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JOHN L. WHARTON

August 16, 2000

VIA HAND DELIVERY

ROBERT M. C. ROSE
OF COUNSEL

Ms. Blanca S. Bayo, Director
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

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RECEIVED-FPSC
00 AUG 16 AM 11:51
RECORDS AND REPORTING

Re: North Fort Myers Utilities, Inc.;
Wastewater Agreement with Northern Tool & Equipment Co.
Our File No. 16319.29

Dear Ms. Bayo:

Pursuant to Commission Rule 25-30.550, Florida Administrative Code, enclosed is a copy of a Wastewater Agreement entered into between North Fort Myers Utilities, Inc. and DRW Partnership for wastewater service to Northern Tool & Equipment Co. North Fort Myers Utility Inc.'s wastewater treatment plant has a permitted capacity of 2.0 mgd. The current treatment plant connected load is approximately 1.1 million gallons a day and this Wastewater Agreement is for 687.5 gallons a day. There is sufficient capacity in NFMU's existing plant to provide wastewater service pursuant to this Wastewater Agreement. This Wastewater Agreement will have no noticeable impact on the Utility's rates due to the amount of demand being placed on the NFMU wastewater system, and resultant revenues.

In accordance with the aforementioned Rule, we will deem this Agreement approved if we do not receive notice from the Commission of its intent to disapprove within thirty days. Should you have any questions regarding this Agreement, please do not hesitate to contact me.

APP _____
CAF _____
CMP _____
COM _____
CTR _____
ECR _____
LEG _____
OPC _____
PAI _____
RGO _____
SEC _____
SER _____
OTH _____

RECEIVED & FILED
Mart S. Friedman
FPSC-BUREAU OF RECORDS

Very truly yours,

MARTIN S. FRIEDMAN
For the Firm

Dictated by Mr. Friedman
but signed in his absence
to avoid delay in mailing.

DOCUMENT NUMBER-DATE

09968 AUG 16 8

FPSC-RECORDS/REPORTING

NORTHERN TOOL & EQUIPMENT CO.
NAME OF PROJECT

DEVELOPER AGREEMENT

THIS AGREEMENT made and entered into this 9TH day of Aug., 2000, by and between DRW PARTNERSHIP, L.L.P., a Minnesota limited liability partnership, hereinafter referred to as "Developer," and NORTH FORT MYERS UTILITY, INC., a Florida corporation, hereinafter referred to as "Service Company,"

WHEREAS, Developer owns or controls lands located in Lee County, Florida, and described in Exhibit "A," attached hereto and made a part hereof as if fully set out in this paragraph and hereinafter referred to as the "Property," and Developer has plans to develop the Property by constructing thereon a retail store; and

WHEREAS, Developer desires that the Service Company provide central wastewater collection, treatment and disposal ("Wastewater Service") for Developer's Property herein described; and

WHEREAS, the Service Company is willing to provide, in accordance with the provisions of this Agreement and Service Company's Service Availability Policy, Wastewater Service to the Property and thereafter operate applicable facilities so that the occupants of the improvements on the Property will receive adequate Wastewater Service from Service Company;

NOW, THEREFORE, for and in consideration of the premises, the mutual undertakings and agreements herein contained and assumed, Developer and Service Company hereby covenant and agree as follows:

1.0 The foregoing statements are true and correct and incorporated herein.

2.0 The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

- (a) "Consumer Installation" - All facilities ordinarily on the Developer's side of the Point of Delivery.
- (b) "Contribution-in-aid-of-Construction (CIAC)" - The sum of money and/or the value of property represented by the cost of the wastewater collection systems including lift stations and

treatment plants constructed or to be constructed by a Developer or owner, which Developer or owner transfers, or agrees to transfer, to Service Company at no cost to Service Company to provide Wastewater Service to the Property.

- (c) "Equivalent Residential Connection (ERC)" - A factor used to convert a given average daily flow (ADF) to the equivalent number of residential connections. For this purpose the average daily flow of one equivalent residential connection (ERC) is 275 gallons per day (gpd). The number of ERC's contained in a given ADF is determined by dividing that ADF by 275 gpd. The determination of the number of ERC's for the Property shall be subject to factoring as outlined in Service Company's Service Availability Policy.
- (d) "Point of Delivery" - The point where the pipes of Service Company are connected with the pipes of the Developer, which shall be where the lines of Developer connect to the gravity main located along the front of the Property, which gravity line is being constructed by Developer pursuant to this Agreement.
- (e) "Property" - The area or parcel of land described in Exhibit "A."
- (f) "Service" - The readiness and ability on the part of Service Company to furnish and maintain Wastewater Service to the Point of Delivery (pursuant to applicable rules and regulations of applicable regulatory agencies).

3.0 Assurance of Title. Within a period of forty-five (45) days after the execution of this Agreement, at the expense of Developer, Developer agrees to deliver to Service Company a copy of Title Insurance Policy or an opinion of title from a qualified attorney-at-law, with respect to the Property, which opinion shall include a current report on the status of the title, setting out

the name of the legal title holders, the outstanding mortgages, taxes, liens and covenants. The provisions of this paragraph are for the purpose of evidencing Developer's legal right to grant the exclusive rights of service contained in this Agrément.

4.0 Connection Charges. Developer shall pay those System Capacity Charges as set forth in Exhibit "B" hereto. Payment of the connection charges does not and will not result in Service Company waiving any of its rates or rules and regulations, and their enforcement shall not be affected in any manner whatsoever by Developer making payment of same. Service Company shall not be obligated to refund to Developer any portion of the value of the connection charges for any reason whatsoever, nor shall Service Company pay any interest or rate of interest upon the connection charges paid.

4.1 Neither Developer nor any person or other entity holding any of the Property by, through or under Developer, or otherwise, shall have any present or future right, title, claim or interest in and to the connection charges paid or to any of the wastewater facilities and properties of Service Company, and all prohibitions applicable to Developer with respect to no refund of connection charges, no interest payment on said connection charges and otherwise, are applicable to all persons or entities.

4.2 Any user or consumer of Wastewater Service shall not be entitled to offset any bill or bills rendered by Service Company for such service or services against the connection charges paid. Developer shall not be entitled to offset the connection charges against any claim or claims of Service Company.

5.0 On-Site and Off-Site Systems. Service Company hereby covenants and agrees to construct the on-site wastewater collection systems. The term "on-site wastewater collection systems" means and includes all wastewater collection lines, facilities and equipment, including pumping stations, constructed within the boundaries of Developer's Property adequate in size to serve each building within the Property or as otherwise required by Service Company, and specifically includes but is not limited to extending Service Company's gravity main across the front of the Property between Brown Road and Judd Road. Developer shall construct the off-site wastewater collection systems. The term "off-site wastewater collection systems" means and includes all wastewater collection lines, facilities, and equipment, including lift stations, located outside the boundaries of Developer's Property and constructed for the purpose of connecting on-site systems to Service Company's main.

5.1 Developer shall cause to be prepared five (5) copies of the applications for permits and eight (8) sets of finalized engineering plans prepared and sealed by a professional engineer registered in the State of Florida. Plans shall show the on-site and off-site wastewater collection systems proposed to be installed to provide service to the Property. Developer shall cause his engineer to submit specifications governing the material to be used and the method and manner of installation. All such plans and specifications submitted to Service Company's engineer shall meet the minimum specifications of Service Company and shall be subject to the approval of Service Company, which approval shall not be unreasonably withheld. No construction shall commence until Service Company and appropriate regulatory agencies have approved such plans and specifications in writing. When permits and approved plans are returned by appropriate regulatory agencies to Developer, Developer shall submit to Service Company one copy of the wastewater permit and approved plans.

5.2 After the approval of plans and specifications by Service Company and appropriate regulatory agencies, Developer, or the engineer of record, shall set up a preconstruction conference with engineer of record, utility contractor, appropriate building official(s), all other utility companies involved in the development of the Property, and Service Company.

5.3 Developer shall provide to Service Company's inspector, twenty-four (24) hours notice prior to commencement of construction. Developer shall cause to be constructed, at Developer's own cost and expense, the on-site and off-site wastewater collection systems as shown on the approved plans and specifications.

5.4 During the construction of the Wastewater Systems by Developer, Service Company shall have the right to inspect such installations to determine compliance with the approved plans and specifications. The engineer of record shall also inspect construction to assure compliance with the approved plans and specifications. Service Company, engineer of record and utility contractor shall be present for all standard tests for pressure, exfiltration, line and grade, and all other normal engineering tests to determine that the systems have been installed in accordance with the approved plans and specifications, and good engineering practices. Developer agrees to pay to Service Company, or Service Company's authorized agent, a reasonable sum to cover the cost of inspection of installations made by Developer or Developer's contractor.

5.5 Upon completion of construction, Developer's engineer of record shall submit to Service Company a copy of the signed

certification of completion submitted to the appropriate regulatory agencies. The engineer of record shall also submit to Service Company ammonia mylars of the as-built plans prepared and certified by the engineer of record. Developer shall maintain the on-site wastewater collection system except the gravity main along the front of its Property so that infiltration is within the range of tolerance acceptable within the wastewater industry.

By these presents, Developer hereby transfers to Service Company, title to the gravity main installed across the front of the Property by Developer or Developer's contractor pursuant to the provisions of this Agreement. Such conveyance shall take effect at the time Service Company issues its final letter of acceptance. As further evidence of said transfer of title, upon the completion of the installation, but prior to the issuance of the final letter of acceptance and the rendering of service by Service Company at Service Company's request, Developer shall:

- (a) Convey to Service Company, by bill of sale in form satisfactory to Service Company's counsel, such installations as constructed by Developer and approved by Service Company.
- (b) Provide Service Company with copies of invoices from contractor for such installation.
- (c) Provide Service Company with copies of Releases of Lien for said invoices.
- (d) Assign any and all warranties and/or maintenance bonds and the rights to enforce same to the Service Company which Developer obtains from any contractor constructing such utility systems. Developer hereby warrants and guarantees for one year from the date of transfer that the system is free of defects, and functions or will function as designed. Developer shall immediately repair any defects or Service Company may make repair at Developer's expense.
- (e) Provide to the Service Company an executed notarized affidavit in a form satisfactory to Service Company's counsel of Developer's right to convey the property and assuring that work has been fully paid for such utility systems installed by Developer by reason of work per-

formed or services rendered in connection with the installation of the systems.

- (f) Provide Service Company with all appropriate operation/maintenance and parts manuals and shop drawings.
- (g) Further cause to be conveyed to Service Company, free and clear of all encumbrances, all easements and/or rights-of-way covering areas in which such systems are installed, by recordable document in form satisfactory to Service Company's counsel.

Service Company agrees that the issuance of the final letter of acceptance for such installations installed by Developer shall constitute the assumption of responsibility by Service Company for the continuous operation and maintenance of such systems from that date forward.

6.0 Agreement to Serve. Upon the completion of construction of the on-site and off-site wastewater collection systems, their inspection, and the other terms of this Agreement and Service Company's Service Availability Policy, Service Company covenants and agrees that it will oversee the connection of the wastewater collection systems installed by Developer to the central facilities of Service Company in accordance with the terms and intent of this Agreement. Such connection shall at all times be in accordance with rules, regulations and orders of the applicable governmental authorities. Service Company agrees that once it provides Wastewater Service to the Property and Developer or others have connected Consumer Installations to its system, that thereafter Service Company will continuously provide, at its cost and expense, but in accordance with the other provisions of this Agreement, including rules and regulations and rate schedules, Wastewater Service to the Property in a manner to conform with all requirements of the applicable governmental authority having jurisdiction over the operations of Service Company.

7.0 Application for Service: Consumer Installations. Developer, or any owner of any parcel of the Property, or any occupant of any building or unit located thereon shall not have the right to and shall not connect any Consumer Installation until formal written application has been made to Service Company by the prospective user of service, or either of them, in accordance with the then effective rules and regulations of Service Company and approval for such connection has been granted.

7.1 Although the responsibility for connecting the Consumer Installation to the lines of Service Company at the Point of Delivery is that of the Developer or entity other than Service Company, with reference to such connections, the parties agree as follows:

- (a) All Consumer Installation connections must be inspected by Service Company before backfilling and covering of any pipes.
- (b) Notice to Service Company requesting an inspection of a Consumer Installation connection may be given by the plumber or Developer, and the inspection will be made within twenty-four (24) hours, not including Saturdays, Sundays, and holidays.
- (c) If Service Company fails to inspect the consumer installation connection within forty-eight (48) hours after such inspection is requested by Developer or the owner of any parcel, Developer or owner may backfill or cover the pipes without Service Company's approval and Service Company must accept the connection as to any matter which could have been discovered by such inspection.
- (d) If the Developer does not comply with the foregoing inspection provisions, Service Company may refuse service to a connection that has not been inspected until Developer complies with these provisions.
- (e) The cost of constructing, operating, repairing or maintaining consumer installations shall be that of Developer or a party other than Service Company.
- (f) If a commercial kitchen, cafeteria, restaurant or other food preparation or dining facility is constructed within the Property, the Service

Company requires that a grease trap be constructed, installed and connected so that all wastewaters from any grease producing equipment within such facility, including floor drains in food preparation areas, shall first enter the grease trap for pretreatment before the wastewater is delivered to the lines of the Service Company. Size, materials and construction of such grease trap shall be approved by Service Company.

No substance other than domestic wastewater will be placed into the wastewater system and delivered to the lines of the Service Company. Should any non-domestic wastes, grease or oils, including, but not limited to, floor wax or paint, be delivered to the lines, the customer will be responsible for payment of the cost and expense required in correcting or repairing any resulting damage.

8.0 Exclusive Right to Provide Service. Developer, as a further and essential consideration of this Agreement, agrees that Developer, or the successors and assigns of Developer, shall not (the words "shall not" being used in a mandatory definition) engage in the business or businesses of providing Wastewater Service to the Property during the period of time Service Company, its successors and assigns, provide Wastewater Service to the Property, it being the intention of the parties hereto that under the foregoing provision and also other provisions of this Agreement, Service Company shall have the sole and exclusive right and privilege to provide Wastewater Service to the Property and to the occupants of such buildings or units constructed thereon.

9.0 Rates. Service Company agrees that the rates to be charged to Developer and individual consumers of Wastewater Service shall be those set forth in the tariff of Service Company approved by the applicable governmental agency. However, notwithstanding any provision in this Agreement, Service Company, its successors and assigns, may establish, amend or revise, from time to time in the future, and enforce rates or rate schedules so established and enforced and shall at all times be reasonable and subject to regulations by the applicable governmental agency, or as may be provided by law. Rates charged to Developer or consumers located

upon the Property shall at all times be identical to rates charged for the same classification of service, as are or may be in effect throughout the service area of Service Company.

9.1 Notwithstanding any provision in this Agreement to the contrary, Service Company may establish, amend or revise, from time to time, in the future, and enforce rules and regulations covering Wastewater Service to the Property. However, all such rules and regulations so established by Service Company shall at all times be reasonable and subject to such regulations as may be provided by law.

9.2 Any such initial or future decreased or increased rates, rate schedules, and rules and regulations established, amended or revised and enforced by Service Company from time to time in the future, as provided by law, shall be binding upon Developer; upon any person or other entity holding by, through or under Developer; and upon any user or consumer of the Wastewater Service provided to the Property by Service Company.

10.0 Binding Effect of Agreement. This Agreement shall be binding upon and shall inure to the benefit of Developer, Service Company and their respective assigns and successors by merger, consolidation, conveyance or otherwise, subject to the provisions of paragraph 22.0 hereof.

11.0 Notice. Until further written notice by either party to the other, all notices provided for herein shall be in writing and transmitted by messenger, by mail or by telegram, and if to Developer, shall be mailed or delivered to Developer at:

DRW Partnership, L.L.P.
2800 Southcross Drive
Burnsville, MN 55337
Attention: John Rose

and if to the Service Company, at:

North Fort Myers Utility, Inc.
Post Office Box 2547
Ft. Myers, Florida 33902
Attention: A. A. Reeves, III

with a copy to :

Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
Attention: Martin S. Friedman, Esquire

12.0 Laws of Florida. This Agreement shall be governed by the laws of the State of Florida and it shall be and become effective immediately upon execution by both parties hereto, subject to any approvals which must be obtained from governmental authority, if applicable.

13.0 Costs and Attorney's Fees. In the event the Service Company or Developer is required to enforce this Agreement by Court proceedings or otherwise, by instituting suit or otherwise, then the prevailing party shall be entitled to recover from the other party all costs incurred, including reasonable attorney's fees, including such fees and costs of any appeal.

14.0 Force Majeure. In the event that the performance of this Agreement by either party to this Agreement is prevented or interrupted in consequence of any cause beyond the control of either party, including but not limited to Act of God or of the public enemy, war, national emergency, allocation or of other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, racial or civil rights disorder or demonstration, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, sinkhole or other casualty or disaster or catastrophe, unforeseeable failure or breakdown of pumping transmission or other facilities (which will be repaired by Service Company as soon as reasonably possible), governmental rules or acts or orders or restrictions or regulations or requirements, acts or action of any government or public or governmental authority or commission or board or agency or agent or official or officer, the enactment of any statute or ordinance or resolution or regulation or rule or ruling or order, order or decree or judgment or restraining order or injunction of any court, said party shall not be liable for such non-performance.

15.0 Indemnification. Each party agrees to indemnify and hold the other harmless from and against any and all liabilities, claims, damages, costs and expenses (including reasonable trial and appellate attorney's fees) to which such party may become subject by reason of or arising out of the other party's performance of this Agreement. This indemnification provision shall survive the actual connection to Service Company's wastewater system.

MISCELLANEOUS PROVISIONS

16.0 The rights, privileges, obligations and covenants of Developer and Service Company shall survive the completion of the work of Developer with respect to completing the facilities and services to any development phase and to the Property as a whole.

17.0 This Agreement supersedes all previous agreements or representations, either verbal or written, heretofore in effect between Developer and Service Company, made with respect to the matters herein contained, and when duly executed, constitutes the agreement between Developer and Service Company. No additions, alterations or variations of the terms of this Agreement shall be valid, nor can provisions of this Agreement be waived by either party, unless such additions, alterations, variations or waivers are expressed in writing and duly signed.

18.0 Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine, feminine and neuter genders shall each include the others.

19.0 Whenever approvals of any nature are required by either party to this Agreement, it is agreed that same shall not be unreasonably withheld or delayed.

20.0 The submission of this Developer Agreement for examination by Developer does not constitute an offer but becomes effective only upon execution thereof by Service Company.

21.0 Failure to insist upon strict compliance of any of the terms, covenants, or conditions herein shall not be deemed a waiver of such terms, covenants, or conditions, nor shall any waiver or relinquishment of any right or power hereunder at any one time or times be deemed a waiver or relinquishment of such right or power at any other time or times.

22.0 Because of inducements offered by Developer to Service Company, Service Company has agreed to provide Wastewater Service to Developer's project. Developer understands and agrees that capacity reserved hereunder cannot and shall not be assigned by Developer to third parties without the written consent of Service Company, except in the case of a bona-fide sale of Developer's Property. Such approval shall not be unreasonably withheld. Moreover, Developer agrees that this Agreement is a superior instrument to any other documents, representations, and promises made by and between Developer and third parties, both public and private, as regards the provisions of Wastewater Service to Developer's property.

23.0 It is agreed by and between the parties hereto that all words, terms and conditions contained herein are to be read in concert, each with the other, and that a provision contained under one heading may be considered to be equally applicable under another in the interpretation of this Agreement.

24.0 Service Company shall at all reasonable times and hours, have the right of inspection of Developer's internal lines and facilities. This provision shall be binding on the successors and assigns of the Developer.

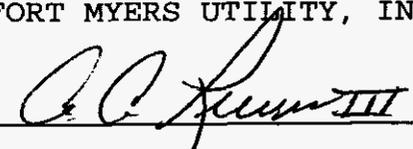
25.0 The parties hereto recognize that prior to the time Service Company may actually commence upon a program to carry out the terms and conditions of this Agreement, Service Company may be required to obtain approval from various state and local governmental authorities having jurisdiction and regulatory power over the construction, maintenance and operation of Service Company. The Service Company agrees that it will diligently and earnestly, at its sole cost and expense, make the necessary proper applications to all governmental authorities and others and will pursue the same to the end that it will use its best efforts to obtain such approvals.

IN WITNESS WHEREOF, Developer and Service Company have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

WITNESSES:

NORTH FORT MYERS UTILITY, INC.

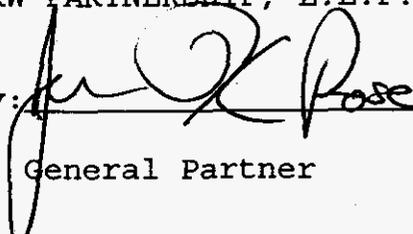

Print Name Leon E. Clemens

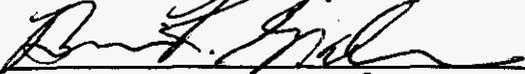
By: 


Print Name JoAnn Babey

DRW PARTNERSHIP, L.L.P.


Print Name DAN KRAEF

By: 


Print Name Brian G. Galt

General Partner

STATE OF FLORIDA)

COUNTY OF LEE)

The foregoing instrument was acknowledged before me this 9th day of August, 2000, by A.A. Keren III, as _____ of North Fort Myers Utility, Inc., a Florida corporation, on behalf of the corporation. He is personally known to me or has produced personally known as identification.

Kathleen R. Shields

KATHLEEN R. SHIELDS

Print Name
Notary Public
State of Florida at Large

My Commission Expires:

STATE OF FLORIDA)
COUNTY OF Lee)

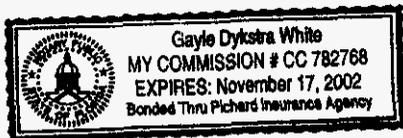


The foregoing instrument was acknowledged before me this 4th day of August, 2000, by John Rose as General Partner of DRW Partnership, L.L.P., a Minnesota limited liability corporation, on behalf of the corporation. He/she is personally known to me or has produced N/A as identification.

Gayle Dykstra White

Print Name
Notary Public
State of Florida at Large

My Commission Expires:



This Instrument Prepared By: Martin S. Friedman, Esquire, 2548 Blairstone Pines Drive, Tallahassee, Florida 32301.

agrmt\devag\northern.gr

6/26/00

EXHIBIT "A"

A tract or parcel of land lying in Section 3, Township 44 South, Range 24 East, Lee County, Florida, and being described as follows:

Beginning at the Southeast corner of Lot 52, MARIANA PARK, as recorded in Plat Book 9, Page 111, of the Public Records of Lee County, Florida; thence run North 89 52' West, along the South line of Lots 52 and 53 of said Mariana Park for 698.70 feet to the Southwest corner of said Lot 53; thence run North 0 53' 40" West along the East right of way line of Brown Road for 165.00 feet to the Northwest corner of said Lot 53; thence run South 89 52' East along the North line of said Lot 53 for 349.35 feet to the Northwest corner of said Lot 52; thence run North 0 53' 40" West along the West line of Lots 47 and 44 and Lot 39 to the Southwesterly right of way line of Cleveland Avenue (S.R. 45, U.S. 41, 200 foot wide right of way); thence run South 39 24' 40" East along said Southwesterly right of way line for 561.15 feet to the intersection with the East line of Lot 52, Mariana Park; thence run South 0 53' 40" East along the West right of way line of Judd Road for 107.65 feet to the point of beginning, and known as Lot 53 and that part of Lots 52, 47, 44 and 39 lying Southwesterly of the West right of way line of Cleveland Avenue (S.R. 45; U.S. 41, 200 foot right of way) in Mariana Park, Plat Book 9, Page 111.

CONTRIBUTIONS IN AID OF CONSTRUCTION

SYSTEM CAPACITY CHARGES

Upon execution of this Agreement, Developer shall pay Service Company the following System Capacity Charges to induce Service Company to reserve the following system capacities for Developer's proposed connections. Developer understands that system capacity is only reserved upon payment of charges by Developer to Service Company. Said system capacity charges to be paid by Developer are those which are set forth in Service Company's Service Availability Policy approved by the Florida Public Service Commission and, accordingly, these charges may be changed from time to time with the approval of the Commission.

Payment Schedule

<u>Customer Category</u>	<u>Number of Gallons/day</u>	<u>Charge Per Gallon</u>	<u>Total Charge</u>
General Service	687.5	\$ 2.31	\$ 1,588

Should actual water consumption exceed 687.5 gallons per day or should the use of the property change, then Service Company may require Developer to pay additional system capacity charges.

EXHIBIT "B"