

KSRU

Keen Sales, Rentals and Utilities, Inc.

685 Dyson Road
Haines City, FL 33844
Business Phone 941-421-6827

RECEIVED ORIGINAL
FLORIDA PUBLIC SERVICE COMMISSION
99 DEC 22 AM 9:28
MAIL ROOM

December 21, 1999

Director
Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 990731-WU: Application for transfer of water facilities from Sunrise Water Company, Inc., holder of Certificate No. 584-W, to Keen Sales, Rentals and Utilities, Inc., holder of Certificate No. 582-W, in Polk County, for cancellation of Certificate No. 582-W, and for amendment of Certificate No. 582-W to include additional territory.

Dear Sir:

This letter is in response to your request of October 27, 1999. We respond as follows:

Deficiencies:

1. Contract for Sale. We have forwarded to the Public Service Commission all of the paperwork we have concerning the sale of the utility. Regarding (a) Sunrise did not forward any interest that had accrued on the deposits. They forwarded to us the monies held as deposit AFTER they had taken out their administrative fee.

Regarding (b) through (f) - These do not apply to this sale.

2. Prior Approval. As stated in your letter, we had, in fact, been informed by the Public Service Commission of the need for prior approval. We voiced that concern to both Mr. John Jenkins, Attorney for Sunrise and Mr. Jon Pomerleau, of Sunrise Water Company. Since several telephone conversations ensued before the signing of the Agreement for Purchase and Sale, I cannot determine who, exactly, for Sunrise made this comment. However, the comment was made and backed up by the statement that "since this was a small transaction, the Public Service Commission probably would not require prior approval". Thusly, we had them revise Item #10 to read as it does in the Agreement for Purchase and Sale. We have enclosed copies and highlighted this Item.

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FPSC-RECORDS/REPORTING

Page Two
Florida Public Service Commission

Clarifications or Corrections

We withdraw our request for a limited proceeding regarding the rates.

Hopefully, this will clear up any and all of the outstanding details and help to speed up the process of the transfer.

If you have any questions, please feel free to contact us.

Sincerely,


J. Ray Keen
President

JRK/mmc
Enclosures (9)

AGREEMENT FOR PURCHASE AND SALE

THIS AGREEMENT FOR PURCHASE AND SALE ("Agreement") is made as of the 4th day of February, 1999, by and between Sunrise Water Company, Inc., a Florida corporation (hereafter "Seller"), whose address is P.O. Box 2397, Winter Park, Florida 32790, and Keen Sales, Rentals Utilities, Inc. ("Purchaser"), whose address is 685 Dyson Road, Haines City, Florida 33844.

WHEREAS, Seller owns and operates a potable water production, treatment, storage, transmission, and distribution system ("Water System"), which is located in Polk County, Florida;

WHEREAS, Purchaser desires to acquire the assets of Seller and Seller desires to sell its assets to Purchaser, upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the sum of ten dollars (\$10), and other good and valuable consideration, and the mutual covenants contained herein, the receipt and sufficiency of which are acknowledged, Seller and Purchaser agree as follows:

1. RECITALS. The foregoing recitals are true and correct and are incorporated herein.

2. COVENANT TO PURCHASE AND SELL; DESCRIPTION OF PURCHASED ASSETS. Purchaser shall buy from Seller, and Seller shall sell to Purchaser, the following Purchased Assets upon the term and conditions set forth in this Agreement: all assets, business properties, and rights, both tangible and intangible, that Seller owns, or in which it has an interest, regarding the Water System ("Purchased Assets"). The Purchased Assets do not include the following:

(1) Cash, accounts receivable, bank accounts, equity and debt securities of any nature, deposits maintained by Seller with any governmental authority, utility deposits and prepaid expenses of Seller, which are Seller's sole property and are not subject to refund to customers, including Developers or others.

(2) Escrow and other Seller provisions for payment of federal and state income taxes.

(3) The name and the Florida corporation known as Sunrise Water Company, Inc.

3. PURCHASE PRICE. Purchaser shall pay to Seller, subject to the adjustments and prorations referenced herein, a total purchase price in the amount of \$100,000. \$50,000 shall be payable at the time of Closing and \$50,000 shall be paid in the form of a purchase money Promissory Note (executed by Purchaser and J. Ray Keen, individually) secured by a Mortgage and Security Agreement,

payable by Purchaser to Seller in equal monthly installments for a period of 60 months from the Closing Date with the unpaid balance accruing interest at the rate of 8% per annum. No prepayment penalty shall apply. Title to the Purchased Assets shall be delivered by the Seller to the Purchaser at Closing, free and clear of all liens, encumbrances, debts, liabilities, or third party claims, other than Permitted Encumbrances (as defined in Section 6 hereof).

4. REPRESENTATIONS AND WARRANTIES OF SELLER. Seller represents and warrants to Purchaser as follows: Seller is duly organized, validly existing and its status is active under the laws of the State of Florida. Seller has all requisite corporate power and authority to carry on its business as now being conducted, to enter into this Agreement, and to carry out and perform the terms and conditions of this Agreement. The Board of Directors and Shareholders of Seller have, or prior to Closing will have, approved this Agreement. Seller makes no representation as to the condition of the real property and tangible personal property being conveyed to Purchaser, and Purchaser acknowledges that it is accepting the real property and tangible personal property in "AS IS" condition, with all faults and no warranty of merchantability or fitness for a particular purpose or use. Seller has not dealt with either a broker, salesman, or finder in connection with any part of this transaction and no broker, salesman or other person is entitled to any commission or fee with respect to such transaction.

5. REPRESENTATIONS AND WARRANTIES OF PURCHASER. Purchaser represents and warrants to Seller as follows: Purchaser is duly organized, validly existing and its status is active under the laws of the State of Florida. Purchaser has all requisite corporate power and authority to carry on its business as now being conducted, to enter into this Agreement, and to carry out and perform the terms and conditions of this Agreement. The Board of Directors and Shareholders of Purchaser have, or prior to Closing will have, approved this Agreement. Purchaser shall, subsequent to Closing, and consistent with prudent business practices, industry standards, and the requirements of the appropriate governmental agencies having jurisdiction over the assets and businesses of the Water System, provide water services to all customers located within the Seller's service area after connection has been made, in a uniform and nondiscriminatory manner. Purchaser has not dealt with either a broker, salesman, or finder in connection with any part of this transaction and no broker, salesman or other person is entitled to any commission or fee with respect to such transaction.

6. TITLE INSURANCE AND PERMITTED ENCUMBRANCES. Prior to the Closing, Purchaser may, at its cost, cause to be issued and delivered a title insurance commitment issued by a title company licensed to do business in the State of Florida, covering the Real Property, in an amount equal to \$100,000. The title insurance commitment shall commit the insurer to issue owner's title

insurance policy to Purchaser covering the Real Property, the standard printed exceptions usually contained in an owner's title insurance policy, and the standard exclusions from coverage. Seller shall execute at or prior to Closing, in favor of the title insurance company, the appropriate mechanic's lien affidavit and "Gap" affidavit sufficient to allow the title insurance company to delete all standard exceptions addressed by such affidavits. The standard form survey exception for easements or claims of easements not shown by the Public Records exception, contained on the title insurance commitment and to be included on the title policy, shall not be deemed new title matters or title defects.

Purchaser shall notify Seller in writing no less than 20 days from the date of this Agreement of any alleged material defect in Seller's title to the Real Property, other than those accepted herein and the Permitted Encumbrances, which render or may render Seller's title to the Real Property unmarketable in accordance with standards adopted by The Florida Bar, or uninsurable. Seller shall have 20 days after receipt of Purchaser's notice, to eliminate all of the material objections to title set forth in Purchaser's notice. In the event Seller fails to cure defects identified by Purchaser then Purchaser may accept whatever title Seller is able to convey with no abatement of the Purchase Price or, reject title and terminate this Agreement with no liability for damages from either Purchaser or Seller. If Purchaser rejects title as provided above, neither party shall have any further liability under this Agreement.

As used above, "Permitted Encumbrances" mean and include (i) All present and future building restrictions, zoning regulations, laws, ordinances, resolutions, regulations and orders of any governmental authority having jurisdiction over the Real Property and the use thereof; and, (ii) easements, restrictions, reservations, rights-of-way, conditions and limitations of record, if any, which are not coupled with any reverter or forfeiture provisions, including (without limitation) any drainage, canal, mineral, road, or other reservations of record in favor of the State of Florida or any of its agencies or governmental or quasi-governmental entities, or as may be set forth in any "Murphy Deeds", none of which, however, shall impair or restrict the use of the Property for the operation of the Utility Systems.

7. PRE-CLOSING CONDUCT. Prior to the Closing Date, Seller shall operate and maintain the Water System in a normal and usual manner, to ensure that the condition of the Water System shall not be materially diminished or depleted, normal wear and tear excepted and promptly notify Purchaser of any notification received by Seller from any person, business, or agency of any existing, or potential, environmental law violation. Purchaser may, during normal business hours and following reasonable notice to Seller, inspect the Water System, and the books and records of Sunrise,

provided such inspection shall not interfere with the normal operation of the Water System.

8. CLOSING DATE AND CLOSING. This transaction shall be closed on or before February 25, 1999 ("Closing Date"), unless advanced or extended by mutual agreement of the parties, at Seller's office, or a location mutually acceptable to both parties. At Closing:

(1) Purchaser shall deliver \$50,000 to Seller. Title to the Real Property shall be conveyed to the Purchaser by warranty deed free of all claims, liens, or encumbrances, other than Permitted Encumbrances.

(2) Title to the Tangible Personal Property shall be conveyed to Purchaser by Bill of Sale free of all claims, liens, or encumbrances, other than Permitted Encumbrances.

(3) Seller's right, title and interest in and to its easements shall be assigned to Purchaser.

(4) All documentary stamps, if required, on the deeds of conveyance of the Real Property included in the Purchased Assets shall be paid by Seller.

(5) Real property and personal property taxes on the Purchased Assets and Water System, and any other applicable taxes, shall be prorated as of the Closing Date and Seller shall be required to pay its share at or prior to Closing. All other taxes and assessments accrued or owed by Seller as of the date of Closing, with respect to the Purchased Assets, shall be and remain the obligation of Seller. All other taxes and assessments imposed or attempted to be imposed from and after the date of Closing, with respect to the Purchased Assets, shall be the obligation of Purchaser.

(6) Purchaser shall execute in favor of Seller a purchase money Promissory Note in the amount of \$50,000 (executed by Purchaser and J. Ray Keen, individually), secured by a Mortgage and Security Agreement, payable to Seller in equal monthly installments for a period of 60 months with the unpaid balance accruing interest at the rate of 8% per annum. Payment of the Promissory Note shall be secured by the Purchased Assets, including after-acquired property.

(7) The parties recognize that the Closing may be established during the normal billing cycle of Seller. All accounts receivable shall remain the property of Seller. The gross revenues from water services rendered, but not yet billed ("Unbilled Revenue") as of the date of Closing, shall be paid to Seller within ten (10) days of Purchaser's collection thereof. Purchaser shall utilize the same methods of collecting the Unbilled Revenue as it

would if such Unbilled Revenue was its own. Except as set forth above, Purchaser shall be entitled to all Water System revenue earned from the Closing Date forward.

(8) Connection Charges (defined as connection, plant capacity, main extension, capital or other charges paid for the availability of utility services) received by Seller prior to closing shall be retained by Seller.

(9) All transfers required or necessary hereunder shall take place, unless extended by mutual consent.

(10) Each of the parties shall pay the fees of its own attorneys and other professional advisers or consultants in connection with this transaction.

(11) All bills for services, materials and supplies rendered in connection with the operation of the Water System prior to Closing, including but not limited to electricity for a period up to and including the Closing Date, shall be paid by Seller. Any prepaid expenses shall be a Purchase Price credit to Seller at Closing.

(12) All prorations required under this Agreement shall be made.

(13) Purchaser shall assume Seller's liability for customer deposits, and credit shall be given to the Purchaser on the Purchase Price therefor.

9. POST CLOSING COOPERATION. Seller and Purchaser shall, at any time and from time to time after the Closing Date, upon reasonable request of the other party, execute, acknowledge and deliver, such further documents and assurances as may be required in order to implement and perform any of the obligations, covenants and agreements of the parties. Seller shall, for two post-Closing meter readings, assist Purchaser to the extent reasonably necessary with such meter readings.

10. FLORIDA PUBLIC SERVICE COMMISSION MATTERS. The Water System operates under Certificate of Authority No. 584-W ("Certificate") issued by the Florida Public Service Commission ("PSC"), which authorizes it to provide water service to certain territories in unincorporated Polk County, Florida. The parties acknowledge that this transaction is subject to the jurisdiction of the PSC and Section 367.071 of the Florida Statutes. Recognizing that PSC approval of the transaction and transfer of the Certificate may not be accomplished on or before the Closing Date, this Agreement shall be subject to modification, including rescission by mutual agreement, in the event the PSC fails to approve the transfer. In such an event, the parties shall immediately meet to discuss and negotiate, in good faith, a course of action acceptable to both

parties. Purchaser shall pay all costs required to prepare, file and accomplish a transfer of the Certificate at the PSC that pertains to the Purchaser's part of this transaction.

1.1. MISCELLANEOUS PROVISIONS.

a. This Agreement, and the documents referred to herein, collectively embody the entire agreement and understandings between the parties and there are no other agreements or understandings, oral or written, with reference to this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be considered an original.

b. Any notice or other document required or allowed to be given pursuant to this Agreement by either party to the other shall be in writing and shall be delivered personally, or by recognized overnight courier or sent by certified mail, postage prepaid, return receipt requested, or by facsimile transmission with written confirmation. If to Seller such Notice shall be addressed to Seller at:

Sunrise Water Company, Inc.
c/o Macauley Whiting, Jr., President
P.O. Box 2397
Winter Park, Florida 32790

If to Purchaser, such notice shall be addressed to Purchaser at:

Keen Sales, Rentals Utilities, Inc.
c/o J. Ray Keen, President
685 Dyson Road
Haines City, Florida 33844

c. The drafting of this Agreement constituted a joint effort of the parties, and in the interpretation hereof it shall be assumed that no party had any more input or influence than any other.

d. This Agreement is solely for the benefit of the parties hereto and not for the benefit of any third party.

e. In the event any term or provision of this Agreement is determined to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or deleted, and the remainder of this Agreement shall be construed to be in full force and effect.

f. In the event of any litigation that arises between the parties with respect to this Agreement, the prevailing party shall be entitled to reasonable attorney fees and court costs at all trial and appellate levels.

g. This Agreement may be amended or modified only if executed in writing and in the same manner as the original. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Florida.

h. Neither Purchaser nor Seller may transfer or assign this Agreement or the duties or obligations created herein.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed the day and year aforesaid in counterparts, each counterpart to be considered an original.

SUNRISE WATER COMPANY, INC.

[Signature]
Secretary
(SEAL)

Macadley Whiting Jr 2-4-99
By: Macadley Whiting, Jr.
President

KEEN SALES, RENTALS UTILITIES, INC.

[Signature]
Secretary
(SEAL)

JR Keen 2-8-99
By: J. Ray Keen
President

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