

UTILITIES, INC.

2335 Sanders Road
 Northbrook, Illinois 60062-6196
 Telephone 847 498-6440
 Facsimile 847 498-2066

December 22, 2000

Ms. Blanco S. Bayo, Director
 Division of Records and Reporting
 Florida Public Service Commission
 2540 Shumard Oak Blvd.
 Tallahassee, FL 32399-0850

001820-SU

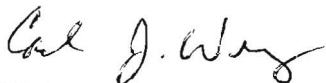
RE: Application for Transfer of Sewer Utility Facilities from Cross Creek of Fort Myers Community Association, Inc. to Utilities Inc. of Eagle Ridge in Lee County Florida.

Dear Ms. Bayo:

Enclosed for filing are an original and 12 copies of an Application for Transfer of Facilities. Two additional copies of the tariffs are also included along with the \$1,500 filing fee.

If you have any questions, please contact me directly.

Respectfully submitted,



Carl J. Wenz
 Vice President, Regulatory Matters

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

Initials of person who forwarded check:



cc: Mr. Martin S. Friedman
 Mr. Joseph H. Hassler

DOCUMENT NUMBER-DATE

16423 DEC 26 8

FPSC-RECORDS REPORTING

UTILITIES, INC.

2335 Sanders Road
Northbrook, Illinois 60062-6196
Telephone 847 498-6440
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Carl J. Wenz
Vice President, Regulatory Matters

cc: Mr. Martin S. Friedman
Mr. Joseph H. Hassler

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FPSC-RECORDS/REPORTING

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

Mr. Carl J. Wenz
Utilities, Inc.
2335 Sanders Road
Northbrook, IL 60062
(847) 498-6440

and

Mr. Martin S. Friedman
Attorney at Law
2548 Blairstone Pines Dr.
Tallahassee, FL 32301
(850) 877-6555

**D) Indicate the organizational character of the transferee:
(Circle one)**

Corporation

Partnership

Sole Proprietorship

Other _____

(specify)

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

Utilities, Inc. of Eagle Ridge was incorporated in the State of Florida on August 8, 1995.

F) If the buyer is a corporation, list the names, titles, and addresses of corporate officers and directors.

Utilities, Inc. of Eagle Ridge is a wholly-owned subsidiary of Utilities, Inc. The officers and directors of Utilities, Inc. are as follows:

<u>Name</u>	<u>Office</u>	<u>Directors</u>
James L. Camaren	Chairman & C.E.O	James L. Camaren
Lawrence N. Schumacher	President	Robert K. Wolfe
David C. Carter	Vice President	Lewis Hay III
Andrew N. Dopuch	Vice President	Harrington Bischof
Carl J. Wenz	V.P., Regulatory Matters	Jon R. Lind
		Daniel C. Searle
		Samuel H. Ellis

The address of Utilities, Inc. and its officers and directors is 2335 Sanders Road, Northbrook, IL 60062. The officers of Utilities, Inc. of Eagle Ridge (UIER) are the same as Utilities, Inc. The directors of UIER are Mssrs. Camaren and Schumacher.

G) If the buyer is not a corporation, list the names, titles, and addresses of all persons owning an interest in the organization.

N/A.

PART II FINANCIAL AND TECHNICAL INFORMATION

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

This transfer is in the public interest. Utilities, Inc. (UI) has approximately 35 years of experience in the water and wastewater utility industry. UI was formed in 1965 with the objective of acquiring small water and sewer companies. By centralizing the management, accounting, billing and data processing functions, these companies can achieve economies of scale that would be unattainable on a stand-alone basis. These companies are typically troubled and undercapitalized. They are primarily developer owned and with little experience in operating utilities. At the present time, UI provides safe and reliable water and sewer service to approximately 230,000 customers in 16 states. A list of Utilities, Inc.'s Florida subsidiaries is shown on Exhibit A. UI focuses solely on the ownership and operation of small utility systems and has vast experience improving and operating facilities. In addition, UI has both the regulatory experience and financial wherewithal to ensure consistent compliance with environmental regulations. UI's experience, through its Utilities, Inc. of Eagle Ridge subsidiary, in operating sewer utilities will provide depth to the Cross Creek customers on both a day-to-day basis as well as during emergencies. UI has operated other water and wastewater utilities in Florida under the regulation of the Florida Public Service Commission since 1976. UI's existing Florida subsidiaries are in good standing with the Commission. For these reasons, the proposed transfer of ownership would best serve the public interest.

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

Please see Exhibit A for a list of Utilities, Inc. subsidiaries.

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

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

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

- 1) Customer deposits and interest thereon;
- 2) Any guaranteed revenue contracts;
- 3) Developer agreements;
- 4) Customer advances;
- 5) Debt of the utility; and
- 6) Leases.

Please see Exhibit B for a copy of the sewer asset purchase agreement.

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

The Cross Creek of Fort Myers Community Association, Inc. is a not-for-profit entity and is therefore not subject to the jurisdiction of the FL PSC. Therefore, there are no outstanding RAF's, fines or refunds owed.

- E) Exhibit _____ - A statement of how the transferee is financing the purchase.**

The purchase of the sewer utility assets of the Cross Creek of Fort Myers Community Association, Inc. is a cash transaction. There are, therefore, no entities that have provided or will provide funding to the Transferee in connection with this transfer.

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

The purchase of the sewer utility assets of the Cross Creek of Fort Myers Community Association, Inc. is a cash transaction. There are, therefore, no entities, which have provided or will provide funding to the Transferee in connection with this transfer.

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

Pursuant to Article IV of the October 12, 2000 Revised-Asset Purchase Agreement, the seller and purchaser propose a Net Book Value of \$750,000.

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

The purchaser has not requested an acquisition adjustment, either positive or negative, in this proceeding. (See Rule 25-30.037 (2)(m), F.A.C., Application for Authority to Transfer.)

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

Mr. Joseph H. Hassler
President
Cross Creek of Fort Myers Community Association, Inc.
Fort Myers, FL 33912
(941)768-1166

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

The books and records have been requested to be provided at the time of the final closing. The books and records will be transferred to the buyer upon Commission approval of the transfer. However, the books and records will be available to the Commission Staff during this proceeding.

- K) Exhibit N/A - A statement from the buyer that is has obtained or will obtain copies of all of the federal income tax returns of the seller from the date the utility was first established, or rate base was last established by the Commission or, if the tax returns have been obtained, a statement from the buyer detailing the steps taken to obtain the returns.

N/A

- L) Exhibit - A statement from the buyer that after reasonable investigation, the system being acquired appears to be in satisfactory condition and in compliance with all applicable standards set by the Department of Environmental Protection (DEP) or, if the systems is in need of repair or improvement, has any outstanding Notice of Violation of any standard set by the DEP or any outstanding consent orders with the DEP, the buyer shall provide a list of the improvements and repairs needed and the approximate cost to make them, a list of the action taken by the utility with regard to the violation, a copy of the Notice of Violations (s), a copy of the consent order and a list of the improvements and repairs consented to and the approximate cost to make them.

At the present time, the buyer is not aware of any outstanding Notice of Violation or any outstanding DEP consent order.

PART III NOTICE OF ACTUAL APPLICATION

- A) Exhibit - An affidavit that the notice of actual application was given in accordance with Section 367.045(1) (a), Florida Statutes, and Rule 25-30.030, Florida Administrative Code, by regular mail to the following: the governing body of the municipality, county, or counties in which the system or the territory proposed to be served is located; the privately owned water and wastewater utilities that hold a certificate granted by the Public Service Commission and that are located within the county in which the utility or the territory proposed to be served is located, if any portion of the proposed territory is within one mile of a county boundary, the utility shall notice the privately owned utilities located in the bordering counties and holding a certificate granted by the Commission; the regional planning council; the office of Public Counsel; the Public Service Commission's Director of Records and Reporting; the appropriate regional office of the Department of Environmental Protection; and the appropriate water management district. Copies of the Notice and a list of entities noticed shall accompany the affidavit. **THIS MAY BE A LATE-FILED EXHIBIT.**

This will be provided as a late filed exhibit once the notices have been sent.

- B) Exhibit - An affidavit that the notice of actual application was given in accordance with Rule 25-30.030, Florida Administrative Code, by regular mail or personal delivery to each customer of the system being transferred. A copy of the Notice shall accompany the affidavit. **THIS MAY BE A LATE-FILED EXHIBIT.**

This will be provided as a late filed exhibit once the notices have been sent.

- C) Exhibit _____ - Immediately upon completion of publication, an affidavit that the notice of actual application was published once in a newspaper of general circulation in the territory in accordance with Rule 25-30.030, Florida Administrative Code. A copy of the proof of publication shall accompany the affidavit. **THIS MAY BE A LATE-FILED EXHIBIT.**

This will be provided as a late filed exhibit once the notice has been published.

PART IV FILING FEE

Indicate the filing fee enclosed with the application:

\$1,500.00 (one fee for water and one for wastewater)

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

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

PART V OTHER

- A) Exhibit C - Evidence that the utility owns the land where the utility treatment facilities are located, or, where the utility does not own the land, a copy of the agreement which provides for the long term, continuous use of the land, such as a 99-year lease. The Commission may consider a written easement or other cost-effective alternative.

Attached is the 99 year lease for the land upon which the treatment facility is located.

- B) Exhibit D - The original and two copies of sample tariff sheets reflecting the new name of the utility, the existing rates and charges and territorial description of the water and/or wastewater systems.

Attached are sample tariff sheets. Utilities, Inc. of Eagle Ridge proposes to charge the same rates currently in effect.

- C) Exhibit N/A The utility's current certificate (s) or, if not available, an explanation of the steps the applicant took to obtain the certificate (s).

N/A.

PART VI AFFIDAVIT

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

Carl J. Wenz
(Applicant)

BY: Carl J. Wenz, Vice President, Regulatory Matters
Name and Title*

Subscribed and sworn to before me this 22ND day of DECEMBER 2000.



Phil Ann Scully
Notary Public

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

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Docket No. _____

Application by Utilities, Inc. of Eagle Ridge for Approval to Transfer the Sewer Utility Assets from Cross Creek of Fort Myers Community Association, Inc. in Lee County

EXHIBIT A

Listing of Utilities, Inc. Subsidiaries

FLORIDA:

		Certificate #	
		Water	Sewer
MID-COUNTY SERVICES, INC.	S		81
LAKE UTILITY SERVICES, INC.	W	496	
UTILITIES, INC. OF FLORIDA	W&S	410,040, 107, 204, 278	305, 229, 225
MILES GRANT WATER & SEWER COMPANY	W&S	352	308
TIERRA VERDE UTILITIES, INC.	S		58
LAKE PLACID UTILITIES, INC.	W&S	414	347
ALAFAYA UTILITIES, INC.	S		379
UTILITIES INC. OF EAGLE RIDGE	S		369
WEDGEFIELD UTILITIES, INC.	W&S	404	341
UTILITIES, INC. OF LONGWOOD	S		232
PEBBLE CREEK UTILITIES, INC.	W&S	n/a-Hillsborough County	
EASTLAKE WATER SERVICE CORP.	W&S	n/a-Hillsborough County	
SANLANDO UTILITIES CORPORATION	W&S	247	189
LAKE GROVES UTILITIES, INC.	W&S	234	485
CYPRESS LAKES UTILITIES, INC.	W&S	592	509
BAYSIDE UTILITY SERVICES, INC.	W&S	469	358
UTILITIES, INC. OF SANDALHAVEN	S		495

ILLINOIS:

APPLE CANYON UTILITY COMPANY	W
CAMELOT UTILITIES, INC.	W&S
CHARMAR WATER COMPANY	W
CHERRY HILL WATER COMPANY	W
CLARENDON WATER COMPANY	W
COUNTY LINE WATER COMPANY	W
DEL MAR WATER CO.	W
FERSON CREEK UTILITIES COMPANY	W&S
GALENA TERRITORY UTILITIES, INC.	W&S
KILLARNEY WATER CO.	W
LAKE HOLIDAY UTILITIES CORP.	W
LAKE WILDWOOD UTILITIES CORP.	W
VALENTINE WATER SERVICE, INC.	W
WHISPERING HILLS WATER COMPANY	W
MEDINA UTILITIES CORPORATION	S
CEDAR BLUFF UTILITIES, INC.	S
HARBOR RIDGE UTILITIES, INC.	W&S
GREAT NORTHERN UTILITIES, INC.	W
NORTHERN HILLS WATER AND SEWER CO.	W&S
WATER SERVICE CORP.	

LOUISIANA:

LOUISIANA WATER SERVICE, INC.	W&S
UTILITIES INC. OF LOUISIANA	W&S

MARYLAND:

UTILITIES, INC. OF MARYLAND	W&S
GREENRIDGE UTILITIES, INC.	W
MARYLAND WATER SERVICE INC.	W&S
PROVINCES UTILITIES, INC.	W

VIRGINIA:

COLCHESTER PUBLIC SERVICE CORP.	S
MASSANUTTEN PUBLIC SERV. CORP.	W&S

OHIO:

HOLIDAY SERVICE CORP.	W
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GEORGIA:

UTILITIES, INC. OF GEORGIA	W&S
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INDIANA:

TWIN LAKES UTILITIES, INC.	W&S
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MISSISSIPPI:

CHARLESTON UTILITIES, INC.	W&S
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SOUTH CAROLINA:

CAROLINA WATER SERVICE, INC.	W&S
SOUTHLAND UTILITIES, INC.	W
UNITED UTILITY COMPANIES, INC.	W&S
SOUTH CAROLINA UTILITIES, INC.	S
TEGA CAY WATER SERVICE, INC.	W&S
BIO-TECH, INC.	

NORTH CAROLINA:

CAROLINA WATER SERVICE INC. OF N.C.	W&S
CWS SYSTEMS, INC.	W&S
WATAUGA VISTA WATER CORPORATION	W
CAROLINA TRACE UTILITIES, INC.	W&S
CONNESTEE FALLS UTILITIES, INC.	W&S
NORTH TOPSAIL UTILITIES, INC.	S
BRADFIELD FARMS WATER COMPANY, INC.	W&S
CAROLINA PINES UTILITIES, INC.	S

TENNESSEE:

TENNESSEE WATER SERVICE, INC.	W
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PENNSYLVANIA:

UTILITIES, INC. OF PENNSYLVANIA	S
PENN ESTATES UTILITIES, INC.	W&S

NEVADA:

SPRING CREEK UTILITIES COMPANY	W&S
UTILITIES INC. OF NEVADA	W
SKY RANCH WATER SERVICE CORP.	W

NEW JERSEY:

MONTAGUE WATER COMPANY	W
MONTAGUE SEWER COMPANY	S

ARIZONA

BERMUDA WATER COMPANY	W
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Docket No. _____

Application by Utilities, Inc. of Eagle Ridge for Approval to Transfer the Sewer Utility Assets
from Cross Creek of Fort Myers Community Association, Inc. in Lee County

EXHIBIT B

Sewer System Revised-Asset Purchase Agreement

**ASSIGNMENT AND ASSUMPTION
OF REVISED-ASSET PURCHASE AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF REVISED-ASSET PURCHASE AGREEMENT (this "Agreement") is made as of December 20, 2000 by and between UTILITIES, INC., an Illinois corporation, as Assignor ("Assignor"), and UTILITIES, INC. OF EAGLE RIDGE, a Florida corporation, as Assignee ("Assignee").

FOR VALUE RECEIVED and intending to be legally bound, Assignor hereby GRANTS, BARGAINS, SELLS, TRANSFERS, CONVEYS and ASSIGNS to Assignee, effective as of the date hereof, all of Assignor's rights, title and interest in and to the Cross Creek Sewer System — Revised-Asset Purchase Agreement, dated as of October 12, 2000 (the "Asset Purchase Agreement"), between Assignor and Cross Creek of Fort Myers Community Association, Inc., a Florida not-for-profit corporation.

Assignee hereby accepts the foregoing assignment and assumes all of Assignor's duties, liabilities, obligations and responsibilities under the Asset Purchase Agreement, including all duties, liabilities, obligations or responsibilities of Assignor under the Asset Purchase Agreement which arise out of or are attributable to the period prior to the date hereof. This Assignment shall not relieve Assignor of its obligations under the Asset Purchase Agreement as Buyer; provided, however, that as between Assignor and Assignee, Assignee shall indemnify and hold harmless Assignor from and against any and all claims, damages and liabilities incurred by Assignor which arise out of or are attributable to the Asset Purchase Agreement.

Each of the undersigned persons executing this Assignment certifies that: (a) he or she is fully empowered and duly authorized by any and all necessary action or consent required under any applicable articles of incorporation, bylaws or other organizational documents to execute and deliver this Assignment for and on behalf of said party; (b) said party has full capacity, power and authority to enter into and carry out its obligations under this Assignment; and (c) this Assignment has been duly authorized, executed and delivered. This Assignment shall be governed by and construed and enforced in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, Assignor and Assignee each have caused this Assignment and Assumption of Revised-Asset Purchase Agreement to be executed and delivered effective as of the date first written above.

UTILITIES, INC.

By: Lawrence N. Schumacher
Name: Lawrence N. Schumacher
Title: President

UTILITIES, INC. OF EAGLE RIDGE

By: Carl J. Wenz
Name: Carl J. Wenz
Title: Vice President, Regulatory Matters

CROSS CREEK SEWER SYSTEM
REVISED - ASSET PURCHASE AGREEMENT
LEE COUNTY, FLORIDA

This Agreement is entered into on this 12th day of October, 2000 by and between Cross Creek of Fort Myers Community Association, Inc., a not-for-profit Florida corporation, (hereinafter referred to as "Seller") and Utilities, Inc., an Illinois corporation (hereinafter referred to as "Purchaser").

WITNESSETH

WHEREAS, the Seller is the owner of a sewage collection, treatment and disposal system which has been installed to provide central sewer service to 905 condominium units located in the community known as "Cross Creek", in Lee County, Florida, and more fully described on Exhibit 1 attached, (hereinafter referred to as the "Property"); and

WHEREAS, Purchaser is engaged through its operating subsidiaries in the business of furnishing water and sewer service to the public in various communities throughout the United States; and

WHEREAS, Purchaser desires to acquire and Seller desires to sell the sewage collection, treatment and disposal facilities (collectively the "Facilities") installed to provide sewer service to the Property, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants as hereinafter set forth, the parties hereto agree as follows:

ARTICLE I

REPRESENTATIONS BY SELLER

Seller represents and warrants that:

- 1) Seller is a not-for-profit corporation duly incorporated, validly existing and in good standing under the laws of the State of Florida. Seller has the authority by way of Board Resolution to enter into this Agreement and sell the Facilities and lease the underlying real property.
- 2) Seller is, and at the interim closing (the "**Interim Closing**" as hereinafter defined) will be, the owner of the Facilities with good and marketable title, free and clear of all liens and encumbrances.
- 3) Seller will cooperate fully with Purchaser in any and all applications or petitions to public authorities deemed necessary or desirable by Purchaser in connection with the purchase of the Facilities from Seller as contemplated herein.
- 4) Attached hereto as Exhibit 2 is a detailed list of the Facilities to be acquired by Purchaser; attached hereto as Exhibit 3, is the Lease, along with the legal description of the real property of Seller to be leased to Purchaser pursuant to this Agreement.. Said Facilities consist of a 249,000 gallons-per-day capacity sewage treatment plant, including filters and

disinfection, two standard effluent storage tanks with capacities of 690,000 gallons and 200,000 gallons, one substandard effluent storage tank with a capacity of 375,000 gallons, and a complete central sewer collection system.

- 5) Attached hereto as Exhibit 4 is a list, signed by the Seller, and briefly describing, as of the date of this Agreement, the following:
 - (a) To the best of Seller's knowledge all pending or threatened actions at law, suits in equity or administrative proceedings relating to the Facilities;
 - (b) All contracts or obligations of any nature between Seller and any other party relating to the facilities. Seller will use its best efforts to terminate such contracts or obligations but makes no assurance or representation to Buyer of its ability to do so.
- 6) Except as indicated in Exhibit 4:
 - (a) Seller has all necessary permits, licenses and easements (including sufficient rights of access) for its water and sewer utility business;
 - (b) To the best of Seller's knowledge, the Facilities of Seller have been installed within the easements relating thereto and in accordance with all necessary permits or licenses all of which shall be assigned to Purchaser as required;
 - (c) At the Interim Closing, the Facilities of Seller will be capable of operation in accordance with at least the minimum standards, requirements, rules and regulations of all governmental bodies, and regulatory agencies which may have jurisdiction thereover.
- 7) Except as indicated in Exhibit 4, there are no pending or, to Seller's knowledge, threatened actions at law or suits in equity relating to the Facilities, or any pending or, to Seller's knowledge, threatened proceedings before any governmental agency.
- 8) Except as indicated in Exhibit 4, there are no contracts or obligations of any nature between Seller and any other party relating to the Facilities.
- 9) Between the date hereof and the Interim Closing, the sewer system of Seller will be operated in the ordinary course and Seller will, at all reasonable times, permit Purchaser, its attorneys and agents, to examine Seller's books, accounts, and other records and physical properties relating to the Facilities.
- 10) Prior to the Interim Closing and subject to final approval of the Florida Public Service Commission ("Commission,") the consummation of the transactions contemplated herein

will have been duly authorized by all necessary action, corporate or otherwise, on behalf of Seller.

- 11) Seller has filed all tax returns which are required to be filed, and each such return which has been filed is true and correct, and Seller to the extent applicable, has paid all taxes shown as payable on such returns when and as required by applicable law.
- 12) No representation or warranty by Seller in this Agreement, or any statement or certificate furnished or to be furnished to Purchaser pursuant hereto or in connection with the transactions contemplated herein, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading. The Facilities are to be transferred and sold to Purchaser in "as is" condition. Seller makes no representation or offers no warranty as to the condition of the Facilities.
- 13) Seller hereby represents and warrants to Purchaser that Seller has full corporate power and authority to enter into this Agreement and to carry out the transactions contemplated herein except as provided in 14) below. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein have been duly authorized by all necessary corporate action of Seller except as provided in 14) below.
- 14) This Agreement is conditioned upon Seller obtaining approval of its members for the transfer, sale and disposition of the Facilities, and lease of the underlying real property, which vote shall be obtained no later than November 30, 2000.

ARTICLE II

REPRESENTATIONS BY PURCHASER

Purchaser represents and warrants that:

- 1) Purchaser shall timely file a petition before the Florida Public Service Commission for a franchise to provide sewer utility service to the Property and shall use its best efforts to seek approval of the franchise and arrange for the assignment of the Department of Environmental Protection Permit.
- 2) Purchaser acknowledges that upon completion of the sale of the Facilities, additional sewage treatment plant upgrades will be required in the future to meet the reasonable utility needs of customers within the Property. Purchaser agrees to construct and install said treatment plant upgrades on a timely basis.

- 3) Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois and licensed to do business in Florida, with full corporate power and authority to enter into this Agreement and to carry out the transactions contemplated herein. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein have been duly authorized by all necessary corporate action of Purchaser.
- 4) Purchaser agrees to allow Seller to inspect the Facilities and its operations from time to time and Purchaser will cooperate with the assigned liaison from the Board of Directors of Cross Creek Fort Myers Community Association, Inc. and any consultants retained by Seller.

ARTICLE III

INTERIM CLOSING AND PURCHASE PRICE

1) **Interim Closing**

- (a) *The Interim Closing shall take place on December 15, 2000* at the office of Seller's counsel, or at such other time and place as Seller and Purchaser may agree upon.
- (b) At the Interim Closing, the Seller will, upon due performance by Purchaser of its obligations under the Agreement, deliver to Purchaser:
 - (i) a bill of sale, and sufficient instruments of sale, in form and substance satisfactory to Purchaser's counsel to the Facilities used for the sewage collection, treatment and disposal, free and clear of liens and encumbrances of every nature except for easements of record and the Lease between the parties described in Exhibit 4.
 - (ii) all of the files, documents, papers, agreements, books of account, lists, original cost invoices, engineering drawings, and records pertaining to the sewer system in the possession of Seller, other than its minute books and any other records reasonably needed by Seller;
 - (iii) all orders, permits, licenses or certificates issued or granted to Seller by any governmental authority in connection with any authorization related to the construction, operation or maintenance of its Facilities or the conduct of its sewer system; and
 - (iv) An opinion of Counsel for Seller, dated as of the Interim Closing, that upon the execution of this Agreement by Seller and delivery to Purchaser of the Bill of Sale for the Facilities (other than real estate), Purchaser will have all of Seller's title to the Facilities (other than real estate) free and clear of any liens and encumbrances

reflected by a filing under the Florida Uniform Commercial Code with the Department of State or by a filing in the Public Records of Lee County, Florida, as of a date no earlier than ten (10) days prior to the Interim Closing.

c) At the Interim Closing and from time to time thereafter, Seller shall execute and deliver such further instruments of sale, transfer and assignment, and take such other action as Purchaser may request, in order more effectively to sell, transfer and assign to Purchaser any of the Seller's Facilities, to confirm the title of Purchaser thereto and to assist Purchaser in exercising rights with respect thereto. The parties shall execute the Lease at the Interim Closing.

2) Purchase Consideration

At the Interim Closing Purchaser shall, upon due performance by Seller of its obligations under the Agreement, deliver to Seller the Purchase Price (the "Purchase Price") in the amount of **\$750,000.00** (SEVEN HUNDRED FIFTY THOUSAND DOLLARS), increased by the amount of any current and/or accrued customer accounts receivable (which Seller represents and warrants will be collected at their face amount) transferred by Seller to Purchaser and decreased by any and all liabilities (current, accrued, long-term or other) assumed by Purchaser.

ARTICLE IV

COMMISSION APPROVAL & INTERIM MANAGEMENT

1) Commission Approval

Within thirty (30) days following the Interim Closing, Purchaser will file a petition with the Commission requesting approval of this Agreement, establishment of a rate base in an amount equal to the Purchase Price, establishment of a rate to the Seller in an amount equal to the then in effect total monthly rate paid by Seller's members, which is \$13.45 per month for each of Seller's 905 condominium units, totaling \$12,172.00 per month, and the granting of a Public Utility Franchise. Purchaser agrees not to seek an increase in service rates for a period of two (2) years from the date of Commission approval. Any future rate increase shall be approved by the Florida Public Service Commission.

2) Interim Management

(a) Between the date of the Interim Closing and the Closing (the "Closing") as hereinafter defined, Purchaser shall, at the request of Seller, provide interim management of the sewer utility system serving the Property in the ordinary course of business.

- i) Purchaser agrees to manage and operate the facilities during the period of time between the date of the Interim Closing and the Closing in compliance with all laws, rules and regulations.
- ii) Purchaser agrees to maintain and keep in full force and effect both liability insurance and property insurance on the Facilities at least comparable to the insurance coverage of Seller as of the date of the Interim Closing (such insurance to name Seller as an additional insured party).
- iii) All sewer service revenues or fees payable to Seller between the date of Interim Closing and the Closing shall be the property of Purchaser and all expenses incurred between the date of Interim Closing and the Closing shall be the responsibility of Purchaser.

ARTICLE V
CLOSING

i) Closing

- (a) The Closing shall take place within **ten (10)** days of Commission approval of this Agreement and the granting of a sewer utility franchise at the offices of Seller's counsel, or at such other time and place as Seller and Purchaser may agree upon.
- (b) In the event that, notwithstanding Purchaser's best efforts to obtain such Commission approval, the approval of the Commission is denied, the Purchaser shall continue to operate the Facilities until such time as Seller has the opportunity to find a substitute operator and then Purchaser shall return to Seller all Facilities and documents then in existence unencumbered by any liens or other encumbrances except in existence at Interim Closing, and with representations and warranties similar to those provided by Seller at Interim Closing, and Seller shall return to Purchaser the Purchase Price in full.

ARTICLE VI
GENERAL

- 1) Upon completion of the Interim Closing, Purchaser agrees to supply all customers within the Property with adequate and customary sewer utility service, and to operate, maintain and repair all Facilities acquired herein, including all man holes and force mains located within the Cross Creek Community. Purchaser further agrees to provide, at no cost to Seller reclaimed water for irrigation purposes, and Seller agrees to accept this reclaimed water for irrigation purposes to the maximum extent possible.
- 2) The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance by either party shall not be construed as a general waiver or relinquishment on its part of any such provisions, but the same shall, nevertheless, be and

remain in full force and effect.

- 3) Any notice of delivery required to be made hereunder may be made by mailing a copy thereof addressed to the appropriate party as follows:

If to Purchaser: *Utilities, Inc.*
2335 Sanders Road
Northbrook, IL 60062
Attn: Jim Camaren
Chairman & Chief Executive Officer

If to Seller: *Cross Creek of Fort Myers Community Association, Inc.*
13050 Cross Creek Boulevard
Fort Myers, FL 33912
Attn.: Joseph H. Hassler
President

Delivery when made by registered or certified mail, shall be deemed complete upon mailing.

- 4) The Exhibits to this Agreement are a part hereof and are hereby incorporated in full by reference.
- 5) This Agreement shall be governed by the laws of the State of Florida with venue lying in Lee County, Florida.
- 6) In the event that the Facilities become non-operational by Purchaser or its successors or assigns, the Lease shall immediately be null and void. In the event the Purchaser sells or ceases to operate the Facilities, neither Seller nor its 905 condominium unit owners shall be responsible for any costs associated with dismantling and removal of the Facilities or costs associated with a change of operations including but not limited to providing reclaimed waste water for irrigation purposes. The existing storage tanks, as described in Article I, paragraph 4 of this Agreement, with proper connections to the irrigation system will, at the option of the Seller, be returned to the Seller at no cost. This Agreement shall become null and void if the Purchaser files bankruptcy, or commences an action for dissolution, or makes any assignment for the benefit of creditors.
- 7) Purchaser agrees to indemnify and hold harmless Seller against any loss, damage, liability, expense or cost accruing or resulting from any mismanagement of the Facilities by Purchaser between the dates of the Interim Closing and the Closing including any attorney fees or consultant fees incurred by Seller. Purchaser shall be solely responsible for any environmental damage arising out the use and operation of the Facilities.
- 8) If this Agreement is not executed by both Purchaser and Seller prior to **October 17, 2000**, then the terms and conditions herein are waived with no further obligations or responsibility to either party.

- 9) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns including any subsidiary of Utilities, Inc. It is specifically understood that Purchaser intends to transfer its rights and obligations under this Agreement to a separate wholly-owned subsidiary of Utilities, Inc.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year above first written.

UTILITIES, INC.

By


Chairman & Chief Executive Officer

ATTEST:


Vice President, Secretary

CROSS CREEK OF FORT MYERS COMMUNITY ASSOCIATION, INC.

By


Joseph H. Hassler, President

ATTEST:


John McIlvaine, Secretary

Et 1

OFF
REC 1750 PC2451

LEGAL DESCRIPTION

ENTIRE PARCEL OF LAND

A parcel of land in Section 17 and 20, Township 45 South, Range 25 East, Lee County, Florida, being more particularly described as follows:

Beginning at the Northeast corner of Section 20; thence North 01°-21'-01" West for 2,646.72 feet to the East quarter (E 1/4) corner of said Section 17; thence South 88°-53'-27" West along the quarter (1/4) Section line for 855.33 feet; thence South 29°-44'-17" West for 261.74 feet; thence South 07°-59'-37" West for 940.06 feet; thence South 30°-59'-16" West for 634.98 feet; thence South 40°-31'-05" East for 274.93 feet; thence South 40°-28'-52" West for 466.99 feet; thence North 84°-28'-38" West for 285.10 feet; thence South 22°-27'-36" West for 465.27 feet to the North line of Section 20 being common to Section 17 and 20; thence South 88°-54'-28" West along said North line of Section 20, for 1,060.37 feet to the West line of the East Half (E. 1/2) of the East Half (E. 1/2) of the Northwest Quarter (N.W. 1/4) of Section 20; thence South 00°-00'-12" East along aforesaid West line for 2,545.05 feet; thence North 88°-57'-31" East for 1,566.68 feet; thence South 01°-02'-29" East for 80.71 feet to the Northerly right-of-way line of Daniels Road (S.R. 867A); thence North 82°-52'-47" East along said Northerly right-of-way line of Daniels Road for 922.15 feet to a point of curvature; thence along the arc of said curve and said Northerly right-of-way line of Daniels Road to the right having a radius of 5,879.58 feet, a central angle of 06°-04'-44" feet for an arc distance of 623.80 feet to a point of tangency; thence North 88°-57'-31" East along said Northerly right-of-way line of Daniels Road for 99.53 feet to the intersection of the East line of said Section 20; thence North 01°-13'-17" West along the East line of said Section 20, and leaving said Northerly right-of-way line of Daniels Road for 2,497.43 feet to the Northeast corner of Section 20, the Point of Beginning.

Containing 266.30 acres more or less.

Bearings herein above are based on the North line of Section 20 being North 88°-54'-28" East.

EXHIBIT 2

This Exhibit consists of :

1. Four page listing of facilities as prepared by Source, Inc.
2. Five books entitled:
 - a. "Operation and Maintenance Performance Report"
 - b. "Abbreviated Capacity Analysis Report"
 - c. "Abbreviated Reuse Feasibility Study"
 - d. "Wastewater Permit Application Form 1"
 - e. "Wastewater Permit Application 2A"

STRUCTURES, EQUIPMENT & COLLECTION INVENTORY
for
CROSS CREEK WASTEWATER SYSTEM

EQUIPMENT ITEM #	TYPE	SERVICE	MFR.	DATE INSTALLED
LS-1.1	Control panel	LS #1 - Controls	Sta-Con Mfg., Inc.	Startup 02/18/85
LS-1.2	Submersible pump	LS #1 - Pump #1	Flygt	"
LS-1.3	Submersible pump	LS #1 - Pump #2	Flygt	"
LS-2.1	Control panel	LS #2 - Controls	Quality Controls, Inc.	Startup 10/20/86
LS-2.2	Submersible pump	LS #2 - Pump #1	Flygt	"
LS-2.3	Submersible pump	LS #2 - Pump #2	Flygt	"
LS-3.1	Control panel	LS #3 - Controls	Environment One	08/96
LS-3.2	Submersible pump	LS #3 - Grinder	Environment One	08/96
LS-4.1	Control panel	LS #4 - Controls	Ebara	05/97
LS-4.2	Submersible pump	LS #4 - Grinder	Ebara	05/97
SP-1.1	Control panel	Surge pump #1 - Control	Unitron Controls	02/04/93
SP-1.2	End suction - Solids handling centrifugal pump - horizontal	Surge pump #1	Deming Pumps	"
SP-1.2	Control panel	Surge pump #2 - Control	STES, Inc.	12/95
SP-2.2	End suction - solids handling centrifugal pump - horizontal	Surge pump #2	PACO Pumps	12/95
SP-8-L	Control panel	surge tank blower controls	Unitron Controls	01/19/93
SP-8.1.2	Positive displacement rotary blower	Surge tank aeration blower #1	ITT/Roots Dresser	02/93
SP-8.1.3	Rotary displacement rotary blower	Surge tank aeration blower #2	ITT/Roots Dresser	02/93
D8-A	Control panel	Digester blower control	Barrett Controls	12/95
D8-2	Rotary positive displacement blower	Digester aeration blower	ITT/Roots Dresser	12/95
FM-1	Magnetic flow meter	Influent flow metering	Hersey Measurement Co.	08/95
FM-2	Chart recorder	Charting continuous influent flow	Partlow Corporation	08/95
CL-1	Motorized gear reduction drive unit	Clarifier drive mechanism	Ohio Gear	12/86
AB-1	Control panel	Controls for clarifier drive, aeration blowers	Protrol	12/84
AB-2	Centrifugal air blower	Air supply for process aeration tanks	Lamson Corporation	12/84
F1-1	Rotary positive displacement air blower	Filter air scour	ITT/Roots Dresser	12/95
F1-2	Steel sand filter w/dosing tank & mud well 0.150 MGD	Effluent filtration, back wash holding, chlorination, effluent pumping,	Davco Defiance	12/84

STRUCTURES, EQUIPMENT & COLLECTION INVENTORY
for
CROSS CREEK WASTEWATER SYSTEM

EQUIPMENT ITEM #	TYPE	SERVICE	MFR.	DATE INSTALLED
F1-3	Control panel	0.15 MGD filter and pump controls	Davco Defiance	12/84
F1-4.1	Submersible pump	filter cell No. 1 back wash pump	Peabody-Barnes Pumps	12/84
F1-4.2	Submersible pump	Filter cell No. 2 back wash pump	Peabody-Barnes	12/84
F1-4.3	Submersible pump	Filtered effluent transfer pumping to on-site storage	Peabody-Barnes	12/84
F1-4.4	Submersible pump	Filtered effluent transfer pumping to on-site storage	Peabody-Barnes	12/84
F1-4.5	Submersible pump	Back wash waste pumping to surge tank	Peabody-Barnes	12/84
F1-4.6	Submersible pump	Back wash waste pumping to surge tank	Peabody-Barnes	12/84
F1-2	Steel sand filter w/dosing tank and mud well 0.10 MGD	Effluent filtration back washing holding chlorination and back wash waste holding	Davco Defiance	12/86
F2-2	Control panel	0.10 MGD filter and pumping controls	Davco Defiance	12/86
F2-3.1	Submersible pump	Filter cell No. 1 back wash pump	Peabody-Barnes	12/86
F2-3.2	Submersible pump	filter cell No. 2 back wash pump	Peabody-Barnes	12/86
F2-4.1	Submersible pump	Filtered effluent transfer pumping station	Peabody-Barnes	12/86
F2-4.2	Submersible pump	Filter effluent transfer pumping standby	Peabody-Barnes	12/86
F2-5.1	Submersible pump	Back wash waste pumping to surge tank	Peabody-Barnes	12/86
F2-5.2	Submersible pump	Back wash waste pumping to surge tank	Peabody-Barnes	12/86
FM-2.1	Flow meter	Metering of finished plant effluent	Signet	08/95
FM-2.2	Chart recorder	Continuous recording of finished effluent	Partlow Instruments	08/95
EA-1.1	Turbidity analyzer	Continuous monitoring of filtered effluent	HF Scientific	08/95
EA-1.2	Chlorine residual analyzer	Continuous monitoring of treated chlorinated effluent	EIT	08/95
EA-1.3	Chart recorder	Continuous charting of turbidity and chlorine residual levels	Partlow Instruments	08/95
ET-1.1	Control panel	Effluent recirculation and transfer pump controls (substandard)	Protrol, Inc.	12/84

STRUCTURES, EQUIPMENT & COLLECTION INVENTORY
 for
CROSS CREEK WASTEWATER SYSTEM

EQUIPMENT ITEM #	TYPE	SERVICE	MFR.	DATE INSTALLED
ET-1.2	Close coupled end suction centrifugal pump	Effluent recirculation and transfer pumping (substandard)	Crane Deming	12/84
ET-1.3	Close coupled end suction centrifugal pump	Effluent recirculation and transfer pumping (substandard)	Crane Deming	12/84
ET-2.1	Control panel	Effluent recirculation and transfer pump control (standard)	Acutek	
ET-2.2	Close coupled end suction centrifugal pump	Effluent recirculation and transfer pumping (standard)	Crane Deming	
ET-2.3	Close coupled end suction centrifugal pump	Effluent recirculation and transfer pumping (standard)	Crane Deming	
CB-1.1	Horizontal close coupled centrifugal pump	Chlorine booster pump		05/94
CB-1.2	Horizontal close coupled centrifugal pump	Chlorine booster pump		08/94

STRUCTURES, EQUIPMENT & COLLECTION INVENTORY
for
CROSS CREEK WASTEWATER SYSTEM

STR. #	Use	STRUCTURE		SERVICE	INSTALL DATE
		Size	Mat'l.		
LS 1.4	Wet well	6' dia.	Conc.	LS #1	Feb. 1985
LS 1.5	Valve vault	6' sq.	Conc.	LS #1	Feb. 1985
LS 2.4	Wet well	6' dia.	Conc.	LS #2	Oct. 1986
LS 2.5	Valve vault	6' sq.	Conc.	LS #2	Oct. 1986
LS 3.3	Wet well	2' dia.	Fiberglass	LS #3	Aug. 1986
LS 4.3	Wet well	2' dia.	Fiberglass	LS #4	May 1997
S11.1	Mixing well	4' dia.	Conc.	Holding pond	1996
S11.2	Piping	60" 12" dia.	PVC	Holding pond	1996
S11.3	Intake	4' sq.	Conc.	Holding pond	1996
S11.4	Piping	15" dia.	Conc.	Holding pond	1996
S11.5	Motorized butterfly valve	12" dia.	Steel	Holding pond	1996
LS 1.6	Sewer coll.	10,400' 8" dia.	PVC	LS #1	1985
LS 1.7	Force main	2,800' 6" dia.	PVC	LS #1	1985
LS 1.8	M.H.	55-6' dia.	Conc.	LS #1	1985
LS 2.6	Sewer coll.	4,500' 8" dia.	PVC	LS #2	1993
LS 2.7	Force main	1,400' 4" dia.	PVC	LS #2	1993
LS 2.8	M.H.	25-6' dia.	Conc.	LS #2	1993
LS 4.4	Force main	400' 4" dia.	PVC	LS #4	1997
WTP 1.1	Office	10' sq.	Wood	Wastewater	
WTP 1.2	Aeration, digestion & settling	Varies	Conc.	Wastewater	
WTP 1.3	Filter & chlorine contact tank	12' x 14'	Steel	Wastewater	
WTP 1.4	Filter & chlorine contact tank	12' x 30'	Steel	Wastewater	
WTP 1.5	Storage tank	70' dia.	Steel	Wastewater	
WTP 1.6	Storage tank	70' dia.	Steel	Wastewater	
WTP 1.7	Storage tank	50' dia.	Steel	Wastewater	
WTP 1.8	Eng generator set	3' x 6'	Steel	Wastewater	
WTP 1.9	Splitter box	4' x 8'	Conc.	Wastewater	
WTP 1.10	Chlorine bldg.	2' x 3'	Fiberglass	Wastewater	
WTP 1.11	Influent bar screen	Varies	Steel	Wastewater	
WTP 1.12	Underground piping & valves	Varies	PVC	Wastewater	
WTP 1.13	Fencing	900'-8' high	Steel	Wastewater	

NOTES:

- 1) LS #1 wet well was coated in 1997.
- 2) LS #2 wet well was coated in 2000.
- 3) Service lateral piping entering into the sewer collection piping described in Items LS 1.6 and LS 2.6 is excluded from this inventory.

NINETY-NINE YEAR GROUND LEASE

THIS NINETY-NINE (99) YEAR GROUND LEASE (hereinafter called the "Lease") made and executed this 12th day of October, 2000, by and between **Cross Creek of Fort Myers Community Association, Inc.**, a not-for-profit Florida corporation, 13050 Cross Creek Boulevard, Fort Myers, Florida 33912, hereinafter called the "**Lessor**," its successors and assigns, and **Utilities, Inc.**, an Illinois corporation, 2335 Sanders Road, Northbrook, Illinois 60062, hereinafter called the "**Lessee**."its successors and assigns,

WITNESSETH, that the said **Lessor** in consideration of the rent hereinafter expressed to be paid, and of the mutual covenants set forth herein, does hereby grant a Lease unto the said **Lessee**, of all that ground situate, lying, and being in Lee County, Florida, and described as follows:

See **Exhibit "A," Legal Description of Leased Area**, attached hereto and made a part hereof and hereinafter called "Land."

together with all the rights, ways, easements, privileges and advantages thereunto belonging and in anywise appertaining.

TO HAVE AND TO HOLD the same unto the use of the **Lessee** for the term of ninety-nine (99) years beginning on January 1, 2001 and terminating on December 31, 2100 for the purpose of utilizing the sewer collection, treatment, and disposal facilities, hereinafter called the "**Facilities**,"and providing sewer service and irrigation service to the Cross Creek community and its residents. It is understood that the **Facilities** are owned by **Lessee** and that this Lease is for the underlying and surrounding Land described in the attached Exhibit "A" and not the **Facilities** themselves.

The **Lessor** covenants with the **Lessee** as follows:

1. **Title.** **Lessor** is possessed of the fee simple title to this Land, and it assures **Lessee** of quiet and peaceful possession against all persons whomsoever excepting persons claiming under or through **Lessee**.
2. **Consent.** Whenever **Lessor's** consent or approval is required under the terms of this Lease, such consent or approval shall not be unreasonably withheld.

The **Lessee** covenants with the **Lessor** as follows:

3. **Rent.** **Lessee** covenants to pay rent to **Lessor** at 13050 Cross Creek Boulevard, Fort Myers, Florida 33912, in the amount of \$10.00 per year, plus applicable state sales tax. The rent shall be due on January 1 of each year.

4. **Default.** Each of the following shall be deemed a default by the **Lessee** and a breach of this Lease:

- a. The filing of a petition by or against the **Lessee** for its adjudication as a bankrupt or for an arrangement within the meaning of Chapter Thirteen of the Bankruptcy Act or for its reorganization within the meaning of Chapter Eleven of the Bankruptcy Act.
- b. The dissolution, or the commencement of any action or proceedings for the dissolution of the **Lessee**.
- c. The taking of the property by the **Lessee** by governmental office or agent under any legal process.
- d. The making by the **Lessee** of an assignment for the benefit of creditors.
- e. A default in the payment of rent for a period of thirty (30) day or longer.
- f. A default in the performance of any of the covenants or conditions required to be performed by the **Lessee** under the terms of this Lease for a period of seven (7) days or longer after service of notice thereof by the **Lessor**, or its agent.
- g. **Lessee** shall be responsible for the maintenance, repair and replacement of the fence and the gates surrounding the perimeter of the Land which is the subject of this Lease.
- h. **Lessee** shall pay and discharge all license charges for the operation of the sewage treatment plant, taxes including both tangible personal property taxes or ad valorem real estate taxes; together with the payment of all special assessments levied or assessed against the Facilities of every kind and nature levied during the entire term of this Lease.
- i. **Lessee** agrees to carry public liability and property damage insurance, including environmental endorsement, and to name **Lessor** as an additional insured on **Lessee's** policy.
- j. **Lessee** agrees to make no unlawful, improper or offensive use of The Facilities or to create a nuisance and agrees to abide by and conform to all zoning regulations, building codes or other regulations imposed by applicable Federal, State and local laws, or any applicable governmental regulations, ordinances or statutes.
- k. That the **Lessee** shall make no substantial alterations or changes to the Facilities without the written permission of the **Lessor**, which shall not be unreasonably withheld by **Lessor**.

- l. That at all times during the continuance of this lease and at its own cost and its expense, **Lessee** shall keep and maintain the Facilities and all improvements in good repair and to indemnify and save harmless the **Lessor** from any and all lawful demands, actions, causes of action, damages, loss and expenses including reasonable attorneys fees, by reason of its failure to do so.
- m. **Lessee** shall not permit, or have any authority, to create any liens for labor and material upon **Lessor's** underlying Land, and all persons contracting with **Lessee** for alterations, and repairs thereof, and all materialmen, contractors, mechanics and laborers are hereby charged with notice that they must look to the **Lessee** for payment of any bill for work done or materials furnished during the rental period created by this Lease.
- n. **Lessee** shall not assign or sublet its interest herein without the written consent of the **Lessor**.

5. Effective Default. In the event of a default, either by not paying the rent when due, or failure to promptly perform any other covenants, conditions or provisions of this Lease and such failure continues for a period of seven (7) days after written notice specifying the nature of such failure, or if Lessee abandons, ceases to do business, sells or subleases the Facilities without the consent of Lessor, Lessee shall be deemed to be in default. Lessor shall then have the right to either terminate this Lease or consider this Lease to be in full force and effect. If Lessor elects to consider this Lease in full force and effect upon Lessee's default said election shall not be considered a waiver of Lessor's right to terminate this Lease.

6. Lessor's Right of Inspection.

- a. That Lessor may, as often as it may be necessary, or their duly authorized agents, enter upon and view at any reasonable hour the Facilities to ascertain the condition thereof.
- b. That the buildings situated on the Land with the exception of the waste water treatment plant office building remain the property of **Lessor** and that **Lessor** shall have the use of the buildings and the right of access and use of same provided **Lessor** does not interfere with **Lessee's** operation of the Facilities.

7. Lessee's Right to Quiet Possession. That the **Lessee** shall upon payment of the rent and upon said **Lessee** fully observing and performing the covenants and agreements herein provided to be observed and performed by the **Lessee**, quietly and peacefully possess the land which is the subject of this Lease unless said Lease shall be terminated sooner under and in accordance with any of the provisions herein contained providing for such termination.

8. Interpretation. That in the event of any questions as to interpretation of the terms and provisions hereof, such shall be determined by arbitration of three individuals, one selected by **Lessor**, one selected by **Lessee** and the third by the two so selected. Their findings shall be binding upon both **Lessor** and **Lessee**, except insofar as the same applied to rental payments,

which shall be governed by the laws concerning landlords and tenants in the State of Florida and shall not be subject to arbitration unless Lessor and Lessee at the time of any dispute concerning rent shall both agree to submit the matter to arbitration.

9. Covenants Run with the Land. That all the covenants, provisions and terms, agreements and conditions of this Lease shall be construed as covenants running with the Land and shall inure to the benefit of and shall be binding upon the heirs, executors, administrators, representatives, successors and assigns of the respective parties hereto as fully as upon said parties.

10. Notices. Any notice shall be sent by certified mail return receipt requested to the following:

If to Lessor: Board of Directors
13050 Cross Creek Boulevard
Fort Myers, Florida 33912

If to Lessee: Board of Directors
2335 Sanders Road
Northbrook, Illinois 60062

11. Attorney's Fees and Court Costs. If either party institutes an action to enforce any of the terms of this Agreement, the prevailing party shall be entitled to attorney's fees and court costs incurred, including any appeals.

12. Indemnification. Lessee agrees to indemnify and hold harmless Lessor from and against all claims, losses, expenses, liens, and liabilities (including attorney's fees and court costs) arising from any act, omission or negligence of any person or persons in connection with Lessee's use of the Land or arising from any acts, injury or damage to personal property during the term hereof, except where such injury or damage is due to the Lessor, Lessor's agents or under the direction of Lessor.

13. Additional Construction. Lessor hereby reserves the right at any time and from time to time to make alterations or additions to the Land and the right to change the configuration and location of landscaping, or other improvements, provided Lessor does not interfere with Lessee's operation of the Facilities.

14. Severability and Waiver. No waiver by Lessor of any provision hereof shall be deemed to have been made unless such waiver be in writing signed by Lessor. The failure of Lessor to insist upon the strict performance of any of the covenants or conditions of this Lease, or to exercise any option herein conferred, shall not be construed as waiving or relinquishing for the future any such covenants, conditions or options, both the same shall continue and remain in full force and effect. No payment by Lessee of a lesser amount than the annual rent herein stipulated shall be deemed to be other than on account of the stipulated rent. If any clause provision of this Lease is illegal or unenforceable under present and future laws, then and in that event, the remainder of this Lease shall not be affected thereby.

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

IN WITNESS WHEREOF, the said **Cross Creek of Fort Myers Community Association, Inc.**, the said party of the one part has caused these presents to be signed in its name by its proper officers and its corporate seal to be affixed, attested by its secretary, the day and year above written.

Signed, sealed and delivered in the presence of:

Cross Creek of Fort Myers Community Association, Inc., Lessor

[Signature]
Witness

DAN WETTLIN, JR.
Printed Name of Witness

[Signature]
Joseph H. Hassler, President

[Signature]
Witness

GUINN E. UNGER
Printed Name of Witness

[Signature]
John McIlvaine, Secretary

State of Florida
County of Lee

The foregoing instrument was acknowledged before me this 12th day of October, 2000, by Joseph H. Hassler, President, **Cross Creek of Fort Myers Community Association, Inc.**, a not-for-profit Florida corporation, who is personally known to me or produced _____ as identification and did (did not) take an oath. personally known to me

(Seal)

[Signature]
Notary Public



Gale L. Mulloy
Commission # CC 951792
Expires Aug. 13, 2004
Bonded Thru
Atlantic Bonding Co., Inc.

GALE L. MULLOY
Printed Name

My Commission Expires: 8/13/2004


Utilities, Inc., Lessee

Witness

Printed Name of Witness

Witness

Printed Name of Witness



Chairman & Chief Executive Officer

Secretary

The foregoing instrument was acknowledged before me this _____ day of _____, 2000, by _____, Chairman & Chief Executive Officer of **Utilities, Inc.**, who is personally known to me or produced _____ as identification and did (did not) take an oath.

(Seal)

Notary Public

Printed Name

My Commission Expires:

LEGAL DESCRIPTION
SEWAGE TREATMENT PLANT

A parcel of land lying in Section 17, Township 45 South, Range 25 East, Lee County, Florida, being more particularly described as follows:

Commencing at the Southeast corner of Section 17; thence North 01°21'01" West along the East line of Section 17, for 1,024.52 feet; thence South 88°38'59" West, for 1,188.78 feet to the Point of Beginning of the herein described parcel; thence South 30°59'16" West for 281.91 feet; thence North 40°31'05" West for 226.70 feet; thence North 30°59'16" East for 210.00 feet; thence South 59°00'44" East for 215.00 feet to the Point of Beginning.

Containing 1.21 acres of land, more or less.

Bearings herein above are based on the South line of Section 17, being North 88°54'28" East.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Docket No. _____

Application by Utilities, Inc. of Eagle Ridge for Approval to Transfer the Sewer Utility
Assets from Cross Creek of Fort Myers Community Association, Inc. in Lee County

EXHIBIT C

EVIDENCE OF LAND OWNERSHIP or CONTROL

NINETY-NINE YEAR GROUND LEASE

THIS NINETY-NINE (99) YEAR GROUND LEASE (hereinafter called the "Lease") made and executed this 12th day of October, 2000, by and between **Cross Creek of Fort Myers Community Association, Inc.**, a not-for-profit Florida corporation, 13050 Cross Creek Boulevard, Fort Myers, Florida 33912, hereinafter called the "**Lessor**," its successors and assigns, and **Utilities, Inc.**, an Illinois corporation, 2335 Sanders Road, Northbrook, Illinois 60062, hereinafter called the "**Lessee**."its successors and assigns,

WITNESSETH, that the said **Lessor** in consideration of the rent hereinafter expressed to be paid, and of the mutual covenants set forth herein, does hereby grant a Lease unto the said **Lessee**, of all that ground situate, lying, and being in Lee County, Florida, and described as follows:

See **Exhibit "A," Legal Description of Leased Area**, attached hereto and made a part hereof and hereinafter called "Land."

together with all the rights, ways, easements, privileges and advantages thereunto belonging and in anywise appertaining.

TO HAVE AND TO HOLD the same unto the use of the **Lessee** for the term of ninety-nine (99) years beginning on January 1, 2001 and terminating on December 31, 2100 for the purpose of utilizing the sewer collection, treatment, and disposal facilities, hereinafter called the "**Facilities**,"and providing sewer service and irrigation service to the Cross Creek community and its residents. It is understood that the **Facilities** are owned by **Lessee** and that this Lease is for the underlying and surrounding Land described in the attached Exhibit "A" and not the **Facilities** themselves.

The **Lessor** covenants with the **Lessee** as follows:

1. **Title.** **Lessor** is possessed of the fee simple title to this Land, and it assures **Lessee** of quiet and peaceful possession against all persons whomsoever excepting persons claiming under or through **Lessee**.
2. **Consent.** Whenever **Lessor's** consent or approval is required under the terms of this Lease, such consent or approval shall not be unreasonably withheld.

The **Lessee** covenants with the **Lessor** as follows:

3. **Rent.** **Lessee** covenants to pay rent to **Lessor** at 13050 Cross Creek Boulevard, Fort Myers, Florida 33912, in the amount of \$10.00 per year, plus applicable state sales tax. The rent shall be due on January 1 of each year.

4. **Default.** Each of the following shall be deemed a default by the **Lessee** and a breach of this Lease:

- a. The filing of a petition by or against the **Lessee** for its adjudication as a bankrupt or for an arrangement within the meaning of Chapter Thirteen of the Bankruptcy Act or for its reorganization within the meaning of Chapter Eleven of the Bankruptcy Act.
- b. The dissolution, or the commencement of any action or proceedings for the dissolution of the **Lessee**.
- c. The taking of the property by the **Lessee** by governmental office or agent under any legal process.
- d. The making by the **Lessee** of an assignment for the benefit of creditors.
- e. A default in the payment of rent for a period of thirty (30) day or longer.
- f. A default in the performance of any of the covenants or conditions required to be performed by the **Lessee** under the terms of this Lease for a period of seven (7) days or longer after service of notice thereof by the **Lessor**, or its agent.
- g. **Lessee** shall be responsible for the maintenance, repair and replacement of the fence and the gates surrounding the perimeter of the Land which is the subject of this Lease.
- h. **Lessee** shall pay and discharge all license charges for the operation of the sewage treatment plant, taxes including both tangible personal property taxes or ad valorem real estate taxes; together with the payment of all special assessments levied or assessed against the Facilities of every kind and nature levied during the entire term of this Lease.
- i. **Lessee** agrees to carry public liability and property damage insurance, including environmental endorsement, and to name **Lessor** as an additional insured on **Lessee's** policy.
- j. **Lessee** agrees to make no unlawful, improper or offensive use of The Facilities or to create a nuisance and agrees to abide by and conform to all zoning regulations, building codes or other regulations imposed by applicable Federal, State and local laws, or any applicable governmental regulations, ordinances or statutes.
- k. That the **Lessee** shall make no substantial alterations or changes to the Facilities without the written permission of the **Lessor**, which shall not be unreasonably withheld by **Lessor**.

- l. That at all times during the continuance of this lease and at its own cost and its expense, Lessee shall keep and maintain the Facilities and all improvements in good repair and to indemnify and save harmless the Lessor from any and all lawful demands, actions, causes of action, damages, loss and expenses including reasonable attorneys fees, by reason of its failure to do so.
- m. Lessee shall not permit, or have any authority, to create any liens for labor and material upon Lessor's underlying Land, and all persons contracting with Lessee for alterations, and repairs thereof, and all materialmen, contractors, mechanics and laborers are hereby charged with notice that they must look to the Lessee for payment of any bill for work done or materials furnished during the rental period created by this Lease.
- n. Lessee shall not assign or sublet its interest herein without the written consent of the Lessor.

5. Effective Default. In the event of a default, either by not paying the rent when due, or failure to promptly perform any other covenants, conditions or provisions of this Lease and such failure continues for a period of seven (7) days after written notice specifying the nature of such failure, or if Lessee abandons, ceases to do business, sells or subleases the Facilities without the consent of Lessor, Lessee shall be deemed to be in default. Lessor shall then have the right to either terminate this Lease or consider this Lease to be in full force and effect. If Lessor elects to consider this Lease in full force and effect upon Lessee's default said election shall not be considered a waiver of Lessor's right to terminate this Lease.

6. Lessor's Right of Inspection.

- a. That Lessor may, as often as it may be necessary, or their duly authorized agents, enter upon and view at any reasonable hour the Facilities to ascertain the condition thereof.
- b. That the buildings situated on the Land with the exception of the waste water treatment plant office building remain the property of Lessor and that Lessor shall have the use of the buildings and the right of access and use of same provided Lessor does not interfere with Lessee's operation of the Facilities.

7. Lessee's Right to Quiet Possession. That the Lessee shall upon payment of the rent and upon said Lessee fully observing and performing the covenants and agreements herein provided to be observed and performed by the Lessee, quietly and peacefully possess the land which is the subject of this Lease unless said Lease shall be terminated sooner under and in accordance with any of the provisions herein contained providing for such termination.

8. Interpretation. That in the event of any questions as to interpretation of the terms and provisions hereof, such shall be determined by arbitration of three individuals, one selected by Lessor, one selected by Lessee and the third by the two so selected. Their findings shall be binding upon both Lessor and Lessee, except insofar as the same applied to rental payments,

which shall be governed by the laws concerning landlords and tenants in the State of Florida and shall not be subject to arbitration unless **Lessor** and **Lessee** at the time of any dispute concerning rent shall both agree to submit the matter to arbitration.

9. Covenants Run with the Land. That all the covenants, provisions and terms, agreements and conditions of this Lease shall be construed as covenants running with the Land and shall inure to the benefit of and shall be binding upon the heirs, executors, administrators, representatives, successors and assigns of the respective parties hereto as fully as upon said parties.

10. Notices. Any notice shall be sent by certified mail return receipt requested to the following:

If to Lessor: Board of Directors
13050 Cross Creek Boulevard
Fort Myers, Florida 33912

If to Lessee: Board of Directors
2335 Sanders Road
Northbrook, Illinois 60062

11. Attorney's Fees and Court Costs. If either party institutes an action to enforce any of the terms of this Agreement, the prevailing party shall be entitled to attorney's fees and court costs incurred, including any appeals.

12. Indemnification. Lessee agrees to indemnify and hold harmless **Lessor** from and against all claims, losses, expenses, liens, and liabilities (including attorney's fees and court costs) arising from any act, omission or negligence of any person or persons in connection with **Lessee's** use of the Land or arising from any acts, injury or damage to personal property during the term hereof, except where such injury or damage is due to the **Lessor**, **Lessor's** agents or under the direction of **Lessor**.

13. Additional Construction. **Lessor** hereby reserves the right at any time and from time to time to make alterations or additions to the Land and the right to change the configuration and location of landscaping, or other improvements, provided **Lessor** does not interfere with **Lessee's** operation of the Facilities.

14. Severability and Waiver. No waiver by **Lessor** of any provision hereof shall be deemed to have been made unless such waiver be in writing signed by **Lessor**. The failure of **Lessor** to insist upon the strict performance of any of the covenants or conditions of this Lease, or to exercise any option herein conferred, shall not be construed as waiving or relinquishing for the future any such covenants, conditions or options, both the same shall continue and remain in full force and effect. No payment by **Lessee** of a lesser amount than the annual rent herein stipulated shall be deemed to be other than on account of the stipulated rent. If any clause provision of this Lease is illegal or unenforceable under present and future laws, then and in that event, the remainder of this Lease shall not be affected thereby.

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

IN WITNESS WHEREOF, the said **Cross Creek of Fort Myers Community Association, Inc.**, the said party of the one part has caused these presents to be signed in its name by its proper officers and its corporate seal to be affixed, attested by its secretary, the day and year above written.

Signed, sealed and delivered in the presence of:

Cross Creek of Fort Myers Community Association, Inc., Lessor

[Signature]
Witness

DAN WETTLIN, JR.
Printed Name of Witness

[Signature]
Joseph H. Hassler, President

[Signature]
Witness

GUINN E. UNGER
Printed Name of Witness

[Signature]
John McIlvaine, Secretary

State of Florida
County of Lee

The foregoing instrument was acknowledged before me this 12th day of October, 2000, by Joseph H. Hassler, President, **Cross Creek of Fort Myers Community Association, Inc.**, a not-for-profit Florida corporation, who is personally known to me or produced _____ as identification and did (did not) take an oath. personally known to me

(Seal)

[Signature]
Notary Public



GALE L. MULLOY
Printed Name

My Commission Expires: 8/13/2004

Utilities, Inc., Lessee

Carl J. Wenz
Witness

CARL J. WENZ
Printed Name of Witness

David C. Carter
Witness

DAVID C. CARTER
Printed Name of Witness

Jim Camaren
Chairman & Chief Executive Officer

[Signature]
Secretary

The foregoing instrument was acknowledged before me this 16th day of October, 2000, by Jim Camaren, Chairman & Chief Executive Officer of **Utilities, Inc.**, who is personally known to me. ~~on produced xxxxxxxxxxxxxxxxxx as identification and did (did not) take an oath.~~



Phil Ann Scully
Notary Public
Phil Ann Scully
Printed Name

My Commission Expires: 09-18-01

LEGAL DESCRIPTION
SEWAGE TREATMENT PLANT

A parcel of land lying in Section 17, Township 45 South, Range 25 East, Lee County, Florida, being more particularly described as follows:

Commencing at the Southeast corner of Section 17; thence North $01^{\circ}21'01''$ West along the East line of Section 17, for 1,024.52 feet; thence South $88^{\circ}38'59''$ West, for 1,188.78 feet to the Point of Beginning of the herein described parcel; thence South $30^{\circ}59'16''$ West for 281.91 feet; thence North $40^{\circ}31'05''$ West for 226.70 feet; thence North $30^{\circ}59'16''$ East for 210.00 feet; thence South $59^{\circ}00'44''$ East for 215.00 feet to the Point of Beginning.

Containing 1.21 acres of land, more or less.

Bearings herein above are based on the South line of Section 17, being North $88^{\circ}54'28''$ East.

EXHIBIT A

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Docket No. _____

Application by Utilities, Inc. of Eagle Ridge for Approval to Transfer the Sewer Utility
Assets from Cross Creek of Fort Myers Community Association, Inc. in Lee County

EXHIBIT D

SAMPLE TARIFFS

UTILITIES, INC. OF EAGLE RIDGE
WASTEWATER TARIFF

TERRITORY AUTHORITY

CERTIFICATE NUMBER — 369-S

COUNTY — LEE

COMMISSION ORDER(S) APPROVING TERRITORY SERVED —

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
PSC-98-0514-FOF-SU	04/15/98	951008-SU	TRANSFER FACILITIES TRANSFER

(Continued to Sheet No. 3.1)

Carl J. Wenz
ISSUING OFFICER

Vice President, Regulatory Matters
TITLE

UTILITIES, INC. OF EAGLE RIDGE
WASTEWATER TARIFF

DESCRIPTION OF TERRITORY SERVED

CROSS CREEK DEVELOPMENT
LEE COUNTY, FLORIDA

A parcel of land in Section 17 and 20, Township 45 South, Range 25 East, Lee County, Florida, being more particularly described as follows:

Beginning at the Northeast corner of Section 20; thence North $01^{\circ}-21'-01''$ West for 2,646.72 feet to the East quarter (E 1/4) corner of said Section 17; thence South $88^{\circ}-53'-27''$ West along the quarter (1/4) Section line for 855.33 feet; thence South $29^{\circ}-44'-17''$ West for 261.74 feet; thence South $07^{\circ}-59'-37''$ West for 940.06 feet; thence South $30^{\circ}-59'-16''$ West for 634.98 feet; thence South $40^{\circ}-31'-05''$ East for 274.93 feet; thence South $40^{\circ}-28'-52''$ West for 466.99 feet; thence North $84^{\circ}-28'-38''$ West for 285.10 feet; thence South $22^{\circ}-27'-36''$ West for 465.27 feet to the North line of Section 20 being common to Section 17 and 20; thence South $88^{\circ}-54'-28''$ West along said North line of Section 20, for 1,060.37 feet to the West line of the East Half (E. 1/2) of the East Half (E. 1/2) of the Northwest Quarter (N.W. 1/4) of Section 20; thence South $00^{\circ}-00'-12''$ East along aforesaid West line for 2,545.05 feet; thence North $88^{\circ}-57'-31''$ East for 1,566.68 feet; thence South $01^{\circ}-02'-29''$ East for 80.71 feet to the Northerly right-of-way line of Daniels Road (S.R. 867A); thence North $82^{\circ}-52'-47''$ East along said Northerly right-of-way line of Daniels Road for 922.15 feet to a point of curvature; thence along the arc of said curve and said Northerly right-of-way line of Daniels Road to the right having a radius of 5,879.58 feet, a central angle of $06^{\circ}-04'-44''$ feet for an arc distance of 623.80 feet to a point of tangency; thence North $88^{\circ}-57'-31''$ East along said Northerly right-of-way line of Daniels Road for 99.53 feet to the intersection of the East line of said Section 20; thence North $01^{\circ}-13'-17''$ West along the East line of said Section 20, and leaving said Northerly right-of-way line of Daniels Road for 2,497.43 feet to the Northeast corner of Section 20, the Point of Beginning.

Containing 266.30 acres more or less.

Bearings herein above are based on the North line of Section 20 being North $88^{\circ}-54'-28''$ East.

Carl J. Wenz
ISSUING OFFICER

Vice President, Regulatory Matters
TITLE

UTILITIES, INC. OF EAGLE RIDGE

WASTEWATER TARIFF

RESIDENTIAL SERVICE

RATE SCHEDULE RS

<u>AVAILABILITY</u>	—	Available throughout the Cross Creek development served by the Company.
<u>APPLICABILITY</u>	—	For wastewater service for all purposes in private residences.
<u>LIMITATIONS</u>	—	Subject to all of the Rules and Regulations of this tariff and General Rules and Regulations of the Commission.
<u>BILLING PERIOD</u>	—	Monthly
<u>RATE</u>	—	FLAT CHARGE PER UNIT — \$ 13.45
<u>MINIMUM CHARGE</u>		\$12,172.00 (905 x \$13.45)
<u>TERMS OF PAYMENT</u>		Bills are due and payable when rendered and become delinquent if not paid within twenty (20) days. After five (5) working days written notice is mailed to the customer separate and apart from any other bill, service may then be discontinued.
<u>EFFECTIVE DATE</u>	—	
<u>TYPE OF FILING</u>	—	Facilities Transfer

Carl J. Wenz
ISSUING OFFICER

Vice President, Regulatory Matters
TITLE