means of a stock purchase, there will be no change in the name of the utility and no reason for the certificate to be reissued. A copy of the existing certificate is attached.

# HOPPING GREEN SAMS & SMITH

PROFESSIONAL ASSOCIATION

ATTORNEYS AND COUNSELORS

123 SOUTH CALHOUN STREET

POST OFFICE BOX 6526

TALLAHASSEE, FLORIDA 32314

(850) 222-7500

FAX (850) 224-8551

FAX (850) 425-3415

KEVIN B. COVINGTON  
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JONATHAN T. JOHNSON  
ROBERT A. MANNING  
W. STEVE SYRES  
T. KENT WETHERELL, II  
OF COUNSEL  
W. ROBERT FOXER

JAMES S. ALVES  
BRIAN H. SIBEAU  
KATHLEEN BLIZZARD  
ELIZABETH C. BOWMAN  
RICHARD S. BRIGHTMAN  
PETER C. CUNNINGHAM  
RALPH A. DINEO  
THOMAS H. DIROSE  
WILLIAM H. GREEN  
WADE L. HOPPING  
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RICHARD D. NELSON  
ANGELA R. MORRISON  
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CAROLYN S. RAEPPLE  
DOUGLAS S. ROBERTS  
GARY P. SAMS  
TIMOTHY G. SCHOENWALDER  
ROBERT P. SMITH  
CHERYL G. STUART

Writer's Direct Dial No.  
(904) 425-xxxx

March 5, 1998

DEPOSIT

DATE

980341

D722

MAR 06 1999

Ms. Blanca S. Bayó  
Director, Records & Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Application for Transfer of Certificate

Dear Ms. Bayó:

Enclosed for filing on behalf of K.W. Resort Utilities Corporation, are the original and 5 copies of KW Resort Utilities Corporations' Application for Transfer of Certificate.

Very truly yours,

*Rio D. T.*

*Cheryl G. Stuart*

CGS/clp  
Enclosures

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

RECEIVED  
FLORIDA PUBLIC  
SERVICE COMMISSION  
MAR -6 M 8 59  
MAIL ROOM

# HOPPING GREEN SAMS & SMITH

PROFESSIONAL ASSOCIATION  
ATTORNEYS AND COUNSELORS

123 SOUTH CALHOUN STREET  
POST OFFICE BOX 6526  
TALLAHASSEE, FLORIDA 32314  
ISSO 222-7500  
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CHERYL G. STUART

Writer's Direct Dial No.  
(904) 425-xxxx

March 5, 1998

DEPOSIT

DATE 980341

D722

MAR 06 1998

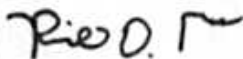
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Director, Records & Reporting  
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Tallahassee, FL 32399-0850

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Very truly yours,



Cheryl G. Stuart

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Enclosures

HOPPING GREEN SAMS & SMITH  
PROFESSIONAL ASSOCIATION  
123 SOUTH CALHOUN STREET  
P.O. BOX 6526  
TALLAHASSEE, FLORIDA 32314



315 S. CALHOUN STREET  
TALLAHASSEE, FLORIDA

028527

NO. DATE VENDOR NO.

028527 03/05/98 PSC

AMOUNT

\*\*\*\*\*1,500.00

PAY  
ONE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS\*\*\*\*\*

TO THE  
ORDER  
OF

Public Service Commission  
Fletcher Building  
Tallahassee, FL 32314

GENERAL ACCOUNT

