

Law Offices

# HOLLAND & KNIGHT LLP

315 South Calhoun Street  
Suite 600  
P.O. Drawer 810 (ZIP 32302-0810)  
Tallahassee, Florida 32301  
850-224-7000  
FAX 850-224-8832

Atlanta	Orlando
Boca Raton	San Francisco
Fort Lauderdale	St. Petersburg
Jacksonville	Tallahassee
Lakeland	Tampa
Miami	Washington, D.C.
New York	West Palm Beach

August 25, 1998

D. BRUCE MAY  
850-425-5607

Internet Address:  
dbmay@hklaw.com

Ms. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Betty Easley Conference Center, Room 110  
Tallahassee, FL 32399-0850

981067-WU

**Via Hand Delivery**

RECEIVED - FPSC  
 50 AUG 25 1998  
 RECORDED - FPSC

Re: In re: Application for Transfer of Water Facility of HOBE SOUND WATER COMPANY to TOWN OF JUPITER ISLAND and Request for Cancellation of Certificate No. 341-W

Dear Ms. Bayo:

Enclosed for filing are the original and 5 copies of Hobe Sound Water Company's Application for Transfer of Facility to Governmental Authority and Request for Cancellation of Certificate. For our records, please acknowledge your receipt of the filing on the enclosed copy of this letter.

Thank you for your consideration in this matter.

Sincerely,

HOLLAND & KNIGHT LLP

  
D. Bruce May

Enclosure  
DBM/sms

cc: Ms. Billie Messer (w/enclosure)  
Ms. JoAnn Chase (w/enclosure)  
Phillip C. Gildan, Esq. (w/enclosure)

DOCUMENT NUMBER-DATE

89228 AUG 25 98

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Transfer of Water )  
Facility of HOBE SOUND WATER )  
COMPANY to TOWN OF )  
JUPITER ISLAND and Request for )  
Cancellation of Certificate No. 341-W. )

DOCKET NO. 981067-WL

**APPLICATION FOR TRANSFER OF  
FACILITY TO GOVERNMENTAL AUTHORITY  
AND REQUEST FOR CANCELLATION OF CERTIFICATE**

Hobe Sound Water Company ("Hobe Sound"), pursuant to Section 367.071(4)(a), Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code, files this Application for Transfer of Water Facility of Hobe Sound Water Company to the Town of Jupiter Island ("Jupiter Island") and Request for Cancellation of Certificate No. 341-W, and states:

1. Hobe Sound is a water utility that operates under Water Certificate No. 341-W. Hobe Sound is located in Martin County, Florida.
2. For purposes of this application, the name and address of Hobe Sound and its authorized representative are:

Hobe Sound Water Company  
11844 S.E. Dixie Highway  
Hobe Sound, Florida 33455

Authorized Representative:  
D. Bruce May, Esquire  
Holland & Knight LLP  
P. O. Drawer 810  
Tallahassee, Florida 32302-0810  
Tel (850) 425-5607

DOCUMENT NUMBER-DATE  
09228-AUG 25 8  
FPSC-RECORDS/REPORTING

3. The name and address of Jupiter Island and its authorized representative, for purposes of this joint application, are:

Town of Jupiter Island  
103 Bunker Hill Road  
Hobe Sound, Florida 33475

Authorized Representative:  
Phillip C. Gildan, Esquire  
Greenberg Traurig  
777 South Flagler Drive, Suite 300 E  
West Palm Beach, Florida 33401  
Tel (561) 650-7900

4. On July 13, 1998, Jupiter Island conducted a public hearing in accordance with Section 180.301, Florida Statutes, in which it considered (a) the most recent available income and expense statement for Hobe Sound; (b) the most recent available balance sheet for Hobe Sound, listing assets and liabilities and clearly showing the amount of contributions-in-aid-of-construction and the accumulated depreciation thereon; (c) a statement of the existing rate base of Hobe Sound for regulatory purposes; (d) the physical condition of Hobe Sound's facility being purchased; (e) the reasonableness of the purchase price and terms; (f) the impact of the purchase on Hobe Sound's customers, both positive and negative; (g) any additional investment required and the ability and willingness of Jupiter Island to make that investment; (h) the alternatives to the purchase and the potential impact on Hobe Sound's customers if the purchase is not made; and (i) the ability of Jupiter Island to provide and maintain high-quality and cost-effective utility service.

Jupiter Island found the transaction to be in the public interest, and as a result, issued its resolution approving the Hobe Sound Company Water Utility System Asset

Transfer Agreement for Purchase and Sale of Water Assets ("Agreement"). A copy of that resolution is attached hereto as Exhibit "A."

5. The transaction is scheduled to close on or before September 1, 1998.

6. This application must be approved as a matter of right as a sale to a governmental authority pursuant to Section 367.071(4)(a), Florida Statutes.

7. A copy of the Agreement entered into between Jupiter Island and Hobe Sound is attached hereto as Exhibit "B."

8. After the closing of this transaction, Hobe Sound will retain no assets that would constitute a system providing or proposing to provide water service to the public for compensation.

9. Jupiter Island has obtained, from Hobe Sound or this Commission, Hobe Sound's most recent available income and expense statement, balance sheet, statement of rate base for regulatory purposes, and contributions-in-aid-of-construction.

10. Pursuant to the Agreement, the liability for all customer deposits and the accumulated interest thereon will be assigned to Jupiter Island at closing.

11. Hobe Sound will pay all outstanding regulatory assessment fees and file the final Regulatory Assessment Fee Return with the Division of Administration of the Commission within the time period required by the rules of the Commission.

12. Attached as Exhibit "C" is a copy of Water Certificate No. 341-W.

WHEREFORE, Hobe Sound requests that the Commission approve the transfer of its water facility to Jupiter Island as a matter of right, declare Jupiter Island to be

exempt from this Commission's jurisdiction, and cancel the water certificate of Hobe Sound.



D. Bruce May  
HOLLAND & KNIGHT LLP  
P. O. Drawer 810  
Tallahassee, FL 32302-0810  
850/425-5607

Attorney for Hobe Sound Water  
Company

TAL-136635.3

**TOWN OF JUPITER ISLAND FLORIDA**

**RESOLUTION NO. 378**

A RESOLUTION OF THE TOWN OF JUPITER ISLAND, FLORIDA, APPROVING THE EXECUTION OF A TRANSFER AGREEMENT WITH THE HOBE SOUND WATER COMPANY; APPROVING THE EXECUTION OF A TRANSFER AGREEMENT WITH HYDRATECH UTILITIES, INC.; APPROVING THE EXECUTION OF A FACILITY PRIVATIZATION CONTRACT; DETERMINING THAT THE PURCHASE OF THE WATER ASSETS OF THE HOBE SOUND WATER COMPANY IS IN THE PUBLIC INTEREST; DETERMINING THAT THE PURCHASE OF THE WATER AND SEWER ASSETS OF HYDRATECH UTILITIES, INC., IS IN THE PUBLIC INTEREST; DETERMINING THAT THE PRIVITIZATION OF THE OPERATIONS AND MANAGEMENT FUNCTIONS OF THE COMBINED WATER AND SEWER ASSETS TO BE ACQUIRED BY THE TOWN IS IN THE PUBLIC INTEREST; AND SETTING FORTH A STATEMENT SHOWING SAME: AUTHORIZING THE APPROPRIATE TOWN OFFICIALS TO EXECUTE THE NECESSARY DOCUMENTS IN CONNECTION WITH THESE TRANSACTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Commission has reviewed and considered, at a minimum, the materials and information required under Section 180.301(1)-(9), Florida Statutes; in conjunction with its determination whether the proposed acquisition by the Town of Jupiter Island of the water assets of the Hobe Sound Water Company and the water and sewer assets of Hydratech Utilities, Inc., is in the public interest and that the privatization of the operations and management functions of the combined water and sewer assets to be acquired is in the public interest;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE TOWN OF JUPITER ISLAND, FLORIDA:

Section 1. A. The Transfer Agreement between the Town of Jupiter Island and the Hobe Sound Water Company, the material form of which agreement is attached to this Resolution and incorporated in this Resolution, (the "HSW Agreement") is hereby approved.



B. The Transfer Agreement between the Town of Jupiter Island and Hydratech Utilities, Inc., the material form of which agreement is attached to this Resolution and incorporated in this Resolution (the "HTU Agreement") is hereby approved.

C. The Operations and Management Privatization Agreement between the Town of Jupiter Island and U.S. Filter Operating Services, Inc., the material form of which agreement is attached to this Resolution and incorporated in this Resolution (the "Privatization Agreement") is hereby approved.

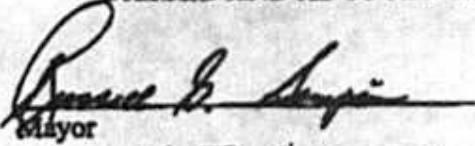
Section 2. The Town Commission makes the following statement required under Section 180.301, Florida Statutes, regarding the purchase of the water assets of the Hobe Sound Water Company, the purchase of the water and sewer assets of Hydratech Utilities, Inc., and the privatization of the operations and management of the water and sewer assets to be acquired:

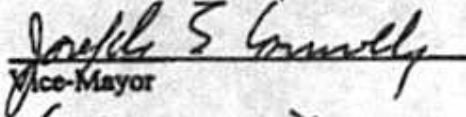
The Town Commission finds that the purchase of the water assets of the Hobe Sound Water Company, the purchase of the water and sewer assets of Hydratech Utilities, Inc., and the privatization of the operations and management of the water and sewer assets so acquired is in the public interest. The Privatization firm of U.S. Filter Operating Services, Inc. has the summary experience in operations and management of utility systems as set forth on the attached proposal, and has the financial ability to provide the service based upon the attached proposal and based upon a pro-forma analysis of the anticipated revenues and expenses of the utility systems to be acquired.

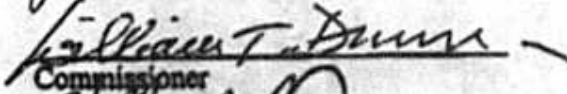
Section 3. The authorized representatives of the Town of Jupiter Island, including the Mayor, the Vice Mayor, the Town Clerk, and the Town Manager are hereby authorized and directed to execute and deliver all documents as necessary to effectuate the terms of the HSW Agreement, the HTU Agreement and the Privatization Agreement, upon the review of counsel for the Town as to completeness and consistency with the approval of the Town Commission.

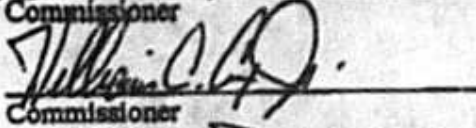
Section 4. This Resolution shall take effect immediately upon passage.

PASSED AND ADOPTED this 13<sup>th</sup> day of July, 1998.

  
Mayor

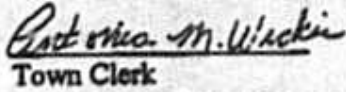
  
Vice-Mayor

  
Commissioner

  
Commissioner

  
Commissioner

Attest:

  
Town Clerk



**HOBE SOUND WATER COMPANY WATER UTILITY SYSTEM ASSET  
TRANSFER AGREEMENT**

**THIS AGREEMENT**, is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 1998, (the "Effective Date"), by and between the Town of Jupiter Island, a political subdivision of the State of Florida (the "Town"), and Hobe Sound Water Company, a Florida corporation, ("HSW").

**WITNESSETH:**

**WHEREAS**, HSW owns and operates a water supply, treatment, transmission and distribution system, which provides service to the Town and unincorporated portions of Martin County, Florida pursuant to a certificate of authorization granted by the Florida Public Service Commission; and

**WHEREAS**, the Town has the power and authority to provide potable water infrastructure and service inside and outside the municipal boundaries of the Town; and

**WHEREAS**, the HSW has a franchise from the Town for the operation of its water utility system within the Town, which franchise provides for the Town to acquire the utility assets of HSW at the end of the franchise; and

**WHEREAS**, the Town held a public hearing pursuant to Section 180.301, Florida Statutes, on the proposed purchase and sale of all or substantially all of the water utility assets owned by HSW in Martin County, Florida, per this Agreement and has made a determination that such a purchase and sale is in the public interest; and

**WHEREAS**, the Town, in determining if such a purchase is in the public interest considered, at a minimum, all of the factors referenced in Section 180.01, et seq., Florida Statutes; and

**WHEREAS**, the acquisition of the Utility System by the Town has been determined by the Town to be in the best interest of the Town, and the Town has threatened to acquire the Utility System from HSW by exercise of the Town's power of eminent domain. HSW is willing to sell the Utility System to the Town in lieu of the Town's instituting an eminent domain proceeding; and the Town has agreed to purchase the Utility System from HSW in lieu of eminent domain proceedings and in settlement of this matter upon the terms and conditions set forth in this Agreement. HSW would not sell its Utility System to the Town, but for the Town's position that it would institute a condemnation action against HSW if HSW did not accept this Agreement;

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, representations and agreements contained herein, and other good and valuable consideration exchanged between the parties, the parties to this Agreement do undertake, promise and agree for themselves, their permitted successors and assigns as follows:

## **ARTICLE I DEFINITIONS AND CONSTRUCTION**

**SECTION 1.01. DEFINITIONS.** As used in this Agreement, the following terms shall have the meanings as defined herein unless the context requires otherwise:

**"Agreement"** means this Hobe Sound Water Company Water Utility System Asset Transfer Agreement, including any amendments and supplements hereto executed and delivered in accordance with the terms hereof.

**"Assumed Liabilities"** means the liabilities and obligations of HSW under or pursuant to the contracts, agreements and instruments identified on Appendices I, J, K, L and M.

**"Commission"** means the Town Commission of the Town of Jupiter Island, Florida.

**"Easements"** means all existing rights, privileges, easements, licenses, prescriptive rights, rights-of-ways, and other rights to use public and private roads, highways, streets, railroads and other areas owned or used by HSW in connection with the construction, reconstruction, installation, expansion, maintenance and operation of its water utility system or the Purchased Assets.

In this regard, HSW shall identify, with reasonable particularity, Easements covering all distribution facilities of the utility system, with true copies of the Easement Agreements, containing legal descriptions of the lands covered by the Easements. Easements located in recorded plats and rights to locate lines and dedicated public right-of-ways shall be identified.

**"Excluded Assets"** means those assets, business properties, rights, obligations or liabilities, both tangible and intangible, of HSW, including all bank accounts, income tax escrow accounts and such other assets described in Appendix A hereto, which shall not be and are not to be sold, conveyed, or transferred to or assumed by the Town pursuant to this Agreement.

**"HSW"** means the Hobe Sound Water Company, a Florida corporation, and its successors and assigns.

**"Purchased Assets"** means all of the water utility assets owned by HSW as described and referenced in Section 3.02(A) hereof, less the Excluded Assets.

**"Permitted Exceptions"** means those title exceptions described in Appendix B hereto.

**"Territory"** means that geographical land area set forth in HSW's Public Service Commission certificated area.

**"Town"** means the Town of Jupiter Island, a municipal corporation organized and existing under the laws of the State of Florida.

**"Transaction Costs"** means the costs, fees and expenses incurred by the Town in connection with the Agreement and the issuance of bonds or the use of any other interim financing alternative contemplated in Section 4.03 hereof, including but not limited to (A) rating agency and other financing fees; (B) the fees and disbursements of bond counsel; (C) the fees and disbursements of the Town's financial advisor; (D) the fees and disbursements of the Town's consulting engineers; (E) the fees and disbursements of the Town's water and wastewater counsel and consultants; (F) the costs of preparing or printing the bonds and the documentation supporting issuance of the bonds; (G) the fees payable in respect of any municipal bond insurance policy if one is obtained; (H) the fees payable in respect to any instruments required to meet the Town's bond reserve fund requirements; (I) the fees and costs to prepare an Official Statement for the issuance of bonds if one is obtained; and (I) any other costs of a similar nature incurred in connection with issuance of the bonds. Any transaction costs in addition to these sums shall be borne by the Town.

**"Utility System"** means the water supply, treatment, transmission and distribution system of HSW which provides services to incorporated and unincorporated portions of Martin County, Florida pursuant to certificate(s) granted to HSW by the Florida Public Service Commission.

#### **SECTION 1.02. CONSTRUCTION AND INTERPRETATION.**

(A) Words that indicate a singular number shall include the plural in each case and vice versa, and words that import a person shall include firms and corporations.

(B) The terms "herein," "hereunder," "hereby," "hereof," and any similar terms, shall refer to this Agreement; the term "heretofore" shall mean before the date of execution of this

Agreement; and the term "hereafter" shall mean on or after the initial date of execution of this Agreement.

(C) Words that reference only one gender shall include all genders.

(D) This Agreement shall be construed as resulting from joint negotiation and authorship.

No part of this Agreement shall be construed as the product of any one of the parties hereto.

**SECTION 1.03. INCORPORATION.** The appendices hereto and each of the documents referred to therein are incorporated and made a part hereof in their entirety by reference.

**SECTION 1.04. SECTION HEADINGS.** Any headings preceding the texts of the several Articles, Sections or Appendices in this Agreement and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.

## **ARTICLE II REPRESENTATIONS**

**SECTION 2.01. REPRESENTATIONS OF THE TOWN.** The Town makes the following representations, which shall survive any closing hereunder for a period of one year.

(A) The Town is duly organized and validly existing as an incorporated municipality under the laws of the State of Florida.

(B) The Town has all requisite power and authority to enter into this Agreement, perform its obligations under this Agreement and complete the transactions contemplated by this Agreement.

(C) The Town has fulfilled and complied with all of the legal requirements applicable to the transactions contemplated by this Agreement, including without limitation the provisions of



Section 180.01, et seq., Florida Statutes, relative to the purchase of a water utility by a Town. The execution and delivery of the Agreement by the Town, the Town's performance of its obligations under the Agreement, and the completion of the transactions contemplated under the Agreement do not violate the Town's Charter, any applicable laws, or other legal restrictions or agreements. All necessary action on the part of the Town to authorize the execution and delivery of the Agreement, the Town's performance of its obligations under the Agreement and completion of the transactions contemplated under the Agreement has been taken.

(D) To the best of its knowledge and belief after due inquiry, the Town is not in default under any provisions of the laws of the State of Florida material to the performance of its obligations under this Agreement. The Commission has duly authorized the execution and delivery of this Agreement and this Agreement constitutes a valid and legally binding obligation of the Town, enforceable against the Town in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion of a court of competent jurisdiction in accordance with general principles of equity.

(E) There is no action, suit, investigation, or proceeding pending or, other than those matters set forth in Section 2.02(D), to the Town's knowledge and belief, threatened against or affecting the Town, at law or in equity or before any federal, state, municipal, or other governmental department, commission, board, bureau, agency or instrumentality, wherein any decision, ruling or finding would adversely affect the transactions contemplated hereby or which in any way would adversely affect the validity of this Agreement or any other agreement or



instrument to which the Town is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby.

(F) Town has not dealt with any broker, salesman or finder in connection with the transactions contemplated herein and no sales commissions or finder's fees are due or payable as a result hereof. HSW and the Town each agrees to indemnify and hold the other harmless against any claim or demand made by any broker or agent claiming to have dealt or consulted with them in this transaction.

(G) After Closing, any rate revision (increase or decrease) or rate structure and rate design change implemented by the Town will be equitably applicable to each class of customer and applicant for water service, subject to the requirements of Chapter 180, Florida Statutes and applicable law. The Town shall not establish any impact fees relating to receipt of utility service in excess of a customer's pro rata share of the reasonably anticipated cost of expanding utility facilities necessitated by the customer's connection to the then existing facilities of the utility system. Such impact fees shall be based upon demand in accordance with the demand formula attached as Appendix T.

(H) The Town will provide HSW with a list identifying those current employees of HSW to whom the Town's contract utility operations and management entity intends to offer employment in connection with the Utility System, and the terms upon which such employment will be offered. The Town shall cause its contract utility operations and management entity to make such offers of employment prior to closing, effective upon closing. If the offered terms of employment are not satisfactory to HSW, or if the Town shall fail to cause such offers of employment to be made, HSW shall have the option of terminating the Agreement.

(I) No later than six months following the closing of this Agreement, the Town will petition the South Florida Water Management District (SFWMD) to abandon the water production well referred to by HSW as "Well 23A" (identified as Parcel 20 on Appendix C to this Agreement). The Town will diligently pursue abandonment of Well 23A upon receipt of a permit authorizing such abandonment from the SFWMD, at which time the Town will deliver to HSW a quit-claim deed of the Town's rights to "Well 23A" (Parcel 20).

(J) The Town warrants to HSW, as a material and integral part of the consideration for this transaction, that following acquisition of the Utility System, the Town intends to conduct its future water utility activities consistent with the Management Plan for Consolidation and Enhancement, a copy of which HSW acknowledges delivery and receipt.

**SECTION 2.02. REPRESENTATIONS OF HSW.** HSW makes the following representations, which shall survive any closing hereunder for a period of one year.

(A) HSW is a corporation duly organized, validly existing and in good standing in the State of Florida, authorized to do business in the State, and has all requisite corporate power and authority to enter into and fully perform this Agreement. The Purchased Assets represent all of the assets of HSW used in the operation of the utility system.

(B) The Shareholders of HSW are Trustees Under Agreement dated December 16, 1964, FBO Nathaniel P. Reed and his Descendants (30 shares); Trustees Under Agreement dated December 16, 1964, FBO Joseph V. Reed, Jr., and his Descendants (20 shares); Trustees Under Agreement dated December 16, 1964, FBO Adrian P. Reed and his Descendants; Trustees Under Agreement dated December 16, 1964, FBO Robert A. Hemmes, Jr. and his Descendants (20 shares); and Trustees Under Agreement dated December 16, 1964, FBO Linda Lee Hemmes and

her Descendants (10 shares). Each of the shareholders of HSW has approved and authorized HSW to enter into and consummate the transaction set forth in the Agreement.

(C) All necessary corporate action on the part of HSW relating to the direction and authorization of HSW's execution, delivery and performance of this Agreement has been duly taken, and this Agreement is a valid and legally binding obligation of HSW, enforceable against HSW, in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion of a court of competent jurisdiction in accordance with the general principles of equity.

(D) There is no action, suit, investigation, or proceeding pending or, to HSW's knowledge and belief, threatened against or affecting HSW at law or in equity or before any federal, state, municipal, or other governmental department, commission, board, bureau, agency or instrumentality, wherein any decision, ruling or finding would adversely affect the transactions contemplated hereby or which in any way would adversely affect the validity of this Agreement or any other agreement or instrument to which HSW is a party which is used or contemplated for use in the consummation of the transactions contemplated hereby.

(E) To the best of HSW's knowledge and belief and after due inquiry, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated, nor compliance with the terms and provisions of this Agreement and the instruments required of HSW under the Agreement will violate the provisions of any applicable law or any applicable order or regulation of any governmental authority having jurisdiction over HSW and will not conflict with or result in a material breach of any terms, conditions or

provisions of any agreement or instrument to which HSW is now a party, or constitute a default thereunder.

(F) HSW has good and marketable title to the Purchased Assets and, at closing, shall have the power and authority to deliver sole and exclusive title to and possession of the Purchased Assets to the Town free and clear of all encumbrances or security interests, subject only to the Permitted Exceptions.

(G) HSW has not dealt with any broker, salesman or finder in connection with the transactions contemplated herein and no sales commissions or finder's fees are due or payable as a result hereof. HSW and the Town each agrees to indemnify and hold the other harmless against any claim or demand made by any broker or agent claiming to have dealt or consulted with them in this transaction.

(H) The Real Property identified in Appendix C hereof represents all real property owned by HSW and used in the operation of the Utility System and the Purchased Assets.

(I) To the best of HSW's knowledge and belief after due inquiry, the Easements identified in Appendix D hereto represent all the Easements necessary for use in connection with the maintenance and operation of the Utility System and the Purchased Assets, and all of the Purchased Assets are located completely and legally within the Easements or the Real Property.

(J) HSW possesses an enforceable easement interest in the Easements shown on Appendix D hereto and none of the easement interests prohibit assignment or require the grantor's, or current fee owner's, consent thereto.

(K) No present possessory interest in any real or personal property owned, used or controlled by HSW has ever automatically terminated or reverted to the grantor thereof as a



result of any failure to continuously use such property for water purposes; nor is HSW aware of any claim, whether actual or threatened, of any such reversion.

(L) Appendix E, attached hereto, is a schedule of all plans, specifications, surveys and as-built drawings which substantially describe the Utility System's water plants, water supply facilities, water transmission and distribution systems and all other utility facilities.

(M) Appendix F, attached hereto, is a schedule of all current or active permits, applications or other documents, together with effective dates and any expiration dates, which authorize the operation of the Utility System's water facilities issued by all applicable governmental authorities. HSW warrants that, except as set forth on Appendix F, all of the Utility System's facilities are legally permitted, and that all required renewals of permits have been timely and legally applied for.

(N) Appendix G, attached hereto, is a map or maps of the Utility System which is representative of HSW's water, water supply facilities, water transmission and distribution system, and the Utility System's current certificated water service areas.

(O) Appendix H, attached hereto, lists the equipment, vehicles, tools, parts, laboratory equipment, computer equipment, software, and other personal property used by HSW in connection with the operation of Utility System.

(P) Appendix I, attached hereto, is a schedule of all operating and vendor contracts of HSW affecting the Utility System.

(Q) Appendix J, attached hereto, is a schedule of all executory agreements, sometimes referred to as developer agreements, entered into by HSW or its predecessors, and owners or developers of real property for the provision of water and wastewater utility services through the Utility System.

(R) Appendix K, attached hereto, is a schedule, with respect to all executory agreements under which HSW as the owner of the Utility System has any continuing or outstanding water service obligations as of July 1, 1998, which shows the total number of (1) contractual connections; (2) contractual connections paid for and not yet connected; (3) contractual connections not yet paid for and not yet connected; and (4) any contractual connections for which HSW has collected or expects to begin collecting a periodic minimum or base facility charge prior to closing.

(S) Appendix L, attached hereto, is a schedule of all other agreements to which HSW is a party or by which any of the Purchased assets is bound or affected which would reasonably be considered to be an encumbrance upon the Purchased Assets, including without limitation, any leasehold agreements or oral agreements. Appendix L identifies any such oral agreements and contains a summary description of the terms thereof.

(T) Appendix M, attached hereto, consists of the Florida Public Service Commission ("FPSC") Orders, containing HSW's water tariff, which represents and contains the most current schedule of rates, fees and charges that HSW is authorized to impose, together with HSW's last two (2) annual reports filed with the FPSC.

(U) Appendix N, attached hereto, is a schedule of any and all insurance policies currently in force, which provide coverage to HSW with respect to the Purchased Assets. Such appendix indicates the name and address of each carrier, the policy number, the date of expiration of coverage and the type of coverage provided.

(V) From and after the Effective Date of this Agreement, HSW will not, without the prior written consent of the Town, dispose of or encumber any of the Purchased Assets, with the exception of non-material transactions occurring in the ordinary course of HSW's business.



(W) From and after the Effective Date of this Agreement, there will be no material depletion of the Purchased Assets, nor any adverse material change in the condition of the Purchased Assets, and the Utility System and all of the Purchased Assets will be properly maintained within the custom and usage of the industry up until and through closing.

(X) Except as set forth in Appendix O, HSW has not been cited nor notified, and is not, after due inquiry, aware of any violation of any governmental rule, regulation, permitting condition, or other governmental requirement of any type or nature applicable to the ownership, maintenance, construction or operation of the Utility System, nor is HSW aware of any conditions which by reason of the passing of time or the giving of notice by the appropriate governmental agency would constitute such a violation.

(Y) No employment contract exists under which HSW is the employer that cannot be canceled within thirty (30) days' notice or less and without payment of any consideration for such cancellation.

(Z) The water plants, facilities and appurtenances included in the Purchased Assets are located on real property which has been zoned by appropriate authorities under zoning certifications, special exceptions or variances, or rights of use which will permit the respective use of such parcels for water utility purposes.

(AA) To the best of HSW's knowledge and belief, the Real Property and Easements included in the Purchased Assets are in compliance with, and HSW has not violated, in connection with its ownership, use, maintenance, or operation of the Utility System, applicable environmental, federal, state, Town, or local laws relating to pollution or protection of the environment, including but not limited to, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended by the Superfund Amendments and

Reauthorization Act of 1986, and the Resource Conservation and Recovery Act. HSW has not authorized the placing or depositing of hazardous substances on the Real Property and Easements except, if at all, in accordance with applicable law, and HSW has no actual knowledge of any hazardous substance having been, or currently being, placed or deposited on said Real Property and Easements except in a lawful manner.

(BB) HSW has prepared and delivered to the Town a written billing analysis of all revenues of the Utility System for the twelve (12) month period ending May 31, 1998. The Town acknowledges that said billing analysis has been prepared in accordance with the requirements of the its consultants.

(CC) Except as set forth in Appendix P, there are no facts actually known to HSW materially affecting the physical condition of the Utility System or Purchased Assets which are not readily observable or which have not been disclosed or provided to the Town in connection with this Agreement or otherwise.

(DD) HSW is in sole and exclusive possession of the Purchased Assets and HSW at Closing shall deliver sole and exclusive possession of the Purchased Assets to the Town.

(EE) The information provided to the Town by HSW in conjunction with the Agreement, including the Attachments to this Agreement, are true and correct and do not omit any material fact necessary to make the information provided by HSW not misleading to the Town to the best of HSW's knowledge.

(FF) At or before closing, HSW shall obtain and include within the Easements rights of access to all existing water lines, wells, and monitor wells, including within and through the parcels of the proposed Hobe Sound Village. HSW shall obtain the commitment of the Hobe Sound Land Company and any purchaser of the property within Hobe Sound Village to provide

an easement(s) over the existing utility facilities within said property or pay all costs associated with relocating the utility facilities to a location(s) acceptable to Town on alternative property.

(GG) At or before closing, HSW shall obtain and include within the Easements a 30 ft wide access easement following the current alignment of the existing shellrock road through the Eastern Wellfield between the water treatment plant and U.S. 1. This easement shall provide that upon transfer of the property underlying the easement by the current owner to a third party, then fee title to the property underlying the easement shall be automatically transferred to the Town.

(HH) At or before the closing, HSW shall obtain and include within the Easements unrestricted and perpetual access to all existing well sites (including wells in use, wells out of service, and abandoned wells) located within the proposed upland preserve areas associated with Parcel A, Parcel D, Parcel C, Parcel B and Parcel I of the proposed Hobe Sound Village.

(II) At or before the closing, HSW shall obtain and include within the Purchased Assets all water rights owned or controlled by the Hobe Sound Land Company or HSW on property not owned by either company.

(JJ) HSW shall undertake, or cause to be undertaken, the complete replacement of the iron removal filter media and FDEP requested testing of the units at 5.0 gpm/ft<sup>2</sup>. This obligation shall survive the closing.

(KK) At or prior to closing, HSW shall cause to be transferred, and pay all costs associated with such transfer, the State of Florida Submerged Lands Lease for the most recent Intracoastal Waterway crossing.

(LL) At or prior to closing, HSW will obtain from the SFWMD a postponement to 30 days following closing of the due date for submission to SFWMD of the detailed plan for remediation of the Eastern Wellfield as required by the SFWMD Consent Agreement.

(MM) At or prior to closing, HSW shall obtain and include within the Easements, an easement granting the Town an unrestricted right to locate new water supply wells, together with access thereto, in the preserve areas of the proposed Hobe Sound Village, provided such right is subject to reasonable requirements for visual, noise and air quality buffers. Water supply wells extracting from the groundwater, or shallow, aquifer will be located no closer than 250 ft. from the Preserve area boundary. Water supply wells extracting from the Floridan aquifer will be located no closer than 100 ft. from the Preserve area boundary.

### **ARTICLE III PURCHASE AND SALE OF ASSETS**

**SECTION 3.01. PURCHASE AND SALE COVENANT.** At closing, the Town shall purchase and HSW shall sell and convey the Purchased Assets to the Town upon the terms and subject to the conditions set forth in this Agreement, and the Town shall assume and agree to perform and discharge the Assumed Liabilities.

#### **SECTION 3.02. PURCHASED ASSETS.**

(A) The Purchased Assets, exclusive of the Excluded Assets, shall include those assets, business properties, and rights both tangible and intangible, that HSW owns or uses in the operation of the Utility System, or any interest in which it has or hereafter acquires, relating thereto, including the following:

(1) The Real Property and interests, whether recorded in the public records or not, in real property owned, used or controlled by HSW and described in Appendix C hereof.

(2) All water treatment plants, wells, transmission and distribution lines and mains, and pumping facilities of every kind and description whatsoever including without limitation, all trade fixtures; leasehold improvements, pumps, generators, controls, tanks,



distribution or transmission pipes or facilities, valves, meters, service connections, and all other physical facilities and property installations used in the operation of the Utility System, together with an assignment of all existing and assignable third party warranties that relate to completed or in progress construction.

(3) All equipment, owned or leased vehicles, tools, parts, laboratory equipment, and other personal property owned or used by HSW in connection with the operation of the Utility System, as more particularly described in Appendix H of this Agreement.

(4) The Easements more particularly described in Appendix D of this Agreement.

(5) All current customer records and supplier lists, as-built surveys, record information and water plans, plats, engineering and other drawings, designs, blueprints, plans and specifications, and operating manuals, calculations, and studies, and all other information controlled by or in the possession of HSW that relates to the description and operation of the Utility System, inclusive of all pertinent computers, computer records and the lawful use of all computer software which is used in the operation of the Utility System for billing or customer record keeping purposes, all agencies for the supply of water; all water rights, flowage rights and riparian rights, and all consents, grants, licenses, privileges and uses necessary to construct, maintain and operate plants and systems for the procuring, treatment, distribution, transmissions of water to the customers of the Utility System; all telephone numbers, post office boxes, FCC licenses, use of corporate name, and full water storage tanks. The lawful use of any licensed software or proprietary software developed for HSW shall be limited to the recovery and transfer of data to Town computers. In any event, HSW shall provide the Town with the computers, software, and data used in the operation of the Utility System and will exert its best

efforts to provide, or cause to be provided, all computer records within its possession and control and to cooperate with the Town in the transfer of such data to the Town's computer systems.

(6) All necessary transferable regulatory approvals subject to all conditions, limitations or restrictions contained therein; all existing permits and other governmental authorizations and transferable approvals of any kind necessary to operate and maintain the Utility System according to all governmental requirements, as more specifically described in Appendix F to this Agreement.

(7) All rights and obligations of HSW under any existing or proposed agreements and contracts which the Town shall assume at closing.

(B) The Purchased Assets shall be conveyed by HSW to the Town subject to the Permitted Exceptions, but otherwise free and clear of all liens or encumbrances.

(C) The Purchased Assets do not and shall not include the Excluded Assets. The Excluded Assets are more particularly described in Appendix A hereto.

### **SECTION 3.03. PURCHASE PRICE AND CONSIDERATION FOR TRANSFER.**

(A). The purchase price and consideration for the transfer shall be SIXTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS (\$16,500,000.00), subject to the terms, adjustments and prorations as provided herein, and shall be payable by wire transfer at closing. The purchase price shall be allocated among the Purchased Assets in accordance with a schedule to be prepared by HSW prior to closing.

(B) HSW, and its shareholders (including the current beneficiaries and current relatives of the beneficiaries of any trust), employees, agents and affiliates, warrant to the Town, as a material and integral part of the consideration for this transaction, that if the Town commences



the design, permitting, and construction of a reverse osmosis water treatment facility, neither HSW, nor any of its shareholders (including the current beneficiaries and current relatives of the beneficiaries of any trust), employees, agents or affiliates, will object to or interfere with, or cause or recommend that any other person or entity object to or interfere with, the issuance of surface water discharge permits from any and all applicable regulatory agencies for the brine reject generated by a reverse osmosis water facility to be constructed by the Town.

#### **ARTICLE IV CONDITIONS PRECEDENT TO CLOSING**

**SECTION 4.01. ENGINEERING DUE DILIGENCE.** The Town shall have the opportunity to obtain at its expense a due diligence investigation of the Utility System and the Purchased Assets and HSW shall reasonably and timely cooperate in such an endeavor. The Town shall have until 5 p.m., on July 31, 1998, to terminate this Agreement at its sole discretion in the event it is not satisfied with the information contained in engineering due diligence by delivering written notice of termination to HSW, at which time the Town and HSW shall be released by one another of all further obligations under this Agreement. Failure to timely notify shall be deemed a waiver of this condition.

**SECTION 4.02 . ISSUANCE OF BONDS.** The Town intends to finance the Purchase Price by the issuance of Triple A rated and credit enhanced insured revenue bonds payable solely from the net revenues of the Town's water system, in a principal amount sufficient with other available funds to fund the payment of the Purchase Price, after adjustments and prorations as provided herein, and make payment of the costs of the transaction at closing. The Town's obligation to close the transactions contemplated in this Agreement shall be and is expressly

conditioned upon its ability to issue such bonds at an average interest rate to maturity of five and one-tenth percent (5.1%) or less. In the event the Town, in its sole discretion, determines after diligent efforts that such bonds cannot be sold on or prior to the date of closing, each of the Town and HSW shall have the option of either (1) extending the closing for a period not exceeding thirty (30) days, (2) renegotiating the Purchase Price based upon the prevailing interest rates and bond market at the time of closing or (3) canceling this Agreement by written notice to the other party and thereupon the Town and HSW shall be released by one another of all further obligations hereunder.

#### **SECTION 4.03. OPERATIONS AND MANAGEMENT CONTRACT.**

The Town intends to enter into an operations and management contract with a qualified utility operations and management entity to operate and manage the utility assets acquired pursuant to the terms of this Agreement. The Town's obligation to close the transactions contemplated in this Agreement shall be and is expressly conditioned upon its ability to secure a written operations and management contract on terms acceptable to the Town in its sole discretion on or before the date of closing. In the event the Town has not entered into an acceptable operations and management contract on or prior to the date of closing, each of the Town and HSW shall have the right to cancel this Agreement by providing written notice to the other party, and thereupon the Town and HSW shall be released by one another of all further obligations hereunder.

#### **SECTION 4.04. ENVIRONMENTAL ASSESSMENT.**

(A) The Town shall have the right to obtain an environmental assessment of the Real Property and Easements to be conveyed hereunder. The environmental assessment shall be in general accordance with the scope and limitations of the American Society for Testing and

Materials Designation: E 1527-94 (Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process). Any such environmental assessment, together with a written declaration from an environmental consultant shall verify that the Real Property, Easements and other facilities to be conveyed hereunder are in compliance with all applicable state and federal environmental laws, and that the facilities, and property within one hundred (100) feet, surrounding the facilities are free of unlawful contamination and, if necessary, provide an itemized estimate of all costs associated with bringing the subject Real Property, Easements and facilities into compliance and the response cost for clean-up, removal and remediation.

(B) The environmental assessment is expected to be completed by the date of closing. The receipt of an environmental assessment shall be a condition precedent to closing, unless waived in writing by the Town.

(C) If the environmental consultant's estimate of the aggregate costs associated with bringing the subject Real Property and facilities into compliance and the response costs for clean-up, removal, and remediation is in excess of \$25,000, the excess of which HSW determines not to pay, then the Town shall have the option of (1) accepting the property as it then is, or (2) canceling this Agreement by written notice to HSW, and thereupon the Town and HSW shall be released by one another of all further obligations hereunder. If such costs are less than or equal to \$25,000, then the Town may not cancel the Agreement pursuant to this condition.

**SECTION 4.05. SURVEY.** The Town intends to order a survey of some or all of the Real Property and Easements being insured by the title insurance policies hereunder. Any such survey shall (A) be received prior to closing and updated thereafter as required by the title insurer; (B) be satisfactory and sufficient for the title insurer to delete the standard exceptions of title insurance coverage concerning encroachments, overlays, boundary line disputes or any other

adverse matter which would be disclosed by an accurate survey; (C) be certified as of the current date to the Town, the title insurer or any other parties requested by the Town; and (D) show the location of all improvements and easements. Adverse matters disclosed by such a survey may be resolved by HSW so that such matters may be removed as an exclusion to coverage on the title insurance commitment, at HSW's expense (such expense to cure must be agreed upon by the Town and such agreed upon expense shall be escrowed at the time of closing as a deduction from the Purchase Price.) If HSW elects not to resolve such adverse matters at the time of the closing, the Town shall have the option of either (1) accepting the property without regard to such adverse matters, or (2) canceling this Agreement by written notice to HSW, and thereupon the Town and HSW shall be released by one another of all further obligations hereunder. Any escrow monies agreed upon by the Town and HSW shall be deposited with the Clerk of the Town in an interest bearing account, to be used to reimburse the Town for all actual and verifiable costs experienced by the Town in connection with removing any defects within one year of the closing date, the remainder, if any, being returned to HSW at the end of that year and any excess costs shall be paid by HSW when finally determined by the Town; provided however, that the Town shall not be entitled to reimbursement for such funds or interest earned thereon, until 180 days after closing hereunder. This provision shall allow HSW six months after closing to minimize costs to cure such defects with its own resources.

#### **SECTION 4.06. TITLE VERIFICATION.**

(A) Within ten (10) days after entering into this Agreement, the Town shall order a commitment for an ALTA form owner's title insurance policy. Time permitting, the title insurance commitment shall be delivered to the Town, with a copy to HSW not less than fifteen (15) days prior to the closing as provided for in Section 5.09(A) hereof. Subject to subsection (E)



of this section, any encumbrances or defects in title must be removed from said commitment prior to closing and the subsequent title insurance policy issued free and clear of encumbrances, title defects, materialman's liens or other adverse matters, created or potentially created by HSW with the exception of (1) taxes for the current year which are not yet due and payable, (2) the Permitted Exceptions reflected in the schedule attached hereto as Appendix C, and (3) any encumbrance of or created by the Town, including any instruments evidencing debt executed by the Town at closing.

(B) The estate or interests to be insured by any title insurance policy shall consist of all Real Property and insurable Easements identified in Appendices E and F hereof.

(C) At closing, the owner's title insurance policy shall show marketable title to the insured estate or interests vested in the Town. All charges for the issuance of the owner's title insurance commitment shall be part of the Transaction Costs.

(D) The Town shall select a title insurer willing to issue the owner's title insurance policy in an amount determined by the Town, for a premium which shall not exceed the minimum rate promulgated by the Florida Insurance Commissioner. Nothing herein shall preclude the Town from selecting its own counsel to act as an agent for the title insurer in conjunction with the issuance of the title insurance policy.

(E) Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law. The Town shall have five (5) days from receiving the title commitment to examine it. If title is found defective or the title commitment reflects title exceptions other than those shown on the schedule attached hereto as Appendix B, the Town shall thereafter within eight (8) days from receiving the title commitment, notify HSW in writing specifying the defects. If the defects render the title unmarketable, HSW

may pursue removing the defects, so that such matters may be removed as an exclusion to coverage on the title insurance commitment, at HSW's expense (such expense to remove such matters must be agreed upon by the Town and such agreed upon expense shall be escrowed at the time of closing as a deduction from the Purchase Price.) If HSW is unable or elects not to resolve such adverse matters at the closing, the Town shall have the option of either (1) accepting the property and the escrow funds without regard to such adverse matters, or (2) canceling this Agreement by written notice to HSW, and thereupon the Town and HSW shall be released by one another of all further obligations hereunder. Any escrow monies agreed upon by the Town and HSW shall be deposited with the Clerk of the Town in an interest bearing account, to be used to reimburse the Town for all actual and verifiable costs experienced by the Town in connection with removing any defects within one year of the closing date, the remainder if any being returned to HSW at the end of that year and costs in excess of the escrowed amount shall be paid by HSW to the Town when finally determined; provided however, that the Town shall not be entitled to reimbursement for such funds or interest earned thereon, until 180 days after closing hereunder. This provision shall allow HSW six months after closing to minimize costs to cure such defects with its own resources.

(F) Within five (5) days after entering into this Agreement, the Town shall order a search of the Official Records of Martin County, Florida and the records of the Secretary of State for uniform commercial code financing statements evidencing a secured interest in the Purchased Assets. Such search shall be part of the Transaction Costs. Time permitting, the results of such a search shall be delivered to the Town, with a copy to HSW not less than fifteen (15) days prior to closing. Any secured interests in the Purchased Assets must be paid off, released or terminated at HSW's expense, or funds necessary to do so must be escrowed at the time of closing as a



deduction from the Purchase Price. In the event all secured interests in the Purchased Assets are not paid off, released or terminated at or prior to closing (or sufficient funds therefor placed in escrow), the Town shall have the option of either (1) accepting the property subject to such secured interests or (2) canceling this Agreement, thereupon the Town and HSW shall be released by one another of all further obligations hereunder.

**SECTION 4.07. TRANSFER OF PERMITS.** Within five (5) days after the execution of this Agreement, HSW shall commence all requisite action to apply for and cause the transfer of its permits and governmental approvals relating to the Utility System as of the date of closing, including cancellation of the Florida Public Service Commission certificates, including, operation of the Utility System but not limited to the procedures referenced in Rule 62-4.120, Florida Administrative Code, 40 C.F.R. § 122.63(d) (1980) and 47 C.F.R. § 73 (1980) and shall use all reasonable efforts to obtain the transfer of such permits and approvals. The Town shall timely cooperate and provide all reasonably necessary assistance in this endeavor. Upon transfer, the Town shall assume all obligations under the permits and governmental approvals necessary for the continued operation of the Utility System.

**SECTION 4.08. SIMULTANEOUS CLOSING OF HYDRATECH UTILITY INC., TRANSFER AGREEMENT.** The Town's obligations to HSW under this Agreement are expressly conditioned upon the simultaneous closing of the Hydratech Utility, Inc. Transfer Agreement of even date herewith. In the event that the Hydratech Utility, Inc. Transfer Agreement does not close simultaneously with the closing of this Agreement, the Town shall have the option of either (1) waiving this condition to closing or (2) canceling this Agreement, and thereupon the Town and HSW shall be released by one another of all further obligations hereunder.

**ARTICLE V  
CLOSING PROCEDURES**

**SECTION 5.01. CLOSING DATE AND PLACE.**

It is anticipated that the transactions contemplated by this Agreement will be closed on a mutually agreed upon date between August 1, 1998 and August 30, 1998. The date and time for closing shall be as recommended by the Bond Underwriters for the Town. The date may be extended by the Town for a period of up to thirty (30) days based upon the recommendation of its Bond Underwriters. The closing shall be held at the offices of the Town, or other locations designated by the Town.

**SECTION 5.02. DOCUMENTS FOR THE CLOSING.**

(A) HSW shall furnish at closing a certificate reaffirming HSW's representations and warranties hereunder; and HSW shall furnish a non-foreign affidavit, a no-lien affidavit, a "gap" affidavit, a corporate incumbency certificate, a corporate good standing certificate from the State of Florida, a corporate resolution authorizing the execution of the Agreement, the warranty deed, and the bill of sale, all in substantially the form attached hereto as Appendix Q. HSW shall also furnish at closing any necessary assignments, estoppel letters, releases, satisfactions, terminations and any corrective instruments as well as enter into a transfer, assignment and assumption agreement in substantially the form attached hereto as Appendix R, as well as provide the certificates of title to all owned vehicles transferred to the Town.

(B) The Town shall furnish at closing the closing statement, a certificate reaffirming the Town's representations and warranties hereunder and enter into a transfer, assignment and assumption agreement in substantially the form attached hereto as Appendix R.

(C) From time to time after closing, each party hereto shall, upon request of the other, execute, acknowledge and deliver, or shall cause to be executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers or other documentation for (1) confirming or correcting title in the name of the Town or perfecting undisputed possession by the Town of any or all of the Purchased Assets, including the establishment of record of utility easements for all water utility facilities which are a part of the Utility System, or (2) otherwise fulfilling the obligations of the parties hereunder.

**SECTION 5.03. RECORDING FEES AND DOCUMENTARY TAXES.**

(A) Recording fees to record the deed and any other instruments necessary to deliver marketable title to the Town shall be part of the Transaction Costs.

(B) The Purchased Assets are being purchased by the Town for public purposes in lieu of eminent domain and therefore this transaction should be immune from documentary stamp tax, in accordance with the ruling in Department of Revenue v. Orange County, 620 So.2d 991 (Fla 1993). If, however, this transaction is subsequently deemed taxable, the Town and HSW shall divide equally the cost of the documentary stamps to be affixed to any deed or other instruments of conveyance. The purchase price and consideration being given by the Town hereunder constitutes the total consideration to be paid or given by the Town in connection with the acquisition of the Purchased Assets and any consequences or impacts incurred by HSW in connection therewith, including, without limitation, any severance damages, loss of business damages or impacts or costs or taxes to HSW or any person or entity affiliated with HSW.

**SECTION 5.04. PROPERTY TAXES.** All real and personal property taxes on the Purchased Assets shall be prorated as of the day of closing and, if necessary, HSW shall be

required to escrow with the Martin County Tax Collector prorated taxes on the Real Property in accordance with section 196.295, Florida Statutes.

**SECTION 5.05. ACCOUNTS RECEIVABLE AND CUSTOMER DEPOSITS.**

(A) HSW shall furnish to the Town, at least ten (10) days prior to closing, a listing of its accounts receivable and customer deposits, by customer and individual amount and estimated unbilled revenue through the date of closing. HSW shall assign to the Town at closing the accounts receivable and all rights of collection therefor, together with the liabilities of customer deposits, in accordance with the following terms. At the closing, the Town shall reimburse HSW for the excess of the sum of outstanding accounts receivable over customer deposits at the time of closing that are not more than sixty (60) days in arrears plus 98% of all unbilled revenue for water and sewer services through the date of closing over the total amount of customer deposits including interest thereon. Should the total customer deposits including interest exceed the sum of outstanding accounts receivable and unbilled revenue, then HSW shall reimburse the Town at closing for any excess amount. Unbilled revenues shall be based upon the actual billings for the month immediately preceding the month of the closing and shall be prorated through the date of closing based on the number of days that have elapsed since the last billing period. All amounts received by HSW through the date of closing for outstanding accounts receivable which were collected by HSW subsequent to the date HSW provided the Town with the list of outstanding accounts receivable, shall be credited to the Town at the closing. After the closing, HSW shall endorse checks received for outstanding accounts receivable and post-closing billings which are payable to HSW in favor of the Town and promptly deliver such checks to the Town. After closing, HSW authorizes the Town to endorse or deposit checks received and payable to HSW with respect to water and sewer service rendered to the utility's customers.



(B) HSW and the Town shall enter into at the closing the post-closing office space contract attached as Appendix S which provides for the Town to utilize the existing office space of HSW by the Town during the Town's conversion of customers to its billing system.

**SECTION 5.06. CONNECTION CHARGES.**

(A) Sums collected by HSW in the ordinary course of business for connection charges, including capacity and deferred standby fees for which service has been actually furnished through physical connection to the Utility System prior to the closing date, shall remain HSW's sole and separate property with no claim of the Town.

(B) All sums collected from and after the date of closing relative to the use of, or connection to, the Utility System shall be paid to the Town, with no claim of HSW therefor.

(C) All sums for connection charges, including capacity and deferred standby fees, collected by HSW through closing which do not result in physical connection to the Utility System prior to the date of closing shall be paid to the Town at closing.

(D) From and after the Effective Date, HSW shall not enter into any agreement, without prior written consent of the Town, which would obligate the Town to provide service upon closing to any customer who is not physically connected to the Utility System prior to closing. The Town shall not unreasonably withhold its consent provided such agreement does not provide for payment of any charges, rates or fees, other than refundable inspection or application fees, prior to physical connection to the Utility System.

**SECTION 5.07. PROFESSIONAL FEES; COSTS.**

(A) Each party shall be responsible for securing its own counsel for representation relative to the negotiation of this Agreement, and all other matters associated with performance, cancellation or closing hereunder; unless otherwise specified herein, and each party shall be



responsible for the payment of the fees of its own attorneys, bankers, engineers, accountants, and other professional advisors or consultants in connection therewith.

(B) In any litigation arising out of this Agreement, each side in such litigation shall bear its own attorney's fees and costs.

(C) The Town shall be responsible for all Transaction Costs.

**SECTION 5.08. RISK OF LOSS.** At all times prior to and through the day of closing, HSW shall maintain adequate fire and extended insurance coverage for the cost of any repairs to the Purchased Assets that may be required by casualty damage. The risk of loss during the said period of time shall fall upon HSW. The risk of loss shall pass to the Town at closing.

**SECTION 5.09. PROCEEDS OF SALE; CLOSING PROCEDURE.**

(A) In order to secure title insurance coverage against the existence of adverse matters recorded during the period of time between the effective date of the title insurance commitment and the date of recording of the documents creating the estate to be insured, HSW and the Town agree that the closing agent for the closing may also be the title insurer, or the title insurer's agent, selected by the Town to issue the owner's title insurance policy insuring the Real Property and insurable easements identified in Appendices E and F hereof.

(B) HSW shall effect the transfer of the Purchased Assets to the Town at the closing; these documents shall be in final form, together with any exhibits or appendices thereto:

- (1) Statutory Warranty deed, with warranties of title for the conveyance of all Real Property to be conveyed hereunder;
- (2) Conveyance instruments for all Easements;

(3) A transfer, assignment and assumption agreement covering all other interests in the Purchased Assets, together with a general assignment of all contracts, agreements, permits and approvals as provided for herein;

(4) Bill of Sale or other documents of assignment and transfer, including vehicle certificates of title, if any, with warranties of title, to all Purchased Assets;

(5) A Florida Department of Revenue Form DR-219 completed in a manner satisfactory to the Town;

(6) Any affidavits, certificates, estoppel certificates, corrective instruments, releases, satisfactions or terminations necessary to close; and

(7) The original or a certified copy of all permits, governmental authorizations and approvals.

(C) The disbursement of proceeds shall be at the direction of the title insurer, or its agent (in accordance with a closing and disbursement statement executed by both parties), in order to secure coverage against adverse matters or defects in title which are recorded during the period of time between the effective date of the title insurance commitment and the date of recording of the document creating the estate or interest to be insured.

(D) Within ninety (90) days after closing, upon written request by the Town, HSW shall reimburse the Town or pay a prorated portion of any charge, fee or rate for services furnished to the Utility System through the date of closing for water, sewer, power, telephone, solid waste collection, pest control, sludge hauling or general maintenance and reconcile any connection charges, accounts receivables, customer deposits or unexpended application fees or other charges not otherwise considered or accounted for at the time of closing. Within 90 days after closing, upon written request by HSW the Town shall reimburse HSW or pay a prorata portion of any

charge, fee or rate for services furnished to the Utility System subsequent to the date of closing for water, sewer, power, telephone, solid waste collection, pest control, sludge hauling or general maintenance and reconcile any connection charges, accounts receivables, customer deposits or unexpended application fees or other charges not otherwise considered or accounted for at the time of closing. Such post-closing reimbursement and reconciliation process may be extended by either party for thirty (30) days upon written notice to the other party.

## **ARTICLE VI GENERAL PROVISIONS**

**SECTION 6.01. RIGHT TO ENTER.** Prior to closing, the Town, and its consultants and invitees shall have the right, at any reasonable time with prior notice to HSW, to enter upon HSW's property to inspect the Utility System and the Purchased Assets, to familiarize itself with day-to-day operations, to review the operational practices of HSW, and to ensure compliance with any and all federal and state regulatory requirements.

### **SECTION 6.02. CONDUCT BETWEEN EXECUTION AND CLOSING.**

(A) Upon the execution of this Agreement, HSW shall continue to provide water to its current customers in the ordinary and usual manner.

(B) HSW shall prudently maintain the Utility System to ensure its proper operation through closing.

**SECTION 6.03. TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement. Time periods specified in this Agreement shall expire at midnight on the date stated unless the parties agree in writing to a different date or time. Any time period provided for herein which ends on Saturday, Sunday or a legal holiday shall extend to 5:00 p.m. on the next business day.

**SECTION 6.04. APPLICABLE LAW; JURISDICTION AND VENUE.**

(A) This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

(B) The parties to this Agreement expressly consent to the jurisdiction of and agree to suit in any court of general jurisdiction in the State of Florida, whether state, local or federal, and further agree that all state and local venue shall lie in Martin County, Florida.

**SECTION 6.05. FAILURE OF PERFORMANCE.**

(A) A breach of this Agreement shall mean a material failure to comply with any of the provisions of this Agreement. If any party breaches any obligation herein, then, upon receipt of written notice by the non-breaching party, the breaching party shall proceed diligently and in good faith to take all reasonable actions to cure such breach and shall continue to do so until such breach is cured.

(B) Unless otherwise provided herein, the parties to this Agreement may proceed at law or in equity to enforce their rights under this Agreement.

**SECTION 6.06. NOTICE.**

(A) All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the parties at the following addresses:

To Town: TOWN OF JUPITER ISLAND  
103 Bunker Hill Road  
Post Office Box 7  
Hobe Sound, Florida 33475  
Attn: Russell G. Simpson, Mayor  
Fax: 561-546-76228  
Phone: 561-546-5011

with a copy to:

**GREENBERG, TRAURIG**  
777 South Flagler Drive, Suite 300 E  
West Palm Beach, Florida 33401  
Attn: Phillip C. Gildan, Esquire  
Fax: 561-655-6222  
Phone: 561-650-7967

To HSW: **HOBE SOUND WATER COMPANY**

Hobe Sound, Florida 33475  
Attn: Michael Carfine  
Fax: 561-546-5019  
Phone: 561-546-3034

with a copy to:

**HOLLAND & KNIGHT**  
625 N. Flagler Drive Suite 700  
West Palm Beach, Florida 33401  
Attn: David L. Perry, Jr.,  
Fax: 561-650-8399  
Phone: 561-833-2000

(B) Any written notice given to one person in subsection (A) of this section shall also be copied and provided to all other persons identified in subsection (A).

(C) The parties may, by notice in writing given to the others, designate any future or different addresses to which the subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand or by facsimile transmission or five (5) days after the date mailed (certified mail, return receipt requested).

#### **SECTION 6.07. ASSIGNMENT.**

Except as expressly provided for herein, neither HSW nor the Town shall have the power or authority to assign this Agreement or any of their rights, duties or obligations hereunder to a third party and this Agreement shall be construed as solely for the benefit of the Town and HSW



and their successors by law, and no claim or cause of action shall accrue to or for the benefit of any other party by reason hereof.

**SECTION 6.08. AMENDMENTS AND WAIVERS.** No amendment, supplement, modification or waiver of this Agreement shall be binding unless executed in writing by both parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, unless otherwise expressly provided.

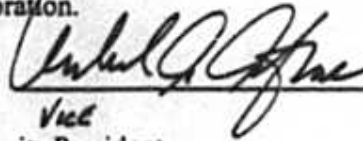
**SECTION 6.09. ENTIRE AGREEMENT.** This Agreement is the entire agreement between the parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, pertaining to the subject matter hereof, and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein. Upon execution by both parties, the Town shall provide HSW three complete certified copies of this Agreement, together with copies of all appendices hereto.

**IN WITNESS WHEREOF,** the Town and HSW have caused this Agreement to be duly executed and entered into on the date first above written.



HOBE SOUND WATER COMPANY, a Florida Corporation.

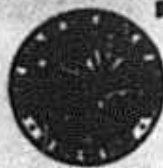
BY:



*Vick*  
its President  
A

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, its Secretary



**Public Service Commission**

CERTIFICATE NUMBER

341 - W

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

BOBE SOUND WATER COMPANY

Whose principal address is

Post Office Box 68

Bobo Sound, Florida 33475 (Martin County)

to provide WATER service in accordance with  
the provisions of Chapter 367, Florida Statutes, the Rules,  
Regulations and Orders of this Commission in the territory de-  
scribed by the Orders of this Commission.

This Certificate shall remain in force and effect until sus-  
pended, cancelled or revoked by Orders of this Commis-  
sion.

ORDER <u>10368</u>	DOCKET <u>800776-W</u>
ORDER <u>PSC-95-0983-POF-WB</u>	DOCKET <u>950218-WB</u>
ORDER _____	DOCKET _____
ORDER _____	DOCKET _____

BY ORDER OF THE  
FLORIDA PUBLIC SERVICE COMMISSION

  
Director  
Division of Records & Reporting

