

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Authority)
to Transfer the Facilities of)
Service Management Systems, Inc.)
d/b/a Auqarina Utilities, Inc.)
and Certificate Nos. 517-W and)
450-S in Brevard County, Florida)
to IRD Osprey, LLC d/b/a Aquarina)
Utilities)
_____)

Docket No. 020091-001 ORIGINAL

APPLICATION OF IRD OSPREY, LLC D/B/A AQUARINA UTILITIES
FOR AUTHORITY TO TRANSFER FACILITIES AND
CERTIFICATE NOS. 517-W AND 450-S

IRD Osprey, LLC d/b/a Aquarina Utilities (hereinafter referred to as "IRD" "Aquarina" or "Buyer") by and through its undersigned attorneys and pursuant to the provisions of Rule 25-30.037, Fla. Admin. Code and Section 367.071, Fla. Stat., files this Application for authority to transfer facilities and Certificate Nos. 517-W and 450-S currently held by Service Management Systems, Inc. ("Seller") to Buyer. In support of this Application, Buyer states:

1. The complete name and address of the Seller, is:

Service Management Systems, Inc.
235 Hammock Shore Drive
Melbourne Beach, Florida 32951

2. The complete name and address of the Buyer is:

IRD Osprey, LLC d/b/a Aquarina Utilities
7860 Peters Road
Suite F-111
Plantation, Florida 33324

Check received with filing and forwarded to Fiscal for deposit. Fiscal to forward a copy of check to RAR with proof of deposit.
Initials of person who forwarded check:
JKM

DOCUMENT NUMBER-DATE
01290 FEB-4-88

3. The name and address of the person authorized to receive notices and communications in respect to this application is:

F. Marshall Deterding
Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301

4. Buyer is a Florida Limited Liability Corporation authorized to do business in Florida, effective on July 16, 2001.

5. The names and addresses of Buyer's members and current managing member are as follows:

Current Managing Member:

Nathan Kalichman
19333 Collins Avenue
Apartment 810
North Miami Beach, Florida 33160

Members:

Robert A. Lievy
1690 South Congress Avenue
Suite 200
Delray Beach, Florida 33445

MMJ Development, LLC, a Florida
Managing Member
Mitchell Pastin, Esquire
4645 Gun Club Road
Suite 25
West Palm Beach, Florida 33415

Ralph Chernin
700 West Hillsboro Boulevard
Suite 2 - Suite 102
Deerfield Beach, Florida 33441

S. Martin Sadkin
7860 Peters Road
Suite F-111
Plantation, Florida 33314

Frank Alter
3802 Northeast 207th Street
Suite 1401
Aventura, Florida 33180

Raya Smail
1106 Grand Avenue
San Rafael, California 94901

Five of the members of the Utility are also members of the developer who owns the remaining property to be served by the Utility.

6. Buyer currently owns no water or wastewater utilities in the State of Florida.

7. Attached hereto as **Exhibit "A"** is a copy of the Agreement for Purchase and Sale and addenda thereto ("Purchase Agreement"), which includes the purchase price, terms of payment, and a list of the assets purchased and liabilities assumed and not assumed and disposition of customer deposits and interest thereon. The Seller has no customer deposits. The closing will occur upon approval of the Transfer of the Certificates to operate the Utility, at which time Buyer will pay all cash for the Utility.

8. There are no guaranteed revenue contracts, customer advances or leases that must be disposed of in association with the Transfer of the Utility assets.

9. There are no outstanding written developer Agreements. However, there is an existing agreement to allow the connection of 20 residential sewer only customers. The only written agreement is a letter written by the existing Utility, agreeing to accept the donation of improvements in connection with the 20 connections, if the appropriate connection fees and all other costs are paid by the Developer. A copy of this letter is attached hereto as **Exhibit "B"**. This connection will likely take place in advance of the approval of this Transfer. No other existing developer agreements exist.

10. There is outstanding debt of \$171,324.75 of the Utility which will be paid by Seller at the closing of the transaction. As such, the Utility assets will pass to the Buyer free of any existing debt.

11. Buyer will purchase Seller's utility assets in a cash transaction, with those monies provided by the members of the Buyer LLC. There will be no mortgage or other secured debt after closing.

12. The transfer of the water and wastewater facilities of Seller to Buyer is in the public interest for the following reasons:

(a) Buyer will continue to utilize the same professional operation and management personnel utilized by the Seller for the purposes of operating and maintaining the Utility's system. These personnel are professional operators and managers of water and sewer utility systems, and have knowledge of regulatory requirements and procedures. Therefore, Buyer has the technical capability to efficiently and effectively provide high quality water and wastewater service to the Utility's service territory, the customers therein, and all potential future customers within the existing territory.

(b) Because members of the buying entity own the great majority of the remaining unsold and unserved property within the certificated service territory of the Utility, the interests of the Buyer's members are substantially the same as those of the Utility, to guarantee continuous and adequate water and wastewater service to the properties located within the service territory. To the extent the Buyer is not approved for Transfer of the water and wastewater facilities, the connection between the Utility operator and the major owner of properties within the certificated service

territory will cease to exist as it has in the past with the prior owner.

(c) Buyer has the financial resources to provide real and significant benefits to the Utility's customers as the capital and/or operational needs demand. The Buyer's unique position as being owned by members who own the great majority of the remaining unserved areas within the certificated service territory, places the owners in the unique position of being most interested in ensuring high quality water and wastewater service and providing funding as and when needed for that purpose.

The Utility does not anticipate any immediate needs in the next several years for construction of additional improvements to serve the existing customer base, or any expansion thereof. However, as and when those needs do arise, the entity which controls the Utility has the financial resources to fund those needs and has committed to do so. Attached as **Exhibit "C"** is a copy of the financial statement of Indian River No. 1 Developers, LLC, showing that the entity that has a controlling interest in the Utility and in the remaining undeveloped property within the Utility's service area, has the financial strength to fund any capital needs for the Utility in the foreseeable future.

13. Buyer will fulfill the commitments, obligations and representations of the Seller with regard to Utility matters.

14. As of the time the Utility was last audited by the PSC for the test year ended December 31, 1996, the Commission established a rate base for the Utility's system at \$41,947 for the water system and \$28,928 for the wastewater system and \$235,409 for the non-potable water system. Each of these contain a significant plant held for future use component, at the time of that determination in Docket No. 941234-WS. The Utility has made no determination of used and useful or attempted to update the findings of the Commission since that time, with the exception of the contents of the Utility's 2000 Annual Report for the period ended December 31, 2000, which reflects a gross rate base of \$634,163 for the water system and \$363,912 for the wastewater system. The Utility has made numerous minor additions to plant during the additional year, which has passed since the period covered by the 2000 Annual Report. The only major addition has been the addition of a 150,000 gallon water tank at a cost of approximately \$165,000 during the calendar year 2001.

15. There is no proposal at this time for inclusion of an acquisition adjustment resulting from the current Transfer. The amount of the purchase price allocated to the Utility acquisition

is \$1,390,000 which is based upon an independent appraisal of the Utility facilities and assets. Its appraisal exceeds the net book value and rate base of the Utility as of the date of transfer.

16. The books and records of the Seller are available for inspection by the Commission and are adequate for the purposes of establishing rate base of the water and wastewater systems.

17. Seller will cooperate with Buyer in providing to the Florida Public Service Commission any information necessary in order for the Commission to evaluate the Utility's rate base since its last rate case referenced in paragraph 14 above.

18. The Buyer has obtained the tax returns of the Seller for all tax years since the Utility was last audited and rate base was established by the Commission.

19. After reasonable investigation, the Buyer has determined that the system being acquired appears to be in satisfactory condition and in compliance with all applicable standards set by Florida Department of Environmental Protection ("FDEP"). An evaluation of that system has been performed by a separate engineering firm. There are no outstanding Notices of Violation from the FDEP.

20. As part of the Transfer of the Utility assets, ownership of all utility land was transferred to the Buyer pursuant to the

Purchase Agreement. A copy of the proposed deed to be utilized to transfer this property to the Buyer, including the legal description, is attached hereto as **Exhibit "D."** Upon closing of the transfer of the Utility from the Seller to the Buyer, these deeds will be executed and filed with the Commission. These deeds include descriptions of the property on which the water and wastewater treatment facilities are located.

21. All outstanding regulatory assessment fees due by March 31, 2002 for the year ended December 31, 2001 will be paid by the Seller at the time of closing. Buyer will be responsible for payment of all regulatory assessment fees applicable to the year 2002 and beyond.

22. Because of the change in the name of the Utility, the original and two copies of the water and wastewater tariffs reflecting the change of ownership are attached hereto as a composite **Exhibit "E."**

23. After diligent search of all of its records, the revised Certificates issued to the current owner after Transfer of facilities to Service Management Systems, Inc. cannot be found. Attached hereto as **EXHIBIT "F"** are copies of the Certificates issued in 1992 as a result of the issuance of Order No. PSC-92-0119-FOF-WS in Docket No. 911129-WS. The Utility hereby requests

that the Commission issue new Certificates to the Buyer upon approval of this Transfer.

24. An Affidavit that the actual Notice of the Application was given to the each customer in accordance with Section 367.045(1)(a), Florida Statutes, and Rule 25-30.030, Florida Administrative Code, will be filed as Late Filed **Exhibit "G"**.

25. Attached hereto as **Exhibit "H"** is a copy of the Notice sent to each of the customers of the Utility. An Affidavit of that noticing along with the other mail noticing required by Rule 25-30.030, F.A.C. will be submitted as Late-Filed **Exhibit "I."** The legal description contained in the Notice should be approved as the territorial description of this Utility. This new legal description corrects a scrivener's error which occurred in the original territory description as approved for this system by the Public Service Commission in Order No. PSC-92-0119-FOF-WS, issued in March of 1992. The fact that this error existed in the original description, has also been referenced in the Notice.

25. The water system has the capacity to serve less than 500 water ERCs and between 500 and 2,000 wastewater ERCs. As such, pursuant to Rule 25-30.020(c), Florida Administrative Code, the appropriate filing fee totals \$2,250 and is enclosed herewith.

WHEREFORE, IRD Osprey, LLC hereby requests that the Florida Public Service Commission review this Application for Transfer and find that the facilities of the Certificates of Service Management Systems, Inc. in Brevard County and Certificates No. 517-W and 450-S be approved for Transfer to the Buyer herein.

Respectfully submitted on this
15th day of February, 2002, by:

ROSE, SUNDSTROM & BENTLEY, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
(850) 877-6555

By: 
F. MARSHALL DETERDING

indian\transfer.app

AGREEMENT OF PURCHASE AND SALE

Exhibit "A"

*Final
3-28-01
Signed
4-28-01*

*- w/ 1st
amend.
dtd 4-11-01*

AGREEMENT OF SALE AND PURCHASE

This Agreement of Sale and Purchase (the "Agreement") is made and entered into as of the 28th day of March, 2001, (the "Effective Date") by and between PETRUS CORP., a Kansas corporation ("G.P."), General Partner of PETRUS GROUP, L.P., a Kansas limited partnership authorized to do business in the State of Florida, (hereinafter "Petrus"), SERVICE MANAGEMENT SYSTEMS, INC., a Florida corporation ("SMSI"), and AQUARINA CLUB CORPORATION, a Florida corporation ("ACC"), collectively "Seller" and INDIAN RIVER NO. 1 DEVELOPERS, LLC, a Florida limited liability company, (hereinafter "IRD" or "Buyer").

WITNESSETH:

WHEREAS, Petrus is the owner of certain parcels of real property (the "Property" as hereinafter defined), which consists of vacant and improved real estate known as the Aquarina Planned Unit Development, as more particularly described on attached Exhibit "A"; and

WHEREAS, G.P. is the only general partner for Petrus; and

WHEREAS, IRD desires to acquire all right, title and interest in the Property from the G.P. and Limited Partners.

NOW THEREFORE, in consideration of the mutual covenants, warranties and agreements contained herein, and in consideration of other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Petrus and (the "Parties") along with SMSI, and ACC, intending to be legally bound, do hereby covenant and agree as follows:

DEFINITIONS.

For purposes of this Agreement, the following terms are defined as follows:

"Seller's interest" shall mean and include all ownership interests which G.P. and the Limited Partners have in Petrus Group, L.P., a Kansas limited partnership.

"Assets" shall mean all of Petrus' interest and all right title and interest of Petrus in the assets, real property or personal property owned or used by the Seller, including without limitation the Utility (as defined

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"Assets" shall mean all of Petrus' interest and all right title and interest of Petrus in the assets, real property or personal property owned or used by the Seller, including without limitation the Utility (as defined

below) which is owned by Service Management Systems, Inc., the franchise for which is in the name of Petrus. "Assets" which are excluded are cash on hand, bank and utility deposits, note and mortgage receivables, and accounts receivable.

"Due Diligence Period" is the period beginning on Thursday, March 22, 2001, and ending April 11, 2001, twenty-one (21) days thereafter, as more fully described in Paragraph 4.

"Partnership" shall mean Petrus Group, L.P., a Kansas limited partnership.

"Effective Date" shall mean March 26, 2001. ✓

"Seller" shall mean, collectively, the G.P. and the Limited Partners (also referred to as "Petrus").

Service Management Systems, Inc. is a Florida corporation (the "Utility") which owns and operates the water and sewer facilities for property known as the Aquarina Planned Unit Development.

Aquarina Club Corporation is a Florida corporation ("ACC") which operates the golf course and clubhouse known as Aquarina Golf Course (the "Golf Lessee") and owns the property known as the restaurant "Windows on the Sea" (the "Restaurant").

"Valuation Date" means March 26, 2001, in accordance with Schedule 1(k) attached hereto.

0THE SUBJECT PROPERTY.

The Property. (i) Seller agrees to sell, convey and deliver the Property by Florida Statutory Warranty Deed and Absolute Bill of Sale to Buyer and Buyer agrees to purchase and accept from Seller, for the Purchase Price set forth in Section 3(a) hereof, and subject to the conditions set forth in this Agreement, all of Seller's interest, which for purposes of this Agreement includes (i) ownership of the Assets, together with all buildings, improvements, fixtures and equipment now or hereafter located thereon or used in connection therewith, and any and all of Petrus's right, title and interest in and to any oil, gas, air and mineral rights thereon or therein, any and all streets, roads, canals, strips, gores, easements, hereditaments, appurtenances, sewer, water and drainage rights and other rights of way appertaining thereto; and (ii) ACC agrees to sell, assign and transfer all its rights and interests under the franchise and the Lease all of which shall be accompanied by any and all covenants, contracts, approvals, licenses, permits, Golf Lease, Restaurant Lease, variances, restrictions, development agreements,

permits, approvals, riparian rights, lease rights to real and personal property associated therewith and any and all intangible rights benefiting or affecting any of the foregoing (the "Property"). The legal description of the Property is attached hereto as Exhibit "A."

Notwithstanding the foregoing, the term "Property" does not include the inventory of the Golf Course, Clubhouse and Restaurant which includes turf maintenance equipment, merchandise for sale, furniture and office equipment. Such personal property will be separately priced, based upon Seller's cost as to merchandise for sale and fair market value as to other personal property. The sum of those items will be an additional credit to the Seller at closing. Sale of the Property shall include all liquor licenses, business licenses and other such permits now in the name of Seller. The sale price to Buyer of personal property shall be based on a fair market value appraisal by Harris J. Samuels, ASA, P.O. Box 158, New Smyrna Beach, FL 32170. The parties will agree upon an inventory of furniture, inventory, supplies and equipment to be sold separately within fifteen (15) days of the Effective Date. Inventory of the golf pro shop and snack bar perishables shall be at Seller's cost; all personal property is subject to Buyer's election to purchase same. ✓

③ **PURCHASE PRICE AND DEPOSITS.**

(a) **Purchase Price.** The total purchase price (the "**Purchase Price**") to be paid by to Seller for Seller's interest is ELEVEN MILLION THREE HUNDRED FIFTY THOUSAND & 00/100 DOLLARS (\$11,350,000.00) payable as follows. Purchase price should be adjusted from Valuation Date (down for property sales and upward for improvements made) in accordance with Schedule 3(a) attached hereto.

(b) **Initial Deposit.** Within three (3) business days following the Effective Date, shall deliver to the Escrow Agent (set forth in Section 3(e) hereof), the sum of TWO HUNDRED FIFTY THOUSAND & 00/100 DOLLARS (\$250,000.00) (the "**Initial Deposit**"), which sum shall be held by Escrow Agent to be released in accordance with the provisions of this Agreement.

(c) **Additional Deposit.** On or before the expiration of the Due Diligence Period (set forth in Section 4(b) hereof) and only if elects to proceed with this transaction, shall deliver to the Escrow Agent as an additional deposit the sum of SEVEN HUNDRED FIFTY THOUSAND & 00/100 DOLLARS (\$750,000.00) (the "**Additional Deposit**"), which sum together with the Initial Deposit shall be held by the Escrow Agent to be released in accordance with the provisions of this Agreement.

(d) **Balance At Closing.** The balance of the Purchase Price, TEN MILLION THREE HUNDRED FIFTY THOUSAND & 00/100 DOLLARS (\$10,350,000.00), subject to appropriate credits, proration and adjustment as herein provided, shall be paid to Seller at the Closing (defined in Section 6(a) hereof), by U.S. cash by wire transfer, subject to adjustments or proration.

(e) **Escrow.** The escrow agent for purposes of this Agreement shall be a mutually agreeable disinterested third party, i.e., Chicago Title Insurance Company. The expense of the Escrow Agent shall be borne equally by the parties. Chicago Title Insurance Company's office is located at 2701 Gateway Drive, Pompano Beach, FL 33069. The Initial Deposit and the Additional Deposit (together, the "**Deposits**") shall be held in a trust account by the Escrow Agent in a separate, federally insured escrow account(s) and said escrowed funds shall not be released except as provided for in this Agreement. The parties agree to the terms of escrow set forth on Schedule 3(c) attached hereto and made a part hereof.

(f) **Closing Adjustment.** Adjustments to sales price for sales closed by Seller after the Valuation Date and before closing: Seller to be credited for ongoing site improvements and building construction at 100% for Osprey Villas East. [Seller will retain all proceeds from sales of remaining units in the original Osprey Villas (two (2) sales)] Buyer will assume Seller's contracts at closing along with Seller obligations under those contracts. Construction costs shall be reimbursed Seller as set forth in this paragraph so long as Seller provides Buyer with all invoices, receipts, contracts and other records of construction. Records of existing construction expenses will be provided to Buyer upon request. Seller will discontinue sales of Sea Hawk south of Clubhouse and River Oaks lots upon deposit by Buyer of the Additional Deposit. ✓

(g) **The Utility.** The Purchase Price includes the transfer by Absolute Bill of Sale of all of the Utility's right, title and interest in the assets of Service Management Systems, Inc., subject to the Utility Escrow Agreement set forth in Schedule 3(g)(i) attached hereto; Seller shall satisfy the Florida Revolving Fund Loan with a balance net of escrowed deposits of approximately \$153,500.00. The Buyer and Seller will execute a service agreement, Schedule 3(g)(ii), covering the period from closing to Buyer obtaining the Florida PSC certificate for operation.

④ **DUE DILIGENCE.**

(a) **Petrus's Reports.** Beginning March 22, 2001, Petrus and ACC shall make available to Buyer, at Petrus' offices at Aquarina, complete

copies of any and all title insurance commitments, surveys, leases, occupancy agreements, environmental assessment reports, soil tests, engineering reports, ad valorem tax bills, financial records, and other bookkeeping records, utility audits, sales information, including closing statements and golf course records, and other reports and materials pertaining to the Property (including correspondence between Petrus and all federal, state and local regulatory agencies) that are presently in Petrus's possession or control, (herein, "Petrus's Reports"). In addition, Petrus and ACC agree to promptly make available to Buyer, on a continuing basis through the Closing, any information that Petrus obtains pertaining to changes, additions or corrections to Petrus's Reports. As reasonably requested by Buyer, Petrus and ACC each shall provide Buyer with such signed authorizations as are necessary to permit each firm or organization involved with Petrus's Reports to disclose to Buyer all information in its possession or control that is pertinent to the Property. Buyer acknowledges and agrees that, except as may be expressly set forth elsewhere in this Agreement, Petrus is providing Petrus's Reports to Buyer for informational purposes only and that neither Seller nor Petrus makes any representations or warranties with respect to the accuracy and completeness of any information contained in Petrus's Reports, unless Petrus has authored or signed a document among same.

(b) **Due Diligence Period.** Buyer shall have twenty-one (21) days, to wit: until April 11, 2001, following the Effective Date (the "**Due Diligence Period**") to inspect and assess the Property and satisfy itself as to the physical condition of the Property and its suitability for Buyer's intended purposes. Buyer's inspection activities shall be conducted at Buyer's sole cost and expense and may include, without limitation, such surveys, structural inspections, soil and ground water tests, Level I and Level II environmental audits, communications with governmental officials, utility studies, engineering studies and investigation of such other facts, circumstances or matters which Buyer deems necessary to its proposed purchase and development of the Property, including market feasibility studies and the obtaining of financing. Petrus agrees to permit and cooperate with Buyer to make such inspections and investigations. Petrus agrees that Buyer may discuss the Property with and make inquiries of any public officials or authorities.

(c) **Entry Upon Property.** Petrus and ACC hereby grants to Buyer, and to such surveyors, engineers, environmental testing personnel and other professionals and agents retained by Buyer, a license to reasonably enter upon the Property for the purpose of conducting the aforementioned due diligence activities. Petrus represents and warrants that Petrus and ACC have the right and authority to grant to Buyer the license conferred by this Section 4(c). Buyer agrees to comply with all laws, rules and

regulations of any governmental authority with respect to conducting the aforementioned activities, and Buyer shall indemnify and hold Petrus and ACC free and harmless from any loss, damage, cost, legal fee, expense, liability or claim arising out of or in connection with Buyer's exercise of the rights conferred by this Section 3(c) (unless same results from a misrepresentation made by Petrus or ACC to Buyer).

(d) **Buyer's Right To Terminate.** If for any reason whatsoever, in Buyer's sole and absolute discretion, Buyer determines during the Due Diligence Period that Buyer does not wish to purchase the Property and close the transaction contemplated hereby, then, notwithstanding any contrary provision of this Agreement, Buyer shall be entitled to terminate this Agreement. In the event Buyer shall elect to terminate this Agreement as aforesaid: (i) Buyer shall be entitled to immediately reclaim the Initial Deposit, (ii) Buyer shall promptly deliver to Petrus copies of all inspection reports and studies related to the Property prepared for Buyer during the Due Diligence Period or otherwise in Buyer's possession or control at the time of such termination, and (iii) the Parties shall be relieved of all further rights and obligations hereunder. The Parties agree that in the event Buyer shall fail to post the Additional Deposit with the Escrow Agent prior to expiration of the Due Diligence Period, it shall be conclusively deemed that Buyer has elected to terminate this Agreement pursuant to this Section 4(d).

(e) **Buyer's Acceptance Of The Property.** If at any time Buyer shall post the Additional Deposit with the Escrow Agent, Buyer shall thereby waive as a condition to Closing all matters that were subject to inspection during the Due Diligence Period, except for (i) matters arising from inspection of changes, additions or corrections to Petrus' Reports or to a title commitment prepared by the Title Insurance Company ("Title Evidence"); or (ii) matters covered by Petrus's Warranties (set forth in Section 7 hereof); (iii) closure or other sanction of Utility by the Florida Public Service Commission; or (iv) by other applicable terms of this Agreement, including, without limitation, those contained in Section 4(g) hereof.

(f) **Environmental Remediation.** Buyer agrees that from and after the Effective Date, and continuing after the Closing, neither Seller nor Petrus shall have any obligations or liabilities related to removal of Hazardous Materials (defined in Section 7 hereof) from the Property or other environmental remediation of the Property and, in the event Buyer shall incur any costs related thereto, Buyer shall not seek reimbursement or contribution from Seller or Petrus; provided however, notwithstanding any contrary provision of this Agreement, Seller shall be liable for (i) the cost of cleaning and removing any Hazardous Materials which are

released onto the Property (without fault of Buyer) after the Effective Date and prior to Closing, and (ii) the cost of any environmental remediation that is required to be performed with respect to the Property as a result of circumstances known by Seller to exist on or beneath the Property and which Seller fails to disclose to Buyer in violation of Petrus's Warranties.

(g) **Adverse Change.** Seller agrees that in addition to all other provisions of this Agreement, and notwithstanding any contrary provision, Buyer's waiver contained in Section 4(e) hereof and Buyer's obligation to close hereunder is each expressly subject to and contingent upon there not occurring, subsequent to the end of the Due Diligence Period, any material, adverse and not reasonably foreseeable change in (i) the availability of access to and from the Property from nearby public roads and streets, (ii) the availability of sewer, water, electricity or any other utilities to the Property, (iii) the environmental condition of the Property, or (iv) any fact or matter which is the subject of a representation or warranty made by Petrus in Section 7 hereof. In the event any material, adverse and not reasonably foreseeable change in any of the foregoing matters shall occur subsequent to the end of the Due Diligence Period and prior to Closing, then, in such event, and notwithstanding any contrary provision of this Agreement, Buyer shall have the right to request termination of this Agreement by written notice to Seller detailing the nature of the adverse change, delivered to Petrus within five (5) days of the date Buyer first becomes aware of such adverse change. Seller shall have the opportunity to cure such adverse change for a period of thirty (30) days following receipt of such notice. The closing shall be extended for a period of up to thirty (30) days for this purpose. In the event Seller cannot cure such adverse change within thirty (30) days, Buyer shall have the right to terminate this Agreement. In the event Buyer shall terminate this Agreement pursuant to this Section 4(g), then: (A) Buyer shall be entitled to immediately reclaim all Deposits which it has placed with the Escrow Agent, together with all accrued interest thereon, (B) Buyer shall promptly deliver to Seller copies of all inspection reports and studies related to the Property which have been prepared for Buyer or which are otherwise in Buyer's possession or control at the time of such termination, and (C) the Parties shall be relieved of all further rights and obligations hereunder, except with respect to indemnities by the parties which survive the termination of this Agreement.

(h) **Maintenance of the Property Pending Closing.** Petrus and ACC agree, after the expiration of the Due Diligence Period and providing to Escrow Agent of the Additional Deposit, that unless it shall obtain the advance consent of Buyer, not to be unreasonably withheld, Petrus and ACC shall through the closing or earlier termination of this Agreement:

(i) maintain the Property in the same condition as it exists at the time of Buyer's due diligence investigations, normal wear and tear excepted;

(ii) maintain existing insurance policies covering the Property continually in force;

(iii) comply with all applicable federal, state and local laws, ordinances, rules and regulations pertaining to the Property;

(iv) not suffer or permit any sale, transfer or encumbrance of, or lien upon, the Property or any portion thereof, or any interest therein, except to honor those contracts in effect as of the Effective Date and contracts for purchase and sale as referenced in Paragraph 4(h)(vi);

(v) to the extent same might impose additional costs, restrictions or liabilities upon Buyer, not alter, amend, modify or violate any material term, covenant or condition contained in any existing leases or occupancy agreements, in any declaration of restrictive covenants or development agreement, or in any existing management, maintenance, service or other such agreements, affecting the Property, nor enter into any new leases or occupancy agreements or any new restrictive covenant, management, maintenance, service or other such agreements with respect to the Property; and

(vi) Petrus may continue to conduct business and make sales of lots and individual homes without approval of Buyer, providing any sale is for fair market value to a disinterested third party. Sales permitted hereunder are limited to Sea Hawk south of Clubhouse, River Oaks and Osprey Villas East. No other Property may be sold without the consent of the Buyer. Petrus will not take any reservation or contract on the unplatted four lots in Sea Hawk, north of the clubhouse and will cancel the one existing reservation. However, no Sea Hawk lot south of Clubhouse shall be sold for less than Two Hundred Thousand & 00/100 Dollars (\$200,000.00), and no River Oaks lot for less than Eighty-Nine Thousand & 00/100 Dollars (\$89,000.00). Buyer shall have the right to approve or disapprove any proposed contract for Osprey Villas East, not to be unreasonably withheld or delayed. ✓

⑤ SURVEY AND TITLE MATTERS.

(a) **Fee Simple Title.** At Closing, Petrus shall confirm in writing that

it has marketable and indefeasible fee simple title to the Property, free and clear of all claims, liens, encumbrances and encroachments, mortgages and defects of every kind and character in accordance with customary title standards.

(b) **Title Evidence.** Buyer will be furnished a pro forma commitment for a policy of owner's title insurance (the "Title Evidence") covering the Property reflecting title in Petrus, underwritten by Stewart Title Guaranty Company (the "Title Company"). Robert L. Beals, P.A. shall act as "Closing Agent" and furnish such commitment. The Closing Agent shall deliver to Buyer, upon Closing, at Buyer's request, a title insurance commitment, updating the effective date to the closing date and deleting all Schedule B-I requirements, using the minimum promulgated risk premium, and any available reissue credit, insuring title to the Property in Buyer. The policy will be delivered after title is updated by the Title Company. The cost of title search, examination and promulgated rate premium shall be shared equally, fifty percent (50%) by the Parties.

(c) **Survey.** Buyer may obtain, at its sole cost and expense, a new ALTA survey, or updated existing survey, with respect to the Property, conducted by a licensed surveyor (the "Survey"). The Survey shall (i) contain an accurate legal description of the Lands, (ii) show the exact location, dimension and description, including applicable recording information, of the boundaries of all areas of the Lands and all utilities, easements, encroachments, applicable building set-back lines and other physical matters affecting the Property, (iii) state whether the Property or any portion of the Property is located within a 100-year flood plain, and (iv) include a certification, in form and substance satisfactory to Buyer and Title Company, certified to Buyer, Buyer's lenders, the Title Company and Closing Agent. Existing surveys, if any, will be recertified to Buyer at Buyer's expense. Seller will provide copies of all existing surveys and recorded or proposed plats.

(d) **Buyer's Title And Survey Objections.** Buyer shall have until ten (10) days after its receipt of the last of the Title Evidence and the Survey to cause the Title Evidence and Survey to be examined and to provide Seller with written notice of any matters disclosed by same which do not conform with the provisions of Section 5 or that are not acceptable to Buyer ("Buyer's Title and Survey Objections"). Except for any title matters arising of record after the date of the Title Evidence and any survey matters not in evidence as of the date of the Survey, any title or survey matters pertaining to the Property and not included in Buyer's Title and Survey Objections shall be deemed to be permitted exceptions to appear on Schedule B-II.

5 (e) **To Cure Or Remove Objections.** After receiving Buyer's Title and Survey Objections, Seller shall promptly commence diligent best efforts to cure or remove all matters reasonably objected to by Buyer; provided however, Seller shall not be obligated to remove or release any lien or encumbrance securing the payment of money until Closing and Seller may use all or any portion of the Purchase Price to do so with the instrument releasing or discharging such lien or encumbrance being recorded after the Closing in accordance with customary conveyancing practices. Within thirty (30) days of receiving notice of Buyer's Title and Survey Objections, Seller shall provide Buyer with written notice setting forth (i) those title and survey exceptions which Seller has removed or will remove prior to Closing and, if applicable, any liens or encumbrances securing the payment of money which Seller intends to remove as of the Closing, and (ii) those title and survey exceptions, if any, which Seller has not and will not be able to cure or remove prior to Closing notwithstanding Seller's diligent best efforts to cure or remove such exceptions (herein, "Unremovable Title Exceptions"). In addition, and without limiting the generality of the foregoing, in the event Buyer's inspection activities shall reveal any parties to be in occupancy of any portion of the Property, other than parties, if any, whose occupancy is permitted as a Permitted Exception, Seller agrees to exercise diligent best efforts to obtain from each such tenant or occupant, and deliver to Buyer within the aforesaid thirty (30) day period, an estoppel certificate (an "Occupant Estoppel") certifying to Buyer that such tenant or occupant is in possession of the Property pursuant to a written lease or occupancy agreement that allows for its tenancy or occupancy to be terminated by Petrus, without liability to Buyer, on or before the earliest anticipated date for Closing the transaction contemplated by this Agreement. Seller agrees that, if necessary, the scheduled date for expiration of the Due Diligence Period and Buyer posting the Additional Deposit shall automatically be extended until such date as is five (5) business days after the date on which Buyer receives Seller's notice of Unremovable Title Exceptions and any Occupant Estoppels required to be delivered to Buyer pursuant to the terms hereof.

(f) **Buyer's Acceptance Of Title.** After receiving Seller's written notice of Unremovable Title Exceptions, and all applicable Occupant Estoppels (or Seller's notice if it (they) are not forthcoming), Buyer may, at its sole and unfettered option, either:

(i) accept the condition of title to the Property notwithstanding the Unremovable Title Exceptions (and Buyer shall obtain a credit against the Purchase Price at Closing equal to any outstanding judgment, lien or other encumbrance which can be removed by payment of a liquidated sum of money and is so

removed or bonded off by Buyer prior to or in connection with the Closing), or

(ii) terminate this Agreement by written notice to Seller, whereupon, notwithstanding any contrary provisions hereof, this Agreement shall be null and void, the Deposits shall be returned to Buyer together with all interest accrued thereon, and the Parties shall be relieved of all further rights and obligations hereunder.

Buyer shall make the aforementioned election prior to expiration of the Due Diligence Period (unless extended as otherwise provided herein). If Buyer shall fail to make an election within such time period and Buyer shall not otherwise terminate this Agreement pursuant to its rights hereunder, Buyer shall be deemed to have accepted the condition of title to the Property pursuant to Section 5(f)(i) .

CLOSING.

(a) **Closing Defined.** The term "Closing" as used herein shall mean the consummation of the sale and conveyance of the Property as described in Section 2(a) by Seller to Buyer as provided herein and Seller's receipt of the Purchase Price, subject to appropriate closing credits, adjustments and prorations, in immediately available funds.

(b) **Closing Date.** Unless otherwise rescheduled as mutually agreed upon by the Parties in writing, the Closing shall take place within thirty (30) days of the expiration of the Due Diligence Period (the "**Closing Date**"), (to wit: until May 21, 2001) unless extended by other provisions of this Agreement. Closing shall be at the Aquarina Administrative Office.

(c) **Documents To Be Delivered By Petrus.** At the Closing, in addition to any other documents specifically required to be delivered or acts specifically required to be done pursuant to this Agreement, Petrus shall deliver or cause to be delivered to Buyer the following documents in duly executed form:

(i) Warranty Deed and Absolute Bill of Sale as set forth in Exhibit "B-1" and "B-2";

(ii) a "marked up" Title Commitment deleting all requirements under Schedule B-I and, if appropriate, standard exceptions on Schedule B-II, for the Property and with regard to the ACC interest under the Lease dated the Closing Date in such

amounts and containing the terms as are required pursuant to Section 5 hereof;

(iii) such customary affidavits and indemnities as the Title Company may reasonably require in order to issue owner's and lender's title insurance policies as set forth in the immediately preceding clause (ii), without exception for mechanics' or materialmen's liens and limiting the exception for parties in possession to such tenants or other occupants as may be permitted hereunder, including, without limitation, a mechanics' lien and parties in possession affidavit and such other normal and customary affidavits as the Title Company requires for transactions of this nature;

(iv) a discharge or satisfaction from the holder(s) of any mortgage, deed of trust or other security agreement existing with respect to the Property; satisfy all accounts payable and invoices due at closing or received after closing but attributable to goods or services provided to Seller prior to closing;

(v) any and all documents required by the Internal Revenue Service, or required otherwise by the United States or by the state in which the Property is located, with real property transfers, including, without limitation, a Notarized Certificate of Non-Foreign Status as required by Section 1445(b)(2) of the Internal Revenue Code;

(vi) a certificate of Seller that all representations and warranties made in this Agreement by Seller remain true and correct with the same force and effect as if made on, and as of, the Closing Date as set forth on Exhibit "C";

(vii) fully executed original copies of any and all leases, if any, affecting the Property and in effect as of the Closing Date, including any amendments thereto (the "Leases");

(viii) an assignment and assumption by Buyer of any such Leases and debts to be assumed by Buyer, as set forth on Exhibit "D"; Buyer acknowledges its obligation to assume the debts or, at its option, Seller will satisfy the debts and Seller will be credited with an increase to the sales price of all such amounts.

In the event that Seller cannot, after using its best efforts, deliver to Buyer one or more of the foregoing instruments at the Closing, then, at Buyer's option, the Closing Date shall be extended for such period, not to

exceed thirty (30) days, as shall be required for Seller to deliver such instrument(s). If at the expiration of the extended time Seller shall, after using its best efforts, be unable to deliver one or more of such instruments, then, at Buyer's option, Buyer shall either (i) waive Seller's failure to so deliver such instrument(s) and close as otherwise contemplated hereunder, or (ii) cancel this Agreement, in which event all deposits paid hereunder by Buyer and the interest earned thereon shall forthwith be refunded to Buyer, and all obligations of the Parties hereunder shall terminate without recourse to the Parties and without any obligation to pay brokerage commissions.

(d) **Documents To Be Delivered By Buyer.** At the Closing, in addition to any other documents specifically required to be delivered or acts specifically required to be done pursuant to this Agreement, Buyer shall deliver or cause to be delivered to Seller:

(i) proof of federal bank wire transfer duly received by Seller, in the amount of the Purchase Price, subject to adjustments, credits and prorations as set forth herein;

(ii) a duly executed assumption agreement with regard to any Leases; and

(iii) such other affidavits, documents and instruments as are customary for transactions of a similar nature in the state and county in which the Property is located.

Notwithstanding any contrary provision of this Agreement, in the event there remains as of the Closing Date any outstanding judgment, lien or other encumbrance upon Petrus's title which can be removed solely upon payment of a liquidated sum of money, a portion of the Purchase Price sufficient to remove or "bond off" any such judgment, lien or encumbrance shall be used or escrowed for such purpose.

(e) **Closing Expenses.** At the Closing, Seller shall pay the costs of recording any corrective instruments. The parties will share, one-half (½) to each, the cost of all premiums and fees for the Owner's Title Policy. Each Party shall pay any fees due to its own attorneys or other consultants. Except as otherwise provided hereunder, any escrow fees shall be split equally by the Parties. Any expense of third party financing shall be paid by Buyer, including Lender Title Insurance issued simultaneously and any lender required endorsements. The cost of documentary stamp tax on the deed shall be paid one-half by the Seller and one-half by the Buyer.

(f) **Proration Of Real Estate Taxes.** Real estate taxes for the tax fiscal year in which the Closing Date occurs shall be apportioned between

the Parties as of the Closing Date, and the net amount thereof shall be added to or deducted from, as the case may be, the Purchase Price payable hereunder. If the amount of said taxes is not known at the time of Closing, such taxes shall be apportioned on the basis of the taxes assessed for the applicable preceding period and thereafter recalculated and reapportioned as soon as verified current information can be obtained. Any amount due from one Party to the other by reason of such recalculation shall be paid in cash within ten (10) days of such recalculation.

(g) **Special Assessment Liens.** If, at the time of Closing, there shall exist any certified, confirmed and ratified special assessment liens from any public taxing authority or any pending liens for which the improvements have been substantially completed, (i) to the extent such improvements were completed prior to the Closing Date, the same shall be paid by Seller (or credited to Buyer against the Purchase Price at Closing, and (ii) to the extent such improvements were completed after the Closing Date, the same shall be paid by Buyer. Seller represents and warrants that it has no knowledge of any contemplated or proposed assessments of any kind, except a special assessment by the Master Association for a clubhouse, which Seller and Buyer will satisfy at closing, one-half to be paid by each, but Buyer's obligation is limited to Twenty Thousand & 00/100 Dollars (\$20,000.00). Construction plans, specifications, and construction expenses are subject to Buyer's approval. ✓

(h) **Proration Of Other Charges.** Water, sewer or similar charges pertaining to the Property, and any rental or other income arising therefrom, shall be equitably prorated between Seller and Buyer in conformity with standard conveyancing practices.

(i) **Closing Statement.** At the Closing, Seller and Buyer shall execute a settlement statement (the "Closing Statement") in form reasonably acceptable to both Parties, describing in detail the consideration, prorations, adjustments, costs and expenses associated with the transaction.

SELLER'S WARRANTIES.

(a) **Warranties.** Seller acknowledges and understands that Buyer will expend substantial moneys and effort to conduct its due diligence investigations, prepare its development plans and pursue the Approvals. As a material inducement to Buyer entering into this Agreement and pursuing and acquiring the Property, Petrus, ACC and G.P. hereby represent and warrant to Buyer that, except as set forth on attached Schedule 7(a) ("the Disclosures") or otherwise expressly set forth herein, formed without independent investigation, the following statements are

true and correct to the best of Seller's knowledge, which is solely attributable to James Bates, Vice President of Operations, as of the Effective Date ("Petrus's Warranties").

(i) Except as set forth in the Disclosures, or otherwise disclosed on attached Schedule 7(a) or to be discharged at closing, Seller has marketable and indefeasible fee simple title to Property. No person or entity except Buyer has any right or option to acquire all or any portion of the Seller's interest except contracts for purchase and sale set forth in Schedule 7(a). There are no parties in possession of any portion of the Property as adverse possessors, lessees or trespassers except tenants who are in possession under written leases. No prescriptive or other implied or expressed rights-of-way or easements in the Property exist in the public, in any adjacent lands or in any other person, firm or corporation.

(ii) Except as set forth in the Disclosures, G.P.'s, ACC's and Petrus's execution of and performance under this Agreement is pursuant to authority validly and duly conferred upon its respective signatories hereto. Petrus, ACC and G.P. each have the right and authority to perform all of its obligations hereunder without obtaining any consents from any partners, shareholders, officers, directors, investors, governmental authorities or others, except such as shall have been duly obtained prior to execution of this Agreement.

(iii) Except as set forth in the Disclosures, this Agreement and the transaction herein contemplated will not conflict with, result in a breach or violation of, nor constitute a default under any agreement or instrument to which Petrus, or G.P. or ACC is a party or by which Petrus or G.P. or ACC or the Property is bound, and will not constitute a violation of any restrictive covenants affecting the Property nor any applicable law, rule, regulation, judgment, order or decree of any governmental entity, court or authority to which Petrus or G.P. or ACC or the Property is subject. Between the expiration of the Due Diligence period and the Closing, no part of the Property will be alienated, encumbered or transferred in favor of any party whatsoever, except residential lot sales in the ordinary course of business to third party purchasers for fair market value.

(iv) Except as set forth in the Disclosures, no suit, action, order, decree, claim, writ, injunction, attachment, execution proceeding, insolvency proceeding, proceeding in the nature of a condemnation or governmental taking, re-zoning initiative or other

legal or administrative proceeding is currently pending, threatened or contemplated against Petrus or any portion of the Property, which, if adversely determined, might (A) adversely affect Seller's or ACC's right to convey Seller's or ACC's interest to Buyer as contemplated by this Agreement, (B) result in the termination or impairment of any existing access to the Property or of any existing easement benefiting the Property, (C) materially and adversely affect the operation or condition (financial or otherwise) of all or any part of the Property, or (D) adversely affect Buyer's ability to develop and use the Property for the commercial and residential purposes contemplated hereby.

(v) Except as set forth in the Disclosures, Petrus and ACC have not filed and have no present intention of filing any voluntary petition in bankruptcy or any petition or answer seeking any reorganization, liquidation, wage earner's plan, assignment for the benefit of creditors, receivership, dissolution or similar relief under the present or future Bankruptcy Code or any other present or future applicable federal or state law.

(vi) Except as set forth in these Disclosures, all utilities required for the operation of the Property, including, without limitation, water, sewer and electricity, are supplied directly to the Property by facilities of public utilities entering the Property either through adjoining public streets or, if they pass through adjoining lands, in accordance with valid public or private easements which will be conveyed to Buyer as part of its purchase of the Property hereunder, and all permits and approvals for use of such utilities have been obtained from all governmental agencies or authorities or other entities regulating the use thereof and all installation and connection charges for such utilities have been paid in full. All excess surface water runoff or drainage from the Property flows or runs off the Property through valid public or private easements and rights-of-way which will be conveyed to Buyer as part of its purchase of the Property hereunder.

(vii) Various parcels within the Property are separately and distinctly assessed as a separate tax lot. Except for the amounts disclosed by the tax bills, no taxes have been assessed on the Property or any portion thereof in respect of the current fiscal tax year or any prior tax year and no special assessments of any kind (special, bond or otherwise) have been levied against the Property or any portion thereof which are outstanding or unpaid, and no such special assessments are currently contemplated to be levied.

(viii) Upon the Effective Date, Petrus shall make available at Petrus' offices at Aquarina all assessment reports, correspondence and other materials presently in Petrus's possession which pertain to the environmental condition of the Property, including, without limitation, all correspondence between Petrus and federal, state or local environmental regulatory agencies (said reports, materials and correspondence herein referenced as "Petrus's Environmental Reports"). Except as disclosed in Petrus's Environmental Reports: (A) the Property is in compliance in all material respects with all applicable governmental laws, rules, orders and regulations pertaining to environmental conditions on, under or about the Property, including without limitation, soil and ground water conditions, (B) the Property is not now and the Property has not in the past been used for the generation, manufacture, storage, transportation or disposal of, on, or under the Property of any Hazardous Materials, except as may be allowed by applicable governmental laws, rules and regulations governing the use of such Hazardous Materials, (C) there are not now and there never have been any underground storage tanks on the Property, (D) there is not now and there has not in the past been a release or threatened release of any Hazardous Materials from, on, or beneath the Property, (E) Petrus has not received any notice from any federal, state, county or municipal authority as to the existence of Hazardous Materials or other environmental problems at, or relating to, the Property, and (F) the Property has not been used for dumping of dredged or fill material in violation of the Clean Water Act or any similar federal, state or local law, statute, ordinance or regulation regarding wetlands preservation or preservation of water quality. Wherever used in this Agreement, the term "Hazardous Materials" shall mean and include all materials and substances regulated by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.* ("CERCLA"), as amended by the Superfund Amendment and Reauthorization Act of 1986, 42 U.S.C. § 9016 *et. seq.* ("SARA"); the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 *et seq.* ("RCRA"); the Hazardous Material Transportation Act, 42 U.S.C. § 1801 *et seq.* ("HMTA"); the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* ("WPCA"); the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.* ("TSCA"); the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.* ("OSHA"); the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 *et seq.* ("RNA"); the Clean Air Act, 42 U.S.C. § 7401 *et seq.* ("CAA"); the Clean Water Act; the Solid Waste

Disposal Act; or in regulations promulgated pursuant to said federal laws, and shall mean and include in addition all other substances currently classified or considered to be hazardous, toxic or regulated by federal, state or local laws, rules or regulations, including without limitation, asbestos and all petroleum products and their derivatives.

(ix) Except as set forth in Petrus's Disclosures, Petrus has not failed to provide Buyer access to any material contract or agreement relating to the Property or any amendments thereto which will be binding on Buyer from and after the Closing Date.

(x) Neither Petrus nor ACC has received any notices of (i) violations of zoning, subdivision or building codes in regard to the Property or any portion thereof or (ii) eminent domain proceedings (or offers in lieu of condemnation) pending or threatened from any state, county or local authorities in regard to the Property or any part thereof.

(xi) No share of stock and no part of G.P.'s interest in the Property has been previously assigned, pledged, liened or encumbered, and is not subject to any charging order, or other judgment or court orders, affecting its future disposition, nor is any disposition of G.P.'s share in Seller subject to any contract, option or decree.

(b) **Warranties Continuing.** The Warranties set forth above shall continue through and shall survive the Closing of this Agreement for a period of six (6) months after the Effective Date. Without limiting the generality of the foregoing, in the event Petrus shall learn prior to the Closing Date of any matter, event or circumstance which makes any representation to Buyer under this Agreement materially untrue or misleading, Petrus shall promptly furnish Buyer with written notice of same; provided however, the obligation of Petrus to give such notice to Buyer and any such subsequent notice in fact given by Petrus to Buyer shall in no way relieve G.P. of any liability it may have for a prior breach of any of Petrus's Warranties.

(c) **Indemnity.** Petrus and G.P. shall indemnify and hold Buyer free and harmless from any loss, damage, cost, legal fees, expense, liability or claim hereinafter arising, directly or indirectly, whether foreseeable or unforeseeable, up to a maximum sum of One Hundred Fifty Thousand & 00/100 Dollars (\$150,000.00) in the aggregate, out of Petrus's failure to disclose to Buyer any material fact, condition or circumstance of which Petrus was aware, or of which Petrus shall hereafter become aware prior

to Closing, in breach of the Warranties set forth above.

(d) **Additional Representations and Warranties of Seller.**

(i) That none of the liabilities set forth on Exhibit E are delinquent and no suit is pending or threatened with regard to performance of these obligations;

(ii) That all tax returns (federal, state and local) have been duly and timely filed (or extensions of the filing deadline appropriately obtained), and that all taxes due have been paid in full (except pursuant to extensions obtained or valid protests appropriately filed that suspends the requirement for timely payment), such that there are no inchoate tax liens or rights to lien; and

(iii) That there are no amendments to Petrus's Limited Partnership Agreement and certificate nor to the G.P.'s corporate articles of incorporation and by laws other than those previously provided to Buyer.

(iv) Seller will use its best efforts to assist Buyer in transition for a period of six (6) months after closing. Buyer and James Bates will execute a consulting agreement for a minimum of six (6) months following closing, substantially in form and content of Exhibit D attached hereto.

(v) Seller will not market the Property, nor negotiate for or accept any offers for sale during the Due Diligence Period.

RISK OF LOSS OR CONDEMNATION.

(a) **Fire Or Casualty.** Prior to Closing, Petrus and ACC shall solely bear the risk of loss, damage or destruction to the Property by fire, windstorm, hurricane surge or other casualty. In the event the Property is damaged or destroyed by fire, windstorm, hurricane surge or other casualty Buyer shall have the option to (i) terminate this Agreement and reclaim the Deposits and interest accrued thereon, or (ii) proceed with this transaction and accept the Property in "as is" condition and receive the net insurance proceeds realized or to be realized by Petrus and/or ACC as a result of the casualty. Petrus shall not settle any insurance claims prior to closing relating to such casualty without Buyer's prior written consent which shall not be unreasonably withheld..

(b) **Eminent Domain/Condemnation.** In the event the Property is

subject to a taking prior to Closing by any governmental or quasi-governmental authority utilizing its powers of eminent domain, this Agreement shall terminate and all Deposits hereunder shall be returned to Buyer, together with accrued interest thereon. In the event a portion less than the whole of the Property is subject to such taking, Buyer shall have the option to (i) terminate this Agreement and reclaim the Deposits and interest accrued thereon, or (ii) proceed with this transaction and accept the Property in "as is" condition and receive the net proceeds of any condemnation award realized or to be realized by Petrus as a result of said taking. Petrus shall not settle any proceedings prior to Closing relating to such partial taking without Buyer's prior written consent, which shall not be unreasonably withheld.

DEFAULTS.

(a) **Default By Buyer.** If Buyer shall fail or refuse to perform any of Buyer's obligations under this Agreement and such failure or refusal continues for five (5) days following written notice thereof given to Buyer by Seller, except due to Seller's prior breach, Seller may, as its sole remedy at law and in equity, terminate this Agreement. In the event of a termination pursuant to this Section 9(a), Seller shall be entitled to retain, as agreed upon full and complete liquidated damages, any and all deposits (the Initial Deposit and the Additional Deposit) which Buyer has posted with the Escrow Agent, together with accrued interest thereon, and the Parties shall be relieved of all further rights and obligations hereunder or any obligation to pay brokerage commissions (Seller acknowledging that the damage to Seller from Buyer's failure or breach under this Agreement would be difficult to determine and the retention of such sums would be a reasonable estimate of Seller's damage).

(b) **Default By Seller.** If Seller shall fail or refuse to perform any of Seller's obligations under this Agreement and such failure or refusal continues for five (5) days following written notice thereof given to Seller by Buyer, except due to Buyer's prior breach, Buyer may pursue any and all remedies available to it at law but not for specific performance until the Additional Deposit has been delivered to Escrow Agent and, during any such period when Seller is in default, all Buyer's obligations under this Agreement shall be suspended. Prior to the expiration of the Due Diligence Period, Buyer shall be limited, in the event of Seller's default, to actual damages consisting of documented out of pocket expenses, not to exceed Two Hundred Thousand & 00/100 Dollars (\$200,000.00). ✓

Alternatively, and without regard to whether Buyer has previously sought other legal or equitable relief, at Buyer's sole option, Buyer may terminate this Agreement prior to April 21, 2001, by providing Seller with written notice of said termination. In the event this Agreement is

terminated pursuant to this Section 9(b), Buyer shall be entitled to reclaim all deposits which Buyer has posted with the Escrow Agent, together with accrued interest thereon.

NOTICES. All notices, consents, approvals or communications given pursuant to the provisions of this Agreement shall be in writing and shall be delivered pursuant to one of the following methods of delivery: (i) a nationally recognized overnight courier which obtains a signed receipt upon delivery (e.g., U.S. Post Office Express Mail, Federal Express, Airborne Express, etc.), (ii) hand delivery, upon a signed receipt, or (iii) facsimile transmission, provided that the addressee acknowledges in writing its receipt of the transmission. Notice shall be addressed to the party or person to whom the notice is to be given, at the following addresses:

To Seller or Petrus: Robert E. Mossburg
Petrus Group, L.P.
8100 E. 22nd Street, Building 500
Wichita, Kansas 67226
Telephone No.: (316) 681-5100
Fax No.: (316) 681-0994

With a copy to: James
H. Bates
Petrus Group, L.P.
235 Hammock Shore Drive
Melbourne Beach, FL 32931
Telephone No.: (321) 723-2522
Fax No.: (321) 725-0804

With a copy to: Robert L. Beals, Esq.
Robert L. Beals, P.A.
201 North Riverside Drive, Suite B
Indianapolis, FL 32903
Telephone No.: (321) 733-7999
Fax No.: (321) 733-4403

To Buyer: S. Martin Sadkin, Managing Member
Indian River No. 1 Developers, LLC
7860 Peters Road, Suite F-111
Plantation, FL 33317
Telephone No.: (954) 370-7788

Fax No.: (954) 370-9771

With a copy to:

Robert W. Frazier, Jr., Esq.
Frazier, Hotte & Associates, P.A.
2400 East Commercial Boulevard, Suite 826
Fort Lauderdale, FL 33308
Telephone No.: (954) 928-1800

Fax.
No.: (954)
928-1865

Notices served by overnight courier, facsimile or hand delivery shall be deemed delivered on the date a receipt or confirmation of receipt is signed by the addressee or its authorized agent or employee, provided delivery is prior to 5:30 p.m. local time of the recipient.

BROKERS. Seller and Buyer represent and warrant each to the other that it has not consulted with, dealt with or negotiated in any manner with any undisclosed real estate broker, finder, salesperson or agent in connection with the purchase or sale of the Property, or in connection with this Agreement except that Seller has received a request for a commission from D.J. Snapp Realty. Seller and Buyer shall each indemnify the other and hold the other free and harmless from any loss, damage, cost, legal fees, expense, liability or claim which the other may suffer in connection with any other real estate brokers or agents claiming by, through or under Seller or Buyer, respectively, seeking any commission, fee or payment in connection with the transaction contemplated by this Agreement. Should the parties agree that any commission is due any broker, the cost shall be borne equally, one-half by each, based on a purchase price of Eleven Million Three Hundred Fifty Thousand & 00/100 Dollars (\$11,350,000.00), up to a maximum of four percent (4%) of said purchase price. ✓

GENERAL PROVISIONS.

- (a) **Time Is Of The Essence.** Time is of the essence of each and every obligation to be performed by the Parties under the terms of this Agreement. If any date herein set forth for the performance of any obligation by Seller or Buyer or for the delivery of any instrument or notice should fall on a Saturday, Sunday or legal holiday, the compliance with such obligation or delivery shall be deemed acceptable on the next business day following such Saturday, Sunday or legal holiday. As used herein, the term "legal holiday" means any state or federal holiday for

which financial institutions or post offices are generally closed in the state in which the Property is located.

- (b) **Estoppel To Prevent Accidental Default.** If, following the occurrence of any event contemplated hereunder which has the effect of commencing a time period within which some other or further event must be completed or performed, either Party is uncertain as to the exact commencement and/or expiration date of said time period, then, the uncertain Party may, by written notice to the other Party attempt to confirm the exact dates of said time period. If the Party receiving said notice shall fail to contest the confirmed dates by sending written notice to the other Party within five (5) business days after receipt of said confirmation notice, both Parties shall thereafter be deemed to have waived any right to contest the dates set forth in the confirmation notice; provided however, this provision shall not apply if the dates sought to be confirmed are unreasonable or it otherwise appears that either Party has acted in bad faith in either seeking to confirm or in failing to contest said dates.
- (c) **Force Majeure.** If either Party is delayed in the performance of any obligation hereunder by cause or causes beyond the control of the Party, including, without limitation, labor disputes, civil riot or commotion, war, war-like operations, sabotage, or acts of God (financial ability excluded), then, the time for said performance shall be extended for a period equal to the period of uncontrollable delay.
- (d) **Further Assurances.** Seller, ACC and Buyer each hereby agrees that it shall at all times act in good faith and reasonably cooperate as necessary with the other Party in order to satisfy the conditions contained herein and complete the Closing, including, without limitation, executing such consents, applications, affidavits, resolutions, certificates and other instruments and documents as may reasonably be required by governmental authorities, title companies, mortgagees or other third parties whose cooperation is required in order to satisfy such conditions and Close the transaction.
- (e) **Entire Agreement.** This Agreement represents the entire understanding between the Parties with respect to the transaction contemplated herein and supersedes, incorporates and merges all prior negotiations, representations and agreements, whether oral or written. All understandings and agreements heretofore had between the Parties are merged into this Agreement, which alone fully and completely expresses their agreement.
- (f) **Waivers, etc.** Any waiver of any term or condition of this Agreement or of the breach of any covenant, representation or warranty contained

herein, in any one instance, shall not operate as or be deemed to be or construed as a further or continuing waiver of any other breach of such term, condition, covenant, representation or warranty or any other term, condition, covenant, representation or warranty, nor shall any failure at any time or times to enforce or require performance of any provision hereof operate as a waiver of or affect in any manner such Party's right at a later time to enforce or require performance of such provision or any other provision hereof. This Agreement may not be amended, nor shall any waiver, change, modification, consent or discharge be effected, except by an instrument in writing executed by or on behalf of the Party against whom enforcement of any amendment, waiver, change, modification, consent or discharge is sought.

- (g) **Successors And Assigns.** This Agreement and all of its terms, covenants, renditions and provisions shall inure to and be for the benefit of, and shall be binding upon and enforceable by, each of the Parties and its respective heirs, successors, transferees and assigns. No third party shall have any rights, privileges, or other beneficial interest herein or hereunder. This Agreement is not assignable by Buyer. Seller agrees that Buyer may assign this Agreement and its rights hereunder to any third party for purposes of effectuating a tax-free exchange. Buyer may assign this Agreement to entities controlled by Buyer.
- (h) **Severability.** If any provision of this Agreement shall be held or deemed to be, or shall in fact be, invalid, inoperative or unenforceable as applied to any particular case in any jurisdiction or jurisdictions, or in all jurisdictions or in all cases, because of the conflict of any provision with any constitution or statute or rule of public policy or for any other reason, such circumstance shall not have the effect of rendering the provision or provisions in question invalid, inoperative or unenforceable in any other jurisdiction or in any other case or circumstance or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to the extent that such other provisions are not themselves actually in conflict with such constitution, statute or rule of public policy, but this Agreement shall be reformed and construed in any such jurisdiction or case as if such invalid, inoperative or unenforceable provision had never been contained herein and such provision reformed so that it would be valid, operative and enforceable to the maximum extent permitted in such jurisdiction or in such case.
- (i) **Interpretation.** This Agreement shall be interpreted without regard to any presumption or other rule requiring interpretation against the Party causing this Agreement or any part thereof to be drafted.

- (j) **Remedies.** Except as otherwise specified, no remedy conferred upon either Party by this Agreement (including, without limitation, rights of indemnity) is intended to be exclusive of any other remedy herein or otherwise provided or permitted by law or in equity, but each such remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

- (k) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and in pleading or proving any provision of this Agreement it shall not be necessary to produce more than one such counterpart.

- (l) **Applicable Law And Venue.** This Agreement shall be governed by, construed and enforced in accordance with the law of the state in which the Property is located. Venue under this Agreement shall be in the state and county in which the Property is located.

- (m) **Legal Expenses And Attorneys' Fees.** Buyer and Seller each hereby agrees that in the event a dispute arises between the Parties related to or arising out of any breach or alleged breach of this Agreement, or any representation, covenant or warranty contained in this Agreement, and such dispute gives rise to any administrative proceeding, arbitration, court action or other legal process or proceeding, then, the prevailing party in such dispute shall be entitled to reimbursement from the non-prevailing party for all losses, damages, costs, liabilities or expenses reasonably incurred by the prevailing party in furtherance of or defense of said action, process or proceeding, including, without limitation, reasonable attorneys fees whether incurred in preparation for or conduct of trial, administrative or arbitration proceedings, appellate proceedings, or post-judgment proceedings. The term "prevailing party" as used above in reference to proceedings in the Federal Bankruptcy Court shall be deemed to mean the prevailing party in any adversary proceeding or contested matter, or any other actions taken by the non-bankruptcy party which are reasonably necessary to protect its rights in the Property and under the terms of this Agreement.

- (n) **Limitation Of Liability.** Seller, Petrus and Buyer each agrees that no employer, agent, trustee or beneficiary of the other Party shall have any personal liability, directly or indirectly, under this Agreement or under any certification, representation or other instrument delivered in good faith in connection with this Agreement.

SURVIVAL. This Section 13, the representations and warranties contained in Sections 7 (subject to the limitations therein), 11, and 16 hereof, and all

indemnity agreements contained herein shall survive the Closing or any earlier termination of this Agreement, as shall any other provision contained herein where the context of same clearly evidences the Parties' mutual intention that said provision should survive Closing or termination of this Agreement.

EXHIBITS. The following exhibits attached hereto are incorporated herein by reference and shall constitute a part of this Agreement as if fully set forth herein:

Exhibit "A": Legal Description of the Lands

Exhibit "B-1": Warranty Deed

Exhibit "B-2": Absolute Bill of Sale

Exhibit "C": Assignment and Assumption of Leases

Exhibit "D": Consulting Agreement

ACCEPTANCE. This Agreement is submitted by Buyer to Seller as an offer to enter into this Agreement. If this Agreement is not accepted by Seller by execution and delivery to Buyer on or before 5:00 p.m. EDT on March 27, 2001, or the fact of Seller's execution and acceptance communicated in writing to Buyer on or before said time and date, then this offer shall thereafter be null and void and of no further force and effect. This offer shall be deemed accepted if executed in counterparts and fax copies shall be deemed originals.

AUTHORITY. The individual executing this Agreement on behalf of Petrus and G.P. hereby represents and warrants to Buyer that ACC and G.P. are each validly existing corporations and Petrus is a validly existing limited partnership with the requisite power and authority to execute and deliver this Agreement and perform all obligations hereunder, and that said individual is a duly authorized signatory of each such entity with full authority to commit and bind such entity to the terms, covenants and conditions set forth herein. The individual executing this Agreement on behalf of Buyer hereby represents and warrants to Petrus that Buyer is a validly existing corporation with the requisite power and authority to execute and deliver this Agreement and perform all obligations hereunder, and that said individual is a duly authorized signatory of Buyer with full authority to commit and bind Purchase to the terms, covenants and conditions set forth herein.

IN WITNESS WHEREOF, Petrus, G.P., SMSI, ACC and Buyer have caused this Agreement to be executed in multiple copies as of the date and year first above written.

Exhibit "B-2" Absolute Bill of Sale

Exhibit "C" Assignment and Assumption of Leases

Exhibit "D": Consulting Agreement

I. ACCEPTANCE. This Agreement is submitted by Buyer to Seller as an offer to enter into this Agreement. If this Agreement is not accepted by Seller by execution and delivery to Buyer on or before 5:00 p.m EDT on March 27, 2001, or the fact of Seller's execution and acceptance communicated in writing to Buyer on or before said time and date, then this offer shall thereafter be null and void and of no further force and effect. This offer shall be deemed accepted if executed in counterparts and fax copies shall be deemed originals

II. AUTHORITY. The individual executing this Agreement on behalf of Petrus and G.P hereby represents and warrants to Buyer that ACC and G.P. are each validly existing corporations and Petrus is a validly existing limited partnership with the requisite power and authority to execute and deliver this Agreement and perform all obligations hereunder, and that said individual is a duly authorized signatory of each such entity with full authority to commit and bind such entity to the terms, covenants and conditions set forth herein. The individual executing this Agreement on behalf of Buyer hereby represents and warrants to Petrus that Buyer is a validly existing corporation with the requisite power and authority to execute and deliver this Agreement and perform all obligations hereunder, and that said individual is a duly authorized signatory of Buyer with full authority to commit and bind Purchase to the terms, covenants and conditions set forth herein

IN WITNESS WHEREOF, Petrus, G.P., SMSI, ACC and Buyer have caused this Agreement to be executed in multiple copies as of the date and year first above written.

SELLER:

BUYER:

PETRUS GROUP, L.P.,
DEVELOPERS,
a Kansas limited partnership
company

INDIAN RIVER NO. 1
LLC, a Florida limited liability

By PETRUS CORP., a Kansas corporation,
its general partner

By Robert E. Mossburg
Robert E. Mossburg, President
Member

By S Martin Sadkin
S Martin Sadkin, Managing Member

AQUARINA CLUB CORPORATION,
a Florida corporation

Handwritten initials/signatures

By *Robert E. Mossburg*
 Juergen Lieberwirth, President
Robert E. Mossburg, The Agent

SERVICE MANAGEMENT SYSTEMS, INC.,
 a Florida corporation

By *JH*
 James H. Bates, President

OPTIONAL FORM NO. 10 (REV. 5-22-64) U.S. GOVERNMENT PRINTING OFFICE: 1964 O 255-104

[Handwritten signature]

EXHIBIT "A"

Legal description of lands.

For purposes of this Agreement, the real property consists of all land and improvements owned by Petrus as of the Effective Date within the Aquarina PUD and Aquarina II PUD; the complete legal descriptions will be substituted for this Exhibit "A" upon the completion of Buyer's survey.

EXHIBIT "B-1"

Warranty Deed

See attached 2 pages.

EXHIBIT "B-2"

Absolute Bill of Sale

See attached 1 page.

EXHIBIT "C"

Assignment and Assumption of Leases

See attached ____ pages.

1. **Yahama Lease**
2. **American Equipment Leasing**
3. **Submerged Land Lease**

This instrument prepared by & return to:
ROBERT L. BEALS, ESQ.
ROBERT L. BEALS, P.A.
201 North Riverside Drive, Suite B
Indialantic, FL 32903

WARRANTY DEED

THIS INDENTURE, made this ___ day of _____, 2001, between PETRUS GROUP, L.P., a Kansas limited partnership ("Grantor"), and INDIAN RIVER NO. 1 DEVELOPERS, LLC, a Florida limited liability company ("Grantee"), whose address is 7860 Peters Road, Suite F-111, Plantation, Florida 33317;

WITNESSETH, that the Grantor, for and in consideration of the sum of TEN (\$10.00) DOLLARS, to it in hand paid by the Grantee, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the Grantee forever, the following described land situate, lying and being in the County of Brevard, State of Florida, to wit:

See Exhibit A attached hereto and made a part hereof by reference for complete legal description of lands conveyed hereby.

SUBJECT to restrictions, reservations and easements of record, if any, which are not reimposed hereby, and taxes subsequent to December 31, 2000.

The Grantor represents and warrants to the Grantee that the property conveyed hereby is not the homestead property of the Grantor.

And the Grantor does hereby fully warrant the title to the land, and will defend the same against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the Grantor has executed this instrument on the day and year

first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness Signature

Print Witness Name

Witness Signature

Print Witness Name

STATE OF _____)
) ss:
COUNTY OF _____)

THE FOREGOING INSTRUMENT was acknowledged before me this _____ day of _____, 2001, by ROBERT E. MOSSBURG, as President of PETRUS CORP., a Kansas corporation, General Partner of PETRUS GROUP, L.P., a Kansas limited partnership, who is personally known to me, or who produced _____ as identification, and who did take an oath.

GRANTOR:

PETRUS GROUP, L.P., a Kansas limited partnership

By: PETRUS CORP., a Kansas corporation, General Partner

By: _____
Robert E. Mossburg, President

Notary Public Signature

My commission expires:

Print Notary Public Name

C:\OFFICE\WP\DOCS\1002-40\EXHIBIT2.WPD

Prepared by & return to:

Robert L. Beals, Esq.
Robert L. Beals, P.A.
201 North Riverside Drive, Suite B
Indialantic, FL 32903

ASSIGNMENT AND ASSUMPTION OF LEASES

KNOW ALL MEN BY THESE PRESENTS that PETRUS CORP., a Kansas corporation, as General Partner of PETRUS GROUP, a Kansas limited partnership, party of the first part, in consideration of the sum of TEN & 00/100 DOLLARS (\$10.00), and other valuable considerations, received from or on behalf of INDIAN RIVER NO. 1 DEVELOPERS, LLC, a Florida limited liability company, party of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, assign, transfer and set over unto the said party of the second part those certain Leases as described on Exhibit A attached hereto and made a part hereof, all of which INDIAN RIVER NO. 1 DEVELOPERS, LLC, a Florida limited liability company, agrees to assume.

TO HAVE AND TO HOLD the same until the said party of the second part, its heirs, legal representatives, successors and assigns forever.

IN WITNESS WHEREOF, the party of the first part has hereunto set its hand and seal this ____ day of _____, 2001.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

PETRUS GROUP, L.P., a Kansas limited
partnership

By: PETRUS CORP., a Kansas
corporation, General Partner

By: _____
Robert E. Mossburg, President

Witness Signature

Print Witness Name

Witness Signature

Print Witness Name

STATE OF _____)
) ss:
COUNTY OF _____)

THE FOREGOING INSTRUMENT was acknowledged before me this _____ day of _____, 2001, by ROBERT E. MOSSBURG, as President of PETRUS CORP., a Kansas corporation, General Partner of PETRUS GROUP, L.P., a Kansas limited partnership, who is personally known to me, or who produced _____ as identification, and who did take an oath.

Notary Public Signature

My commission expires:

Print Notary Public Name

EXHIBIT "D"

**CONSULTING AGREEMENT
FAMILIARIZATION SUPPORT DURING TRANSITION**

This Consulting Agreement ("Agreement"), made and entered into this ____ day of _____, 2001, by and between INDIAN RIVER NO. 1 DEVELOPERS, LLC, a Florida limited liability company (the "Company"), and James H. Bates (the "Consultant"),

WITNESSETH

WHEREAS, the Company wishes to receive consulting services from Consultant from time to time and Consultant is willing to provide such consulting services, and Company and Consultant wish to enter into this Agreement to set forth the terms and conditions on which services will be provided.

NOW, THEREFORE, the Company and Consultant hereby mutually covenant and agree as follows:

1. Engagement of Consultant. Consultant is hereby retained by the Company, and Consultant hereby accepts such retainment, as a general advisor and consultant to the Company on the terms and conditions hereinafter expressed. Consultant shall perform such consulting duties as are reasonably assigned to him by the Company in regard to the business of the Company.

2. Duties and Term. Consultant agrees to provide ongoing consulting to assist and facilitate Buyers from the date of Closing as herein set forth:

a. Company agrees to employ services of Consultant for a period of a minimum of six (6) months if and when the Company purchases the Aquarina PUD as contemplated under an Agreement of Purchase and Sale between Petrus Group, L.P., a Kansas limited partnership (Petrus) and INDIAN RIVER NO. 1 DEVELOPERS, LLC, a Florida limited liability company, with the effective date of March 26, 2001. Bates agrees to provide assistance for a minimum of six (6) months, to Company in assuming ownership and operations of the Aquarina PUD, to include facilitating the change of the development plan. This Agreement is not valid if the sale from Petrus to Company does not close. Either party to this Agreement after the initial six (6) month minimum period may cancel this Agreement by providing written notification to the other party providing sixty (60) day notice at the addressed shown below.

b. Consultant agrees to utilize his best efforts to assist Company in the transition as the new owner of the Aquarina Project. Consultant will help Company implement a revised Development Plan and provide all requested information of details of development approvals, restrictions, local, regional and state regulations as they relate to the Aquarina Project. Consultant will make available to Company all knowledge and expertise gained from over thirteen (13) years of managing the Aquarina Project. Consultant will assist Company in assuming operation of the utility.

c. Compensation shall be Seven Thousand & 00/100 Dollars (\$7,000.00) per month, payable by the 10th of each month. In addition, Consultant will assist and cooperate with Company in a transition to a new real estate brokerage operation as may be so desired by Company. This would include the phasing out of existing listing agreements on non-developer owned real estate located within the Aquarina Project.

d. During the period of time the Company is operating out of the Melbourne Beach location, Consultant will be available as needed by the Company for a period of time not to exceed forty (40) hours per week. The duties of the Consultant will be to help the Company's owners and management learn the business.

3. Duties of Consultant Relating to Consulting Services. Consultant shall at all times be acting and performing hereunder as an independent contractor. Consultant shall perform all of the Services herein provided for relying on his own experience, knowledge, judgment and techniques. Consultant shall not, in the performance of his duties, be managed or advised concerning the same by the Company. Consultant will not be acting as the employee, agent, partner, servant or representative of the Company, and Consultant will not have any authority to bind the Company or any subsidiary of the Company in any manner.

4. Termination of Agreement. Notwithstanding that the Term shall not have been completed, the Company may terminate this Agreement (a) upon the death of Consultant, (b) if Consultant should be incapacitated by illness or any other matter from performing his duties hereunder for a continuous period of sixty days, or (c) for cause by delivery by the Company to Consultant of notice specifying such cause.

5. Confidential Information. Consultant agrees that, during the term and at all times after the termination of this Agreement for whatever reason, he will treat as confidential and maintain in confidence all information relating to the business of the Company. In addition, Consultant agrees that, without the prior written approval of the Company, he will not disclose any information at any time to any person, corporation, association or other entity except authorized personnel of the Company or a subsidiary of the Company. Upon the termination of this Agreement for any reason, Consultant will not take or retain from the premises of the Company or any subsidiary of the Company any records, files or other documents, or copies thereof, relating in any way to the business operations of the Company or any subsidiary of the

Company. It is expressly agreed that the remedy at law for breach of the agreements set forth in this Section is inadequate and that the Company shall, in addition to any other available remedies (including, without limitation, the right of offset), be entitled to injunctive relief to prevent the breach or threatened breach thereof.

6. Indemnification. Consultant shall defend, indemnify and hold harmless the Company and its officers, directors, employees, agents, parent, subsidiaries and other affiliates, from and against any and all damages, costs, liability, and expense whatsoever (including attorneys' fees and related disbursements) incurred by reason of (a) any failure by Consultant to perform any covenant or agreement of Consultant; (b) the injury to or death of any person or any damage to or loss of property which is due to the negligence and/or willful acts of Consultant; or (c) any breach by Consultant of any representation, warranty, covenant or agreement under this Agreement. The Company shall have the right to offset against any fees due Consultant under this Agreement the amount of any indemnity for any damage, cost, liability, expense, fee or other disbursement, incurred by the Company pursuant to this Section 6.

7. Cooperation. Consultant agrees that at any time and from time to time, upon the request of the Company, to do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts, documents and instruments as may be required to effect any of the transactions contemplated by this Agreement.

8. Governing Law; Consent to Jurisdiction. This Agreement and any disputes relating hereto shall be governed by and constructed under the laws of the State of Florida. Any lawsuits arising from this Agreement shall be brought before a Court of Law in Brevard County, Florida. In the event it becomes necessary for any party to enforce its rights under this Agreement, the prevailing party shall be entitled to all reasonable attorney's fees and costs incurred thereunder.

9. Modifications; Waiver. This Agreement shall not be amended or modified except by written instrument executed by the Company and Consultant. The failure of the Company or Consultant to insist upon strict performance of any provision hereof shall not constitute a waiver of, or estoppel against asserting, the right to require such performance in the future, nor shall a waiver or estoppel in any one instance constitute a waiver or estoppel with respect to a later breach of a similar nature or otherwise.

10. Remedies. The remedies accorded to the parties by this Agreement are in addition to, and not in lieu of, all other remedies to which the parties may be entitled at law or in equity.

11. Inconsistent Obligations. Consultant represents and warrants that, at the date of this Agreement, he has no obligations that are inconsistent with those of this Agreement.

12. Sole Agreement. All prior negotiations and agreements between the parties

hereto relating to the transactions, employment and services contemplated hereby are superseded by this Agreement, and there are no representations, warranties, understandings or agreements with respect to such transactions, employment or services other than those expressly set forth herein.

13. **Severability.** If any of the terms or conditions of this Agreement are held by any court of competent jurisdiction to be unenforceable or invalid, such unenforceability or invalidity shall not render unenforceable or invalid the entire Agreement. Instead, this Agreement shall be construed as if it did not contain the particular provision or provisions held to be unenforceable or invalid, the rights and obligations of the parties shall be construed and enforced accordingly, and this Agreement shall thereupon remain in full force and effect.

14. **Notices.** All notices, consents, approvals or communications given pursuant to the provisions of this Agreement shall be in writing and shall be delivered pursuant to one of the following methods of delivery: (i) a nationally recognized overnight courier which obtains a signed receipt upon delivery (e.g., U.S. Post Office Express Mail, Federal Express, Airborne Express, etc.), (ii) hand delivery, upon a signed receipt, or (iii) facsimile transmission, provided that the addressee acknowledges in writing its receipt of the transmission. Notice shall be addressed to the party or person to whom the notice is to be given, at the following addresses:

To Company: S. Martin Sadkin, Managing Member
Indian River No. 1 Developers, LLC
7860 Peters Road, Suite F-111
Plantation, FL 33317
Fax No.: (954) 370-9771

To Consultant: James H. Bates
270 Hammock Shore Drive
Melbourne Beach, FL 32931
Fax No. (321) 725-0804

Notices served by overnight courier, facsimile or hand delivery shall be deemed delivered on the date a receipt or confirmation of receipt is signed by the addressee or its authorized agent or employee, provided delivery is prior to 5:30 p.m. local time of the recipient.

15. **Binding Effect.** Company has the right to assign the Contract for "Aquarina," and intends to do so. Company agrees that this Consulting Agreement shall be binding upon any Assignee.

IN WITNESS WHEREOF, the Company and Consultant have executed this Agreement

as of the day and year first above written.

CONSULTANT:

James H. Bates

COMPANY:

INDIAN RIVER NO. 1 DEVELOPERS, LLC, a
Florida limited liability company

By: _____
S. Martin Sadkin, Managing Member

SCHEDULE 3(c)

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is by and between CHICAGO TITLE INSURANCE COMPANY, as Escrow Agent; PETRUS GROUP, L.P., as Seller; and INDIAN RIVER NO. 1 DEVELOPERS, LLC, a Florida limited liability company, as Buyer.

Escrow Agent accepts this undertaking subject to these Conditions of Escrow:

1. The Deposit will be accepted by Escrow Agent, who will not commingle funds received by it with escrow funds of others. The Deposits will be placed in a special escrow account under the standard terms and conditions promulgated by Escrow Agent.
2. Escrow Agent shall not be liable for any loss caused by the failure, suspension, bankruptcy or dissolution of the Depository.
3. Escrow Agent shall not be liable for loss or damage resulting from:
 - a. any good faith act or forbearance of Escrow Agent;
 - b. any default, error, action or omission of any party, other than Escrow Agent;
 - c. any defect in the title to any property unless such loss is covered under a policy of title insurance issued by the Escrow Agent;
 - d. the expiration of any time limit or other delay which is not solely caused by the failure of Escrow Agent to proceed in its ordinary course of business, and in no event where such time limit is not disclosed in writing to the Escrow Agent;
 - e. the lack of authenticity of any writing delivered to Escrow Agent or of any signature thereto, or the lack of authority of the signatory to sign such writing;
 - f. Escrow Agent's compliance with all attachments, writs, orders, judgments, or other legal process issued out of any court;
 - g. Escrow Agent's assertion or failure to assert any cause of action or defense in any judicial or administrative proceeding;
 - h. any loss or damage which arises after the Deposit has been disbursed in accordance with the terms of this Agreement.
4. Escrow Agent shall be fully indemnified by the parties hereto for all its expenses, costs and reasonable attorney's fees incurred in connection with any interpleader action which Escrow Agent may file, in its sole discretion, to resolve any dispute as to the Deposit; or which may be filed against the Escrow Agent. Such costs, expenses or attorney's fees, as well as the fees of Escrow Agent described below, may be deducted from the Deposit.

5. If Escrow Agent is made a party to any judicial, non-judicial or administrative action, hearing or process based on acts of any of the other parties hereto and not on the malfeasance and/or negligence of Escrow Agent in performing its duties hereunder, the expenses, costs and reasonable attorney fees incurred by Escrow Agent in responding to such action, hearing or process may be deducted from the funds held hereunder and the party/parties whose alleged acts are a basis for such proceedings shall indemnify, save and hold Escrow Agent harmless from said expenses, cost and fees so incurred.
6. The escrow agent for purposes of this Agreement shall be Chicago Title Insurance Company, 2701 Gateway Drive, Pompano Beach, FL 33069 ("Escrow Agent"). The Initial Deposit and the Additional Deposit (together, the "Deposits") shall be held in trust by the Escrow Agent in a separate, federally insured escrow account(s) and said escrowed funds shall not be released except as provided for in this Agreement. In the event the transaction contemplated hereby is closed, the Deposits and all interest accrued thereon shall be delivered to Seller at Closing and credited against the Purchase Price. If Buyer terminates its agreement of sale and purchase according to Section 4(d), including termination by failing to provide the additional deposit to the Escrow Agent, Buyer may request that the Initial Deposit shall be released by the Escrow Agent. The parties agree that the Escrow Agent shall release the Initial Deposit no later than two (2) business days after receipt of a written request from Buyer. Buyer and Seller agree that the request for return for the Initial Deposit may be made by Buyer only and the signature of Seller shall not be required for return of the Initial Deposit. This provision shall govern the return of the Initial Deposit only and shall not be deemed to govern the deposit funds after Buyer provides the Additional Deposit to the Escrow Agent.
7. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provision hereof, and the Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
8. This Agreement shall be governed and enforced in accordance with an governed by the laws of the State of Florida, and venue for any action brought hereunder shall be in Brevard County, Florida.
9. All of the terms, covenants, warranties and the representations contained herein shall be binding upon the parties, their heirs, successors and assigns.
10. Except as specifically stated herein, this Agreement constitutes the entire agreement between the parties and supersedes all agreements, representations, warranties, statements, promises and understanding snot delivered in connection herewith. No party has in any way relied, nor shall in any way rely, upon any oral or written agreements, representations, warranties, statements, promises or understandings not specifically set forth in this Agreement or in such documents.

11. Neither this Agreement nor any term hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.
12. The headings in this Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.
13. All communications required or permitted to be given hereunder shall be in writing and shall be deemed delivered by one party to another party when personally delivered to them or when placed in a depository under the control of the United States Postal Service, and mailed by certified or registered mail, return receipt requested, postage prepared, addressed to:

To Escrow Agent: Chicago Title Insurance Company
2701 Gateway Drive
Pompano Beach, FL 33069
Telephone No.: (954) 971-2200
Fax No.: (954) 971-4111

To Seller or Petrus: Robert E. Mossburg
Petrus Group, L.P.
8100 E. 22nd Street, Building 500
Wichita, Kansas 67226
Telephone No.: (316) 681-5100
Fax No.: (316) 681-0994

To Buyer: S. Martin Sadkin, Managing Member
Indian River No. 1 Developers, LLC
7860 Peters Road, Suite F-111
Plantation, FL 33317
Telephone No.: (954) 370-7788
Fax No.: (954) 370-9771

or such other address as shall have been previously furnished in writing. Refusal of the mailing by any party shall be deemed to be receipt of the writing for purposes of this Agreement.

14. Each of the parties hereto agree that they shall sign such additional and supplemental documents, including irrevocable stock or bond powers, to implement the transactions contemplated pursuant to this Agreement when requested to do so to any party to this Agreement, including the Escrow Agent.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals
this ____ day of _____, 2001.

ESCROW AGENT:

CHICAGO TITLE INSURANCE COMPANY

By: _____

Its _____

SELLER:

PETRUS GROUP, L.P., a Kansas limited
partnership

By: PETRUS CORP., a Kansas corporation, its
General Partner

By: _____

Robert E. Mossburg, President

BUYER:

INDIAN RIVER NO. 1 DEVELOPERS, LLC, a
Florida limited liability company

By: _____

S. Martin Sadkin, Managing Member

SCHEDULE 3(g)(i)

UTILITY ESCROW AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2001, by and between Buyer, Seller and Utility.

Agreement

1. The applicable terms and conditions of the Agreement between Buyer, Seller and Utility are hereby incorporated by reference.
2. Within fifteen (15) days of the closing, Buyer shall make application to the Florida Public Service Commission ("PSC") for a transfer of the franchise from Seller to Buyer.
3. At closing, the Closing Agent shall deliver the sum of One Million & 00/100 Dollars (\$1,000,000.00) or such higher or lower amount as may be established by an independent appraisal of the Utility, but not to exceed One Million Five Hundred Thousand & 00/100 Dollars (\$1,500,000.00) to Chicago Title Insurance Company (hereinafter "Escrow Agent"). Seller will deliver an Absolute Bill of Sale to the Escrow Agent.
4. Escrow Agent will deposit the funds in a depository to be selected by Seller, but shall remain under the sole control of Escrow Agent.
5. Seller will continue to operate the Utility in the ordinary course of business and in the same fashion it has since acquiring its ownership. No requests for increases or change in the delivery of services will be made by Seller during the escrow period. Utility will not incur any additional debt or financial obligation outside the ordinary course of business.
6. Seller will assist Buyer in any reasonable manner such that Buyer will obtain approval for the transfer of the franchise from the PSC.
7. At the time of approval, both parties will notify Escrow Agent in writing to disburse as follows:
 - a. The One Million & 00/100 Dollars (\$1,000,000.00) or appraised value up to One Million Five Hundred Thousand & 00/100 Dollars (\$1,500,000.00) together with any interest or economic benefit, to Seller.
 - b. Deliver the Absolute Bill of Sale of Buyer, with assets as shown on Exhibit A and a Warranty Deed for the real property as shown on Exhibit B.

- c. Buyer will pay all costs associated with the Application for Transfer.
8. In the event that Buyer is not approved by the PSC, Escrow Agent will continue to hold the funds. The Buyer may select an appraiser of its choice to appraise the value of the Utility within thirty (30) days of the lack of approval by the PSC. The appraiser's fee for appraising the Utility will be shared equally by the parties, fifty percent (50%) to each. The appraiser will appraise the Utility at its fair market value as of the date the application was denied by the PSC. Seller shall have the option to accept the appraisal, or select a second appraiser. Seller's appraiser and Buyer's appraiser shall jointly agree upon an appraiser to do a second appraisal. The second appraisal, the expense of which will be shared equally, fifty percent (50%) to each, shall be binding upon the parties.
 9. Based upon the first or second appraisal, as may be applicable, the parties agree as follows:
 - a. They will jointly instruct the Escrow Agent to deliver the amount determined by the applicable appraisal to Buyer, together with any interest earned thereon.
 - b. They will jointly instruct the Escrow Agent to deliver the balance, together with any interest earned thereon, and the original Absolute Bill of Sale to the Seller.
 10. In the event the escrow is disbursed in accordance with Paragraph 9, the parties shall be deemed to have released each other of any and all obligations with respect to the sale of the Utility and the Utility Service Agreement of even date.
 11. In the event of any litigation arising out of the terms and conditions of this agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees, including trial and appellate work.

PETRUS GROUP, L.P.,
 a Kansas limited partnership
 By: PETRUS CORP., a Kansas corporation,
 its general partner

INDIAN RIVER NO. 1 DEVELOPERS,
 LLC, a Florida limited liability company

By: _____
 Robert E. Mossburg, President

By: _____
 S. Martin Sadkin, Managing Member

SERVICE MANAGEMENT SYSTEMS, a
 Florida corporation
 By: _____
 James H. Bates, President

SCHEDULE 3(g)(ii)
UTILITY SERVICE AGREEMENT

This Agreement is made the ____ day of January, 2001, by and between Service Management Systems, Inc., a Florida corporation (hereinafter "SMS"), and INDIAN RIVER NO. 1 DEVELOPERS, LLC, a Florida limited liability company (hereinafter "Buyer").

WHEREAS, the sale of tangible assets (equipment and real estate) by SMS cannot be concluded until Buyer has been approved to own and operate the water and sewer utilities at "Auarina"; and

WHEREAS, Buyer will make application to the Florida Public Service Commission ("PSC") for such approval; and

WHEREAS, SMS currently holds Water Certificate No. 517W and Sewer Certificate No. 450S pursuant to which it operates the water and sewer utilities.

NOW, THEREFORE, in consideration of Ten & 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties do hereby stipulate and agree as follows:

1. The recitals set forth hereinabove are true and correct, and they, including the Utility Escrow Agreement of even date herewith, are incorporated herein by reference.
2. Buyer will make an application with the PSC for purposes of taking title to SMS's assets and operating the utility. The application process is typically four to six months.
3. The contract to which SMS is a party and Buyer is a purchaser is incorporated herein by reference (the "Contract"). During the time Buyer's application is being processed and pending, SMS will operate the utility and retain ownership of the assets.
4. SMS will have the right to revenues and be responsible for all expenses and otherwise operate the utility in the same fashion as it was operated prior to closing of the Contract. No requests for increases or change in the delivery of services will be made, nor will SMS incur any debt or financial obligation outside the ordinary course of business.
5. SMS's financial books and records shall be open for inspection at all times to Buyer.
6. SMS will assist Buyer on the application process with the PSC and will help to facilitate and expedite PSC approval.
7. Pursuant to the release of escrow, SMS shall convey (the "utility closing") all of the assets listed on Exhibit A attached hereto and made a part hereof by Warranty Deed and Absolute Bill of Sale. Simultaneously with the delivery of the Bill of Sale, the Escrow Agent (pursuant to the Utility Escrow Agreement of even date herewith) shall release the principal and accrued interest to SMS or its designee.

8. As of the date of the utility closing, all taxes of any type, assessments, or other operating charges shall be prorated. SMS shall be entitled to all cash on hand, receivables and shall be responsible for all payables as of closing.

9. In the event Buyer does not received approval from PSC, this Agreement shall be deemed null and void and each party will be released from any and all obligations to the other.

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

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

SERVICE MANAGEMENT SYSTEMS,
INC., a Florida corporation

Witness Signature

By: _____
James H. Bates, President

Print Witness Name

Witness Signature

Print Witness Name

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

INDIAN RIVER NO. 1 DEVELOPERS, LLC,
a Florida limited liability company

Witness Signature

By: _____
S. Martin Sadkin, Managing Member

Print Witness Name

Witness Signature

Print Witness Name

SCHEDULE 7(a)

Seller's Disclosures

The Agreement is subject to the following disclosures, and Buyer acknowledges such disclosures and accepts such conditions as may be set forth herein unless Buyer timely terminates the Agreement in accordance with its terms:

1. Notices to Owner dated February ____, 2000, re Lots 7 and 8, Osprey Villas East from Certified Building Corp.
2. River Oaks: 30 single family lots, sold to date: 24. Developer appointees on board of directors (2) which will need to resign.
3. Master Homeowners Association: Three person board has two developer appointees.
4. Osprey Villas East: Total of 15 units; 2 under construction, one of which is sold. Board members are developer appointees.
5. Site plan approval and preliminary plat approval is pending for Parcels F&G.
6. Seller is prepared to begin construction immediately on Lots 7 and 8, Osprey Villas East.
7. ACC leases with Yamaha. ACC lease with American Equipment Leasing.
8. Petrus is Lessee under a submerged land lease with the State of Florida.
9. The MLS and associated computer hardware and software, as well as Approved Builder Displays, located in the Sales Office do not belong to Seller.

ADDENDUM TO AGREEMENT OF SALE AND PURCHASE made and entered into as of the 11 day of April, 2001, (the "Effective Date") by and between PETRUS CORP., a Kansas corporation ("G.P."), General Partner of PETRUS GROUP, L.P., a Kansas limited partnership authorized to do business in the State of Florida, (hereinafter "Petrus"), SERVICE MANAGEMENT SYSTEMS, INC., a Florida corporation ("SMST"), and AQUARINA CLUB CORPORATION, a Florida corporation ("ACC"), collectively "Seller" and INDIAN RIVER NO. 1 DEVELOPERS, LLC, a Florida limited liability company, (hereinafter "IRD" or "Buyer").

WHEREAS, the parties entered into an Agreement with an Effective Date of March 28, 2001, the contents of which are incorporated herein by reference; and

WHEREAS, the parties wish to modify certain provisions contained therein.

NOW, THEREFORE, in consideration of the mutual premises, covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The recitals above are true and correct.
2. In the event of any conflict between this Addendum and the Agreement, the terms of this Addendum shall control.
3. Paragraph 3, Purchase Price and Deposits, is amended to provide that the Buyer shall receive a credit of \$150,000.00 to be deducted from the purchase price based upon the conveyance by the Seller to Transnation Properties, Inc. of 110 feet of oceanfront property.
4. Paragraph 4 (b) is amended to delete the 21 day due diligence period, and amended to read as follows: Buyer shall have thirty-five (35) days, to wit: until April 25, 2001, following the Effective Date (the "Due Diligence Period") . . .
5. The Seller shall assume responsibility for all deficiencies and repairs itemized in the correspondence dated February 28, 2001, from the St. Johns River Water Management District to Petrus. Petrus will also satisfy its requirements under the mitigation agreement in the State of Florida for removal of Brazilian pepper trees.
6. In the event all the foregoing is not accomplished prior to closing, Seller will escrow up to Twenty Thousand & 00/100 Dollars (\$20,000.00), based upon third party contractors estimate, to fund the completion of the Seller's obligation.
7. The Buyer will, on or before April 18, 2001, at 5:00 p.m. deliver to Seller, by cashier's check, wire transfer or attorney's trust account check, the sum of One Hundred Thousand & 00/100 Dollars (\$100,000.00). This is a non-refundable fee for an extension of the Due Diligence Period but shall be applied as a credit to the Buyer at closing. The delivery of these funds is contingent only upon Buyer's

review of title and surveys, and a legitimate objection to either title or survey which renders the property either unmarketable or inconsistent with Aquarina PUD, Aquarina II PUD, or oceanfront plats such that the Buyer cannot develop the property as indicated on the PUD's or plats.

IN WITNESS WHEREOF, Petrus, G.P., SMSI, ACC and Buyer have caused this Agreement to be executed in multiple copies as of the date and year first above written.

SELLER:

BUYER:

PETRUS GROUP, L.P.,
a Kansas limited partnership

INDIAN RIVER NO. 1 DEVELOPERS,
LLC, a Florida limited liability company

By: **PETRUS CORP.,** a Kansas corporation,
its general partner

By: _____
Robert E. Mossburg, President

By: _____
Robert Levy, Member *

By: *Ralph Chernin*
Ralph Chernin, Member 4-11-01

AQUARINA CLUB CORPORATION,
a Florida corporation

By: _____
Juergen Lieberwirth, President

SERVICE MANAGEMENT SYSTEMS, INC.,
a Florida corporation

By: _____
James H. Bates, President

*

review of title and surveys, and a legitimate objection to either title or survey which renders the property either unmarketable or inconsistent with Aquarina PUD, Aquarina II PUD, or oceanfront plats such that the Buyer cannot develop the property as indicated on the PUD's or plats.

IN WITNESS WHEREOF, Petrus, G.P., SMSI, ACC and Buyer have caused this Agreement to be executed in multiple copies as of the date and year first above written.

SELLER:

BUYER:

PETRUS GROUP, L.P.,
a Kansas limited partnership

INDIAN RIVER NO. 1 DEVELOPERS, LLC, a Florida limited liability company

By: **PETRUS CORP.**, a Kansas corporation,
its general partner

By: _____
Robert E Mossburg, President

By: _____
Robert Levy, Member

By: _____
Ralph Chernin, Member

AQUARINA CLUB CORPORATION,
a Florida corporation

By: _____
Juergen Lieberwirth, President

SERVICE MANAGEMENT SYSTEMS, INC.,
a Florida corporation

By: _____
James H. Bates, President

**MODIFICATION AND EXTENSION OF
AGREEMENT OF SALE AND PURCHASE**

This Modification and Extension of Agreement of Sale and Purchase is made this 2nd day of ~~June~~ 2001, by and between PETRUS CORP., a Kansas corporation ("G.P."), General Partner of PETRUS GROUP, L.P., a Kansas limited partnership authorized to do business in the State of Florida, (hereinafter "Petrus"), SERVICE MANAGEMENT SYSTEMS, INC., a Florida corporation ("SMSI"), and AQUARINA CLUB CORPORATION, a Florida corporation ("ACC"), collectively "Seller" and INDIAN RIVER NO. 1 DEVELOPERS, LLC, a Florida limited liability company, (hereinafter "IRD" or "Buyer").

WITNESSETH:

WHEREAS, the parties entered into an Agreement of Sale and Purchase dated March 28, 2001, amended April 11, 2001, (the "Agreement") for the purchase of Aquanna, and

WHEREAS, the parties wish to modify some terms and conditions of the Agreement, and

WHEREAS, the parties wish to extend the closing date.

NOW THEREFORE, in consideration of the mutual covenants, warranties and agreements contained herein, and in consideration of other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Petrus and IRD (the "Parties") along with SMSI, and ACC, intending to be legally bound, do hereby covenant and agree as follows.

1. RECITALS

The foregoing recitals are true and correct.

2. AQUARINA P.U.D., Stage II, Tract A, Aquarina Beach Club, Plat Book 38, Page 8, Public Records of Brevard County, Florida, ("Beach plat").

The southerly one hundred and ten feet of the Beach plat was conveyed to Transnation Properties, Inc., as reflected in ORB 4265, Page 3202, Public Records of Brevard County, Florida. Transnation paid \$330,000.00 as a purchase price to the prior owner, Petrus Group, L.P.. In order for a single family residence to be built on Transnation's property, and for a change in use of the parent tract A, an amendment to the plat is required. Accordingly, Transnation will deed the one hundred and ten feet back to Petrus prior to closing (as defined in the Agreement) Within seven (7) business days from the execution of this Modification, IRD and Transnation will execute an option contract which will give Transnation six months in which to close with IRD and repurchase the property at a price

of \$330,000.00 IRD will cooperate with Transnation in applying to the Brevard County Planning and Zoning Department for the plat amendment. Any and all costs, expenses or fees associated with the Amendment will be paid by Transnation. All costs of reconveyance and subsequent re-acquisition shall be paid by Transnation. The terms and conditions of the sale will be governed by the standard Florida Bar contract, with a 5% deposit to be held in escrow. The only contingency will be the required plat amendment. If approval is pending but relatively certain to be received, the six month option period shall be reasonably extended; not to exceed three (3) months. If Transnation exercises the option to extend, it will make another five percent (5%) deposit into escrow, which five percent (5%) will be then non-refundable to Buyer, subject to the same terms and conditions contained in the option agreement.

Notwithstanding the foregoing, IRD will, if requested, reduce overall density in the Aquarina project by up to five units as and for mitigation that may be required by the County in connection with the plat amendment. The mitigation is limited to the hotel and multi-family sites.

Prior to the closing of Aquarina, the Seller shall provide written evidence that the violation created by the initial conveyance has been cured from the Brevard County Planning and Zoning Department. The previously negotiated credit of \$150,000.00 in connection with the removal of the one hundred and ten feet from the property is null and void and Buyer shall not be due such credit at closing.

3. SURVEY

Buyer and Seller agree to retain the services of Brick and Associates, Land Surveyors, Inc ("Surveyor"), to perform a survey upon the subject property. The expense of the survey will be shared equally by the Buyer and Seller, 50% each at closing. The Surveyor will be engaged to perform an ALTA compliant survey, to be approved by Buyer's Lender, Counsel and Seller's Title Insurance Underwriter. Seller agrees to pay Surveyor any deposit or pre-payment within 5 days of Surveyors request and all interim or final bills. Seller shall be primarily responsible for directing Surveyors work and monitoring progress.

4. DEPOSIT

Notwithstanding anything in the Agreement to the contrary, upon the execution of this modification, the Buyers deposit of \$250,000.00 will be non-refundable from that point forward, subject to the following:

- a. Written notice acceptable to Buyer and Buyer's insurance Lender that Aquarina PUD, Stage II, Tract A, Aquarina Beach Club, recorded in Plat Book 33, Page 8, Public Records of Brevard County, Florida, is not in violation of any code requirement as a result of the 110 foot conveyance

- b. A final survey approved by Buyer's Lender, Counsel and Seller's Title Insurance Underwriter for deletion of the survey exception from the title policy.
- c. Seller's delivery to Buyer's's lender of any documentation, representations or warranties, customary for commercial loans, which are not unduly burdensome upon Seller. Any such action by Seller shall be without cost, expense or legal fees to Seller

5. CLOSING DATE

Handwritten: Notwithstanding anything in the Agreement to the contrary, the closing date for Aquarina is extended to 10 business days following the Buyers receipt of the final survey, subject to Buyers survey objections, which will be controlled by the terms of the Agreement, and subject to Buyer + Seller mutually agreeing to final closing

6. CONFLICT Statement at least 5 days prior to closing.

In the event of any conflict between this Modification and the Agreement, the terms of this Modification shall control.

7. PERSONAL PROPERTY

Handwritten: Within ~~ten~~ ^{ten} (10) days from the date hereof, the parties agree that IRD shall select the items of personal property it wishes to purchase at closing and establish the price thereof based upon the previously completed appraisal. Seller will use best efforts to finalize the commission due at closing within ~~ten~~ ^{ten} (10) days from date hereof.

8. AGREEMENT

The Agreement, as amended, is in full force and effect without default by either party.

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Handwritten: R. Beals PA
3 (13-01)

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Robert L Beals PH

321 733 4403

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07/07/2008 17:06

Robert L Beals PA
19549281965

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FRAZIER HOTEL ASSOC

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Robert L Beals PR

321 733 4403

P.5

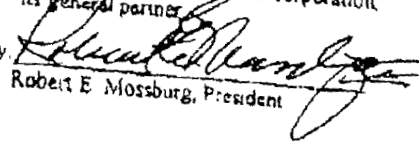
9. PRE-CLOSING SALES

The parties acknowledge that the original closing date made the consideration of pre-closing sales moot. However, by virtue of this extension, sale of lots in River Oaks and Sea Hawk may close prior to the closing between Buyer and Seller. Paragraph 4(h)(6) is hereby amended by the addition of the following language: For every Sea Hawk lot sold (under contract or closed) prior to Aquarina closing, purchase price shall be reduced by \$200,000.00. For every River Oaks lot so sold, purchase price shall be reduced by \$89,000.00. Seller shall be entitled to all proceeds it receives above these minimum prices

SELLER:

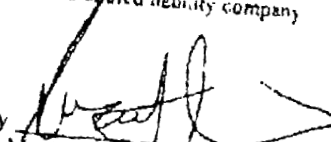
PETRUS GROUP, L.P., DEVELOPERS,
a Kansas limited partnership

By PETRUS CORP, a Kansas corporation,
its general partner

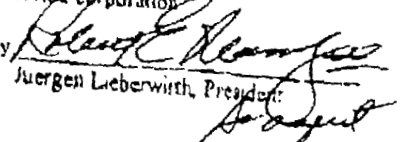
By 
Robert E. Mossburg, President

BUYER:


INDIAN RIVER NO. 1
DEVELOPERS, LLC
a Florida limited liability company

By 
Martin Sadkin, Managing Member

AQUARINA CLUB CORPORATION,
a Florida corporation

By 
Juergen Lieberwirth, President

SERVICE MANAGEMENT
SYSTEMS, INC., a Florida
corporation

By 
James H. Bates, President

THIRD ADDENDUM TO AGREEMENT OF SALE AND PURCHASE

THIS THIRD ADDENDUM TO AGREEMENT OF SALE AND PURCHASE ("Third Addendum") is made and entered into as of the 5th day of September, 2001 by and between PETRUS CORP., a Kansas corporation, General Partner of PETRUS GROUP, L.P., a Kansas limited partnership authorized to do business in the State of Florida, SERVICE MANAGEMENT SYSTEMS, INC., a Florida corporation and AQUARINA CLUB CORPORATION, a Florida corporation, (hereinafter collectively referred to as "Seller") and INDIAN RIVER NO. 1 DEVELOPERS, LLC, a Florida limited liability company (hereinafter referred to as "Buyer"),

WITNESSETH:

WHEREAS, Seller and Buyer did enter into that certain Agreement of Sale and Purchase having an effective date of March 28, 2001 for the purchase by Buyer of the residential community located in Melbourne Beach, Florida commonly known as Aquarina as more particularly described within the aforesaid of Sale and Purchase; and,

WHEREAS, the Agreement of Sale and Purchase was amended by that certain Addendum to Agreement of Sale and Purchase dated April 11, 2001; and,

WHEREAS, the Agreement of Sale and Purchase was further modified by that certain Modification and Extension of Agreement of Sale and Purchase dated July 2, 2001; (the Agreement of Sale and Purchase, the Addendum to Agreement of Sale and Purchase and the Modification and Extension of Agreement of Sale and Purchase are collectively referred to as "Contract"); and,

WHEREAS, the parties wish to further amend the Contract as set forth below,

NOW, THEREFORE, for and in consideration of the sum of Ten (\$10.00) Dollars and other good and valuable consideration, the receipt of which is hereby acknowledged, it is agreed as follows:

1. On or about July 17, 2001, one Thomas McMullen, a resident of Aquarina, filed an action against Seller in the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida under Case Number 05-2001-CA-010783 wherein the Plaintiff, in addition to filing a Lis Pendens with respect to a portion of the real property, which is the subject matter of the Contract between Buyer and Seller, included counts for injunctive relief and other relief from said Circuit Court. Attached hereto as composite Exhibit "A" is (i) the proposed draft of a Settlement Stipulation and Agreement by and between McMullen and

Seller which has been consented to by Buyer; together with (ii) a Memorandum of Understanding by and between Seller and Buyer which has been executed by both parties, which Memorandum outlines the salient terms and conditions incorporated into Exhibit "A" (i) including, inter alia, matters which will require action and cooperation by both Buyer and Seller subsequent to the closing of the transaction represented by the Contract. Buyer and Seller agree that the terms contained within Composite Exhibit "A" [both (i) and (ii)] cannot and will not be modified without the express written consent of both Buyer and Seller, whether such modifications, if any, are requested preclosing or postclosing of the transaction represented by the Contract.

In addition to the foregoing and in furtherance thereof, Buyer and Seller have agreed to contribute the following amounts:

- A. Exclusive parking easement (moveable) in favor of Aquarina Community Services Association, Inc., ("ASCA") encumbering up to 105 feet of the north parking lot located upon the property commonly known as the Aquarina Beach Club Plat, as recorded in Plat Book 33, Page 8, Public Records of Brevard County, Florida.
- B. Up to Eighty-Six Thousand Six Hundred Twenty (\$86,620.00) Dollars (Forty-Three Thousand Three Hundred Ten [\$43,310.00] Dollars each from Buyer and Seller) for the construction of a clubhouse to utilize by the members of the ASCA.
- C. Up to One Hundred Eighty Thousand (\$180,000.00) Dollars (Ninety Thousand [\$90,000.00] Dollars each from Buyer and Seller) for the construction of a pool/cabana/deck/bathroom facility to be utilized by the members of the ASCA.

When the amounts for each of the foregoing amenities has been decided between Buyer and Seller and accepted by the ASCA Board of Directors each party will contribute its proportionate share of the foregoing amounts within three (3) business days of written request therefore being received.

2. Buyer has previously entered into a contract with an organization known as The Conservation Fund (hereinafter referred to as "The Fund" or "Fund"), wherein Buyer, as seller, has agreed to sell a portion of the real property being purchased pursuant to the Contract to said Fund, which property is described on Exhibit "C" attached hereto and made a part hereof by reference. It was contemplated by the parties that Buyer's closing with The Fund and conveyance of the property described on Exhibit "C" thereto would occur simultaneously with the closing of the transaction represented by the Contract. It now

appears that the closing between the Buyer, as seller, and The Fund, as purchaser, will occur subsequent to the closing of the transaction represented by the Contract. The purchase price being paid by The Fund for the property described on Exhibit "C" is Nine Hundred Sixty Thousand (\$960,000.00) Dollars. At the closing of the transaction represented by the Contract, the Buyer shall place with Seller a non-refundable deposit of Three Hundred Thousand (\$300,000.00) Dollars with respect to the property described on Exhibit "C" and in the event the closing between Buyer, as seller, and The Fund, as buyer has not occurred by the close of business on September 27, 2001, then and in such event on the next business day the Buyer shall pay unto Seller an additional Six Hundred Sixty Thousand (\$660,000.00) Dollars towards the completion of the closing of the transaction represented by the Contract and shall thereafter independently close with The Fund. In such event, Seller has agreed to deed the property described on Exhibit "C" by separate deed directly to The Fund upon direction from Buyer to do so. In the event the Buyer, as seller, does not close with The Fund by the close of business on September 21, 2001, then and in such event the Seller shall retain the deposit of Three Hundred Thousand (\$300,000.00) Dollars as and for liquidated damages.

3. Subsequent to Buyer closing with The Fund pursuant to the transaction described in paragraph 2 above, Buyer shall use its reasonable efforts at Seller's expense to secure for Seller, or Seller's designee, a designation of one hundred ten (110) feet of the property described on Exhibit "D" (the two hundred-eighteen [218] feet remaining after conveyance to the Fund) as open space/recreational/conservation area necessary to allow Transnation Corp. to construct its desired residence on the southerly one hundred ten (110) feet of the Ocean Club Plat, which property will not be within the "Beach Club" site plan approved by Brevard County in 1985. Buyer will sign an authorization at closing, which is attached hereto as Exhibit "E". In the event the foregoing cannot be accomplished, then the Buyer shall, at Seller's expense, apply for the designation of a portion of open space within Aquarina to be selected at Buyer's sole discretion, which property must be acceptable to the appropriate authorities within the Brevard County government, so as to allow Transnation the ability to construct its desired residence. In no event shall Buyer be required to so designate more than .30 acres of property to accomplish the foregoing.

4. The parties agree that a proration is being made between them with respect to fees for memberships at Aquarina Country Club and the Ocean Club and that their currently remains approximately Thirty Thousand (\$30,000.00) Dollars in membership receivables as of closing. As, if and when these receivables are collected by Buyer, they will be divided and paid one-half to Buyer and one-half to Seller on a quarterly basis.

5. As set forth on Exhibit "B" attached hereto, Buyer has purchased golf course turf equipment from Seller for the price of Sixty Two Thousand, Seven Hundred (\$62,700.00) Dollars and Buyer has purchased from Seller certain office equipment and

furniture for the price of Thirteen Thousand (\$13,000.00) Dollars. Buyer and Seller agree to resolve the purchase price on the remaining personal property within ten (10) days subsequent to closing. Thereafter, the remaining personal property not purchased by Buyer and owned by Seller may be utilized by Buyer subsequent to closing at no cost to Buyer until such time as Buyer and Seller mutually agree that such non-purchased property will be removed by Seller and replaced with property provided by Buyer. The foregoing notwithstanding, the date to be mutually agreed upon for such removal and replacement shall not exceed 45 days following closing.

6. With respect to Exhibit "B" attached hereto, there are numerous closing prorations being made between Buyer and Seller. It is contemplated that subsequent to closing there may be minor adjustments to these prorations set forth on Exhibit "B" and there will be further prorations not set forth on Exhibit "B" (i.e., utility bills, personnel wages, etc.), all of which Buyer and Seller agree to re-prorate and adjust by payment to the party so entitled no later than 45 days following closing.

7. Buyer is aware that Seller is contracting with a third party to sell to said third party property contained within the Aquarina P.U.D. known as Stage 3, Tract IV, commonly known as "Tidewater II" ("Contract"). Seller agrees that Buyer has the right prior to Seller executing such Contract with its third party purchaser to approve the terms and conditions of such Contract relating to the use to which said property may be put. By execution hereof, Buyer hereby approves the terms of the proposed Contract. Buyer further acknowledges and agrees that said Contract, inter alia, shall provide for the building of single family homes on such property. Any other use contemplated by Seller's third party purchaser under said Contract must be approved by Buyer. Buyer and Seller have entered into an Option to Purchase in favor of Buyer which option is dated of even date herewith and contains a true and correct copy of the Contract attached to the subject Option to Purchase.

8. The Seller is currently constructing or causing to be constructed eight (8) residential units within the portion of Aquarina known as Osprey East. In consideration of Buyer agreeing to close the transaction represented by the Contract prior to the completion by Seller of said eight (8) residential units, Seller agrees that Seller shall complete or cause to be completed all eight (8) residential units within one hundred fifty (150) days following the date of closing of the transaction under the Contract. In the event Seller has not completed all eight (8) residential units prior to one hundred fifty (150) days following such closing, then, and in such event, Seller shall pay to Buyer as a penalty for late completion, the sum of One Thousand (\$1,000.00) Dollars per unit per day until each unit has been completed. For purposes of this paragraph, completion shall mean the obtaining of a Certificate of Occupancy for each unit currently under construction. The foregoing time limits shall automatically be extended by acts of a force majeure nature, i.e., hurricanes, fire, war or acts of God.

9. Prior to closing, Buyer will be entering into a consulting agreement for familiarization support during transition with one James H. Bates as consultant. Inter alia, to facilitate a smooth transition, Buyer will, at closing, direct Mr. Bates to confirm with the employees and personnel of Aquarina to be retained by Buyer, the terms and conditions of each such person's continued employment.

10. Anything contained within this Third Addendum to the contrary notwithstanding, the parties specifically agree that in addition to the provisions of the Contract regarding the survival of certain matters as stated therein, each of the terms and conditions contained within this Third Addendum shall survive closing for a period of time necessary to carry out the letter and intent of each provision hereunder, but in no event later than _____.

11. Notwithstanding anything contained within the Contract to the contrary, if there exists a conflict between any of the terms and conditions set forth within this Addendum and any of the terms and conditions set forth within the Contract, the terms and conditions set forth within this Third Addendum shall control.

12. This Third Addendum may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument, and may be sent by telecopier or facsimile transmittal which shall be deemed to have been given when received and shall be considered as originals.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the dates so stated.

Witnesses:

John R. Morse

Signature of Witness

John R. Morse

Name of Witness

Laurie Brower

Signature of Witness

LAURIE BROWER

Name of Witness

Seller:

Petrus Group, L.P, a Kansas limited partnership, by its General Partner, Petrus Corp., a Kansas corporation

By: Robert E. Mossburg

Robert E. Mossburg, President

Dated: 9/26/81

Marga Hohmann
Signature of Witness
Marga Hohmann

Name of Witness
G. Bernat

Signature of Witness
Gaby Bernat

Name of Witness
Dawn McNulty

Signature of Witness
Dawn McNulty

Name of Witness
Georgia A. Kaufman

Signature of Witness
Georgia A. Kaufman

Name of Witness

Robert W. Frazier Jr.
Signature of Witness

ROBERT W. FRAZIER JR., ESQ.

Name of Witness

John F. Hotte
Signature of Witness

JOHN F. HOTTE, ESQ.

Name of Witness
Q:\docs\lr\aquarina\3rdaddr12.wpd

Aquarina Club Corporation, a Florida corporation

By: A. Lieberwirth

Juergen Lieberwirth, President

Dated: 9/19/01

Service Management Systems, Inc., a Florida corporation

By: James H. Bates

James H. Bates, President

Dated: 9/19/01

Buyer:
Indian River No. 1 Developers, LLC.,
a Florida limited liability company

By: S. Martin Sadkin

S. Martin Sadkin, Managing Member

Dated: 9/18/01

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT IN AND
FOR BREVARD COUNTY, FLORIDA

THOMAS McMULLEN,
and AQUARINA RESIDENTS'
ASSOCIATION, INC., a Florida
not for profit corporation,

CIVIL ACTION NO. 05-2001-CA-010783

Plaintiffs,

vs.

PETRUS GROUP, LP.,

Defendant.

SETTLEMENT STIPULATION AND AGREEMENT

THIS SETTLEMENT STIPULATION AND AGREEMENT ("Agreement") is entered into this _____ day of September, 2001 by and among Thomas A. McMullen ("Owner"), Aquarina Residents' Association, Inc., a not-for-profit corporation ("Residents Association"), Aquarina Community Services Association, Inc., a not-for-profit corporation, ("ACSA"), and Petrus Group, L.P. ("Developer").

RECITALS

- A. Developer is currently the successor Developer pursuant to the Declaration of Covenants, Conditions and Restrictions for Aquarina as recorded in Official Records Book 2434, Page 1145, of the Public Records of Brevard County, Florida, as amended May 10, 1984 and recorded in Official Records Book 2538, Pages 1312 through 1315; as amended May 29, 1986 and recorded in Official Records Book 2704, pages 1553 through 1562, as amended October 1, 1991 and recorded in Official Records Book 3160, pages 1509 through 1511; as amended April 8, 1993 and recorded in Official Records Book 3298, Pages 2217 through 2220; as amended December 13, 1994 and recorded in Official Records Book

3449, Pages 0264 through 0273; as amended December 30, 2000 and recorded in Official Records Book 4276, Pages 0458 through 0463; all in the Public Records of Brevard County, Florida (the "Declaration") and currently retains and holds all rights set forth within the Declaration, as the Developer.

- B. ACSA is the association created pursuant to the Declaration, and retains and holds all right, title and interest, in and to all "Common Properties" identified in the Declaration conveyed or to be conveyed to the ACSA, and which have not been removed from the encumbrance of the Declaration by Developer.
- C. Owner is the current owner of 208 Osprey Villas Court within Aquarina, encumbered by the Declaration and initiated an action to enforce the Declaration in *Thomas McMullen and Aquarina Residents Association, Inc., a Florida not for profit corporation vs Petrus Group, L.P.*, Case No. 05-2001-CA-010783, currently pending in the Eighteenth Judicial Circuit in and for Brevard County, Florida (the "Litigation"), and the Residents Association is a not for profit corporation to which Owner assigned Owner's rights to enforce the Declaration.
- D. Within the Litigation, Owner and the Residents Association asserted causes of action for Declaratory Relief, Injunctive Relief and for Specific Performance, to enforce, and determine the alleged rights of Owner, the Residents Association and ACSA, in and to a certain portion of a beach front property allegedly identified in the Declaration as "Common Properties" and identified in Exhibit "A" to the Complaint ("Beach Property") and regarding the alleged obligation of the Developer to convey over such Common Properties to ACSA, along with a non-exclusive right and easement to use the Beach Property.
- E. Although currently not named as a party to the litigation, the ACSA is the entity having all right, title or interest in and to all Common Properties including the Beach Property under the Declaration that Owner alleges Developer is required to convey to the ACSA and would directly benefit from the Litigation or settlement thereof, and the ACSA is participating in this Agreement to consent to the terms and provisions herein and under the understanding that it will waive and release

any and all rights to enforce the Declaration against Developer based upon the issues brought or asserted in or which could be asserted in the Litigation against Developer.

NOW THEREFORE, in exchange for the covenants, promises, and considerations specifically identified in this Agreement, the sufficiency and receipt of which is hereby acknowledged, Developer, Owner, Residents Association and ACSA agree as follows:

1. Recitals. The Recitals, all exhibits and scheduled attached hereto are true and correct, and are expressly incorporated into this Agreement by this reference.
2. Beach Easement.
 - 2.1 Within 40 days of the acceptance of this Agreement by the members of ACSA, Developer shall execute, record and convey to the ACSA an exclusive ingress, egress and parking easement over, upon and across the North 97 feet of the existing parking lot for the "Beach Club" or "Ocean Club" located at 7535 S. Highway A1A, Melbourne Beach, FL 32951 ("Ocean Club"), as identified in Schedule 2 attached hereto ("Easement Area"). The easement shall grant the ACSA ingress and egress to and from U.S. Highway A-1-A, and the beach determined by the mean high water line of the Atlantic Ocean ("Beach Easement") and shall grant the ACSA an exclusive right to use parking spaces within the Easement Area and a dune cross-over. Upon recording the Beach Easement, all other existing easements over and across the Beach Property or arising by way of the Declaration, shall be terminated of record, and rendered null and void.
 - 2.2 Developer and its successors and assigns shall have the right to amend the Beach Easement to relocate the Easement Area to an area 110 feet North of the most Northerly line of the Easement Area (identified on Schedule 2), or to area 470 feet South of the most Southerly line of the Easement Area (identified on Schedule 2) (hereinafter "Relocated Easement Area") with the acreage and dimensions of the Relocated Easement to be substantially the same as those for the Easement Area. In the event of such a relocation of the Easement Area, the

Beach Easement shall be amended of record changing the legal description of the Easement Area, and the Developer shall construct, at its own cost and expense if parking spaces are not already in existence, and insure that at least 20 parking spaces will exist upon the Relocated Easement Area for use by the ACSA and shall construct a dune cross-over for access to the beach area adjacent to the Relocated Easement Area.

- 2.3 At all times while the Beach Easement is in existence, the ACSA shall at its costs and expenses maintain insurance on the Easement Area insuring the ACSA and Developer against personal injury, death or loss of property upon the Easement Area with Developer named as a co-insured and shall provide Developer with a copy of all insurance policies for the Easement Area. All insurance policies for the Easement Area shall not be terminated or canceled without thirty (30) days prior notice to the Developer. If appropriate insurance is not obtained, Developer may obtain the necessary insurance, at ACSA's cost and expense.
- 2.4 ACSA shall at its cost and expense at all times maintain the Easement Area in a sanitary and clean condition, shall provide appropriate landscaping for the Easement Area and shall repair all improvements constructed on the Easement Area as reasonably necessary from time to time to insure its safe use and enjoyment. Developer shall not be responsible for any maintenance, upkeep, repair or landscaping of the Easement Area.
- 2.5 The ACSA shall indemnify and hold harmless Developer and its agents, representatives, officers, directors, shareholder partners, successors and assigns from and against any claims, causes of action, demands, losses, injuries or damages, including reasonable attorney fees and costs arising from the ACSA's and its members' use of the Easement Area or exercise of its rights under the Beach Easement. The parties agree that the Indemnification Procedures identified in the Schedule 3.1 attached hereto shall be followed by the parties.

3. Marina Lease/Easement.

3.1 Upon transfer of the upland dock and ramp to ACSA from the Developer, and acceptance of this Agreement by the members of the ACSA, the Developer shall assign, and set over unto the ACSA all of its right, title and interest under that certain Submerged Land Lease dated November 1, 1999, having Lease No 051160594 (the "Lease") (excluding any ownership to real property) for the existing fishing pier and observation area located at the marina for Aquarina, as identified in Schedule 3.1 attached hereto (the "Dock"). The ACSA shall be responsible for all costs and expenses for obtaining the consent or approval of any governmental agency to such assignment and upon such assignment of the Lease, the ACSA agrees to assume and shall be liable for any and all duties, obligations or liabilities arising under the Lease, and agrees to indemnify and hold harmless, the Developer its officers, directors, shareholders, partners, agents, employees, representatives, successors and assigns from and against any and all claims, demands, causes of action, administrative proceedings, losses, damages, or injuries, including reasonable attorney fees and costs arising from or which may in any way be associated with the ACSA's or its members' use, management, maintenance or repair of the Dock or any of its obligations or failure to perform such obligations arising under the Lease. The parties agree that the Indemnification Procedures identified in the Schedule 3.1 attached hereto shall be followed by the parties. It is expressly understood and agreed that the concrete boat ramp, and launch and other land improvements associated with or adjacent thereto, not identified in Schedule 3.1 or the 180 linear feet of temporary boat docking area directly to the South of the concrete ramp and launching area boat dock immediately to the South of the Dock, shall be operated by Developer on a fee basis until conveyed to the ACSA at this time. Developer may convey the ramp, launch and temporary boat docking area to ACSA at a future date

Can't

- 3.2 Simultaneously with the assignment of the Lease Developer shall convey and grant to the ACSA a parking easement to the ACSA, to allow the ACSA and its members a exclusive use of seventeen (17) parking spaces in the area identified in Schedule 3.2 attached hereto ("Parking Area"). The Developer at all times reserves and shall have the right to reconfigure and relocate the location of seventeen (17) parking spaces as long as such spaces are still provided within the track of real property known as Stage 4, Track IV of the Aquarina PUD.
- 3.3 The ACSA shall maintain insurance on the Dock and Parking Area excluding the concrete ramp, launching area and South 180 linear feet of temporary docking area, insuring the ACSA and Developer from and against any and all personal injuries, deaths or loss of properties which may occur on the Dock or Parking Area, with Developer named as a co-insured and shall provide Developer with a copy of all insurance policies for the Dock and Parking Area Any insurance policy shall not be terminated or canceled without thirty (30) days prior notice to Developer. In the event such a policy is terminated or ACSA fails to procure such a policy, Developer may purchase such insurance at the ACSA's cost and expense
- 3.4 ACSA shall, at its cost and expense, at all times maintain the Dock in a sanitary and clean condition, shall provide appropriate landscaping for the Dock and Parking Area and shall repair the Dock as reasonably necessary to insure its safe and enjoyable use. Developer shall not be responsible for any maintenance, upkeep, repair or landscaping of the Dock or Parking Area.

4. Recreation Areas.

- 4.1 The Developer shall not at any time change the designation or restriction and approved land use of that certain area within the Declaration or on any plat of that certain area within Stage 3, Track K, of the Aquarina PUD identified on Schedule "4", attached hereto, from the designation and restriction as a "Recreation Area", however, all times, the Developer reserves and shall have all right to sell, transfer or convey in whole or in part Stage 3, Track K, within Aquarina PUD owned by

Developer, as long as the Developer provides, reserves and restricts under the Declaration an equal amount of acreage within the PUD as "Recreation Area".

- 4.2 The Developer shall build and construct a recreation area within Stage 3, Track K as set forth on Schedule 4.2 within 120 days after the existing pool facility located at the Ocean Club is no longer available for the use of the members of the ACSA pursuant to existing agreements. The cost to construct such a recreation area shall not be less than \$100,000.00. This Section shall not imply that the pool currently existing at the Ocean Club shall be available to the Aquarina residents without additional fees or compensation, or that the pool at the Ocean Club currently constitutes Common Property as defined in the Declaration. In the event construction cannot be completed within the 120 days, due to no fault of Developer, Developer shall not be deemed in default of this Agreement, as long as Developer is diligently pursuing completion of construction within the 120 days. In the event Developer exercises its right pursuant to Section 4.1, such construction shall be completed within the real property designated and reserved by Developer as "Recreation Area", upon sale, transfer or conveyance of the property within Stage 3, Track K.
5. Community Center. The Developer agrees to contribute toward completion of construction of the "Community Center" for Aquarina \$50,000.00. At all material times, the Developer shall retain control the distribution of the \$50,000.00 for the construction of the "Community Center", and shall provide ACSA with the funds to fund documented construction costs. If the cost to construct the Community Center does not require use of the \$50,000.00, ACSA shall have no rights to these funds. Developers obligation terminates in eighteen (18) months.
6. Litigation. Within ten (10) days of execution hereof, Owner and the Resident Association shall amend the Complaint within the Litigation to assert every known action or believed action against Developer and the ACSA shall be named as a party Plaintiff. After the filing of such an Amended Complaint, the Litigation shall be dismissed, with

prejudice with all parties to bear their own costs, expenses and attorney fees based upon the agreements reached herein

7. Ocean Club Maintenance. The Developer or the successor owner of the Ocean Club, if not Developer, shall at all times maintain the appearance of the Ocean Club. at its sole cost and expense.
8. Estoppel/Waiver. ACSA through its participation and consent to this Agreement and joinder in the Litigation is estopped from and waives any right to bring, initiate or file any action, claim or administrative proceeding against the Developer for any act, in action, event, negligence, breach of any fiduciary or statutory obligation, alleged misrepresentation or for any alleged violation of or failure to perform any obligation arising under the laws of the State of Florida or arising under the Declaration. The ACSA further agrees not to initiate, file, charge or bring, any administrative proceeding, claim or cause of action against Developer based upon any cause of action or claims which occurred prior to the date of execution hereof, which the ACSA knew or should have known existed prior to the execution hereof, or which are asserted in or which could have been asserted in the Litigation.
9. Contingency. The Developer's obligation herein are expressly contingent upon the ACSA taking appropriate action to have this Agreement approved by its members and this Agreement is approved and accepted by the Members and Developer agrees that it shall not exercise its voting rights with regard to such approval. It is understood and agreed that after acceptance hereof by the members, the covenants and provisions herein may not be amended or modified except upon the approval of Developer and with the consent of a majority of the members other than the Developer.
10. Non-Admission. Each party understands and agrees that this Agreement is a compromise and settlement of disputed claims: the acceptance of any benefit pursuant to this Agreement is intended to terminate the present litigation: the acceptance of benefits under this agreement is not to be construed as an admission of liability by any party under the claims and allegations of the other parties. This agreement may be executed by the parties in counterpart with the same force and effect as if executed simultaneously.

11. **Release.** Except for any parties' obligations under this Agreement and future obligations under the Declaration, Owner, Resident's Association, ACSA and Developer, hereby release and forever discharge each other their agents, respective employees, officers, directors, shareholders, partners, personal representatives, successors and assigns from all claims, demands, actions and causes of action for any damages, costs, compensation, liabilities, obligations, losses, debts, attorney fees and expenses of whatever kind or nature, known or unknown, which Owner, Resident's Association, ACSA or Developer may have or now have by reason of any matter or cause whatsoever from the beginning of the world through the date of this Agreement, including, but not limited to.
- 11.1 claims for breach of any duty or obligation created, established or imposed by (i) any contract or other agreement, written or oral, express, implied, or otherwise arising by operation of law; (ii) any law, statute, ordinance, rule, regulation or other positive enactment having the force of law; (iii) any instrument, document or other writing; or (iv) any fiduciary relationship;
- 11.2 claims arising from any intentional, willful, reckless or negligent conduct or omissions or based upon strict liability;
- 11.3 any claims arising from, in any way connected to or concerning any obligation, duty, right, title or interest of Developer arising under the Declaration.
- 11.4 claims asserted in or which at any time could have been asserted in the Litigation.
12. **Invalidity.** Any term or provision of this Agreement which is determined to be invalid or unenforceable by any Court of competent jurisdiction shall be ineffective only to the extent of such invalidity or unenforceability, without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or any Exhibit hereto, or their applicability to any circumstances, and shall not affect the validity and enforceability of the terms of this Agreement.
13. **Waiver of Jury Trial.** The parties hereto, knowingly, voluntarily and intentionally waive the right any of them may have to a trial by jury in respect to any litigation arising out of, under, or in connection with this Agreement, and any other agreements executed or contemplated to be executed in connection herewith, or any course of conduct, course of dealings, statements (whether verbal or written) or actions of any party (including,

without limitation, any action to rescind or cancel this Agreement and any claims or defenses asserting that this Agreement was fraudulently induced or is otherwise void or voidable); this waiver being a material inducement for Developer to enter into this Agreement.

14. Entire Agreement. This Agreement, including all exhibits attached hereto, embodies the complete and entire agreement between the parties regarding this transaction and supersedes all prior negotiations, agreements, and understandings relating thereto which are merged herein. This Agreement may not be varied or modified except by written agreement signed by all parties. The parties hereto waive the right to assert or claim in any action or proceeding that they were induced to enter into this Agreement by any promise, fact, occurrence, representation, warranty (collectively referred to as ("Representations")) or other matter which is not expressly set forth in this Agreement or any schedule attached hereto, and all such Representations, if any, are merged herein.

15. Notices. Any notice, request, demand, consent, approval or other communication required or permitted under this Contract (collectively a "notice") shall be (a) in writing (or sent by telex, telegram, telefax or telecopy and promptly confirmed in writing) and (b) addressed by the sender to the other party at address or number and in the manner set forth below:

(a) If to the Seller at: c/o A. Van Catterton, Esquire
1990 W. New Haven Avenue
Melbourne, Florida 32901
Fax No.: (321) 722-0330

(b) If to the Buyer at c/o Robert L. Beals, Esquire
201 Riverside Drive, Suite B
Indianapolis, Florida 32903
Fax No. (321) 733-4403

Except as otherwise provided in this Contract, each notice shall be effective and shall be deemed delivered on the earlier of: (i) its actual receipt, if delivered personally, by courier service, or by telex, telefax or telecopy (on the condition that the sending party has confirmation of transmission receipt of the notice). or. (ii) on the third day after the notice is postmarked for

mailing by first-class, postage prepaid, certified or registered, United States mail, with return receipt requested (whether or not the return receipt is subsequently received by the sender).

- 16. Further Assurances. The parties agree to execute any and all additional documents deemed necessary by the attorneys for the parties to effectuate this Agreement and conclude the litigation.
- 17. Capacity. All parties signing this Agreement in any representative capacity represent that they have the authority to sign on behalf of such party or entity. The parties hereto acknowledge that they are represented by counsel and that they have had the benefit of the advice of counsel prior to the execution of this Agreement.
- 18. Counterpart/Facsimile. This Agreement may be signed in counterpart and by facsimile transmission, the composite total of which shall constitute the entire agreement.
- 19. Construction of Agreement. This Agreement has been drafted and prepared by the attorneys for Petrus Group, LP as a convenience and the parties have read and negotiated all of the language used in this Agreement. The parties acknowledge and agree that because all parties participated in negotiating and drafting this Agreement, no rule of construction shall apply to this Agreement which construes any language, whether ambiguous, unclear or otherwise, in favor of, or against, any party by reason of that party's role in drafting this Agreement.

DATED this ___ day of _____, 2001.

Witnesses:

PLAINTIFFS

Thomas McMullen

DEFENDANT:

Petrus Group, I. P

ATTEST: _____

By: _____

Its: _____

RESIDENTS ASSOCIATION:

Aquarina Residents' Association, Inc.

ATTEST: _____

By: _____

Its: _____

ACSA:

Aquarina Community Services Association, Inc.

ATTEST: _____

By: _____

Its: _____

AGREED BY TOM McMULLEN AND JIM BATES
AUGUST 27, 2001

MEMO OF UNDERSTANDING

1 99 ft easement and parking can be moved 30 ft south and 10 ft. north.

2. Submerged land lease & dock assigned to ACSA

3. Commits to deed 838 acres – marina area. ACSA no less than 838 acres.

4 Commit "recreation area" use will not be changed.

5. Commit \$50,000 to community center construction budget within 60 days of signed construction contract.

6. Developer to build pool, restroom, cabana within 120 days after ocean pool is not available to residents.

7. Does not agree to pay legal fees associated with lawsuit for plaintiffs

8. No changes by future developer controlled ACSA that would affect items agreed to.

9. Amend ACSA documents regarding Architectural Control Board relative to ocean club building. Does not require homeowner approval to remove building.

JIM BATES' INTERPRETATION
PROPOSED STIPULATED LEGAL
AGREEMENT

97 ft easement parking and easement can be moved 110 ft north or 470 ft south

Developer commits to convey the improvements and lease at a future date. Developer can continue to charge fees for storage and ramp use.

Grants moveable easement for 17 parking spaces

Commits recreation area will not be reduced in size, but allows transfer of recreation area acreage if approved by Brevard County.

Commits \$50,000 for community center construction costs, but if construction does not occur in 18 months commitment ends.

Developer commits to build a pool within 120 days after ocean club pool not available - not less than \$100,000.

Same

Same

ACSA does not have authorization over other than residential properties. Provides commitment by developer that building will be maintained

EXHIBIT #

This will be up to 105 ft. Easement can be relocated north of beach club parcel as long as developer provides parking and dune crossover. The "beach area" deed will be recorded by 9/21/01

Developer identifies and commits dock and ramp as common properties provided by easement only

Same spaces as County has
Grants moveable easement for 17 parking spaces. County is being asked to revise existing easement. The existing space was a "mistake" by surveyor.

Commitment by developer that current "recreation area" by tennis courts will stay same size and may move

86,600
Developer will pay ~~\$50,000~~ to ACSA for community center within 14 days of signed agreement with ACSA approval. Developer can build it

Developer commits to build a pool, if and when ocean club pool is not available, within 120 days - minimum expenditure ~~\$100,000~~ *180,000*

Same

Same

Developer provides a commitment that building will be maintained, but no architectural control by ACSA

CLOSING STATEMENT-Combined Real Estate and Operations

Seller:		Buyer:		
Ponus Group, L.P. 235 Hammock Shore Dr Melbourne Beach, FL 32951		Indian River No 1 Developers, LLC 7860 Peters Rd-#F-111 Plantation, FL 33317		
Property: Aquatuna Development, Melbourne Beach, FL		Effective Closing Date: September 13, 2001 at close of business		
Description	Seller		Buyer	
	Due To	Due From	Due To	Due From
Contract Purchase Price	11,350,000.00			11,350,000.00
Purchase Price Adjustments				
Culchuse Costs	20,000.00			20,000.00
Service Management Systems (for Stock Payable by Buyer upon Governmental Approvals)	(1,230,000.00)			(1,230,000.00)
Timewater 2 448 LF Ocean Front retained by Seller under Contract to Sea Grape Manor Associates, LLC	(1,433,600.00)			(1,433,600.00)
Fish and Wildlife Parcel to be Closed under Separate Contract with Buyer	(960,000.00)			(960,000.00)
Homeowner Association Easement Reduction in Price	(168,000.00)			(168,000.00)
Sea Hawk Lots sold at Retail pre-closing (4X\$200,000)	(800,000.00)			(800,000.00)
Tranquility Int transferred pre-closing	(200,000.00)			(200,000.00)
River Oak Lots sold at Retail pre-closing (2X\$250,000)	(500,000.00)			(500,000.00)
Osprey East Units (8X\$60,000) Sold at Retail and Complete Construction	(480,000.00)			(480,000.00)
Gross Sales Price	5,564,400.00			5,564,400.00
Initial Deposit by Buyer				(250,000.00)
Closing Allocations and Prorations				
Settlement Savings-Bagby, Issue related to prior sales				
Lorillard	260,000.00			260,000.00
Settlement for Costs to Florida Titlework Co.	50,000.00			50,000.00
Personal Property Settled by Buyer	13,000.00			13,000.00
Turf Equipment Settled by Buyer	62,700.00			62,700.00
Pin Shop Inventory-Post Closing Side Letter				1,228.00
Snack Bar Inventory	1,723.00			1,723.00
Operating Allocations				
2001 Real Estate Taxes \$115,957 (Preliminary amount for year to be adjusted on receipt of actual bills)		81,325.24	81,325.24	
Golf Course Maintenance Paid \$15,500 (9 to IGM for 9/1/01-5)	2,067.97			2,067.97
ACSA Assessment (Sept) Paid \$8,633.79	4,657.46			4,657.46
Mutual Membership, Non-Underlined Obligations (Post Closing adjustment will be done when balance of actual dues are collected)		67,000.00	67,000.00	
Lien Release Payments				
Mortgage Principal Payoff		4,703,389.74		4,703,389.74
Instit's Due on Mortgage		83,005.66		83,005.66
Transaction & Closing Costs				
4% Real Estate Commission on Gross Sales Price		111,284.00	111,284.00	222,576.00
Title Insurance				
\$1,200,000 Simultaneous Loan Policy	125.00		125.00	250.00
\$1,000,000 Owners Policy for Golf Course			576.00	1,152.00
\$5,000,000 Owners Policy Split 50/50	6,300.25		6,300.25	12,600.50
Owners Policy Increase to \$6,000,000			5,224.50	10,449.00
ALTA 5 (10%)			2,182.00	4,364.00
ALTA 5 (Commercial Adjustable)			100.00	200.00
ALTA 5 (Commercial PUD)			100.00	200.00
Survey Endorsement (Commercial)			100.00	200.00
Steward Title Search Fees				
Invoice dated 11/2/00 (paid by buyer)		750.00	750.00	1,500.00
Reimburse Buyer for invoice dated 11/2/00	1,500.00			
Invoice dated 11/2/01 (multiple updates)	100.00		100.00	200.00
Invoice dated 2/1/01 (update)	25.00		25.00	50.00
Invoice dated 5/29/01 (multiple updates)	35.00		35.00	70.00
Invoice dated 7/12/01 (Buyer requested updates)			330.00	660.00
Invoice dated 8/1/01 (final update)	60.50		60.50	121.00
Documentary Stamp		25,788.00	25,788.00	51,576.00
Survey Split 50/50		10,800.00	10,800.00	21,600.00
Survey Charges Paid by Seller to be Reimbursed at Closing out of Split Amounts	9,376.25			9,376.25
Survey Expedite Charge Payable by Seller		5,000.00		5,000.00
Recording		250.00		500.00
Totals	5,970,455.70	5,097,076.09	148,325.24	5,883,395.20
Net Due To (From) Seller	872,784.31			4,862,292.69
Net Due From (To) Buyer			5,735,070.56	
SELLERS: Ponus Group, L.P. By Robert E. Mossburg 9/14/01 BUYER: Indian River No 1 Developers, LLC By [Signature] 9/17/01				

DESCRIPTION: PREPARED BY BRIEL & ASSOCIATES LAND SURVEYORS, INC.

A PARCEL OF LAND LYING IN SECTION 25, TOWNSHIP 29 SOUTH, RANGE 38 EAST BEING A PORTION OF TRACT VI AND TRACT VI, UNIT 1 OF AQUARINA P.U.D. STAGE 4, TRACTS VI & VII AS RECORDED IN PLAT BOOK 41, PAGE 74 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGIN AT THE NORTHWEST CORNER OF SAID TRACT VI, SAID CORNER BEING ON THE EASTERLY RIGHT OF WAY LINE OF STATE ROAD A-1-A; THENCE RUN S26°51'00"E 300.00 FEET ALONG SAID RIGHT OF WAY LINE; THENCE DEPARTING FROM SAID RIGHT OF WAY LINE N63°09'00"E 258.21 FEET TO THE MEAN HIGH WATER LINE OF THE ATLANTIC OCEAN; THENCE RUN ALONG THE MEAN HIGH WATER LINE N21°45'21"W 37.61 FEET; THENCE N26°08'59"W 76.56 FEET; THENCE N31°32'11"W 76.22 FEET; THENCE N29°55'38"W 86.18 FEET; THENCE N29°46'29"W 23.99 FEET TO THE NORTHERLY LINE OF SAID TRACT VI, UNIT 1; THENCE DEPARTING THE MEAN HIGH WATER LINE RUN S63°09'00"W ALONG THE NORTHERLY LINE OF SAID TRACT VI, UNIT 1 AND TRACT VI A DISTANCE OF 250.41 FEET TO THE POINT OF BEGINNING.
CONTAINING 1.78 ACRES MORE OR LESS.

INDIAN RIVER NO. 1 DEVELOPERS, LLC
7860 Peters Road, Suite F-111
Plantation, Florida 33317
Tele: 954-370-7788
Fax: 954-370-9771

September 25, 2001

Mel Scott, Director
Brevard County Planning & Zoning Department
2725 Judge Fran Jamieson Way
Building A
Viera, Florida 32940

Dear Mr. Scott:

Attached please find a requested minor modification to the Aquarina PUD and a check for \$160.00. I have revised the compilation of usage within tracts, revised the projected development stage schedule, and included a plan comparison that compares the requested minor administrative amendment to the last approved minor modification of this PUD approved March 8, 2000.

The attached is a summary of the changes that I am requesting at this time. The net effect of this submittal is to reduce Aquarina's commercial/hotel from 13.7 acres to 13.1 acre. In addition, oceanfront single family residential is increased by .6 acres from 1.0 acre to 1.6 acres. The transfer from commercial/hotel is between abutting tracts.

There will be no decrease in open space or ocean breezeway because 110 oceanfront feet in the tract of land, Stage IV, Tract VI, immediately north of the Aquarina Ocean Club parcel is being added as open space to the Aquarina PUD.

If you have any questions, please call me at 954-370-7788.

Sincerely yours,

S. Martin Sadkin
Managing Member

Attach

Exhibit "E"

LETTER WRITTEN BY THE EXISTING UTILITY

EXHIBIT "B"

SERVICE MANAGEMENT SYSTEMS, INC.

SMS

July 24, 2001

Vistar Realty
3095 South A1A
Melbourne Beach, FL 32951

REF: Beverly Court Utilities

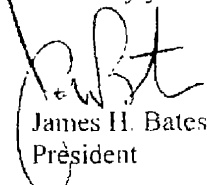
Dear Sirs:

I am in receipt of the civil engineering design and the Department of Environmental Protection application form for Beverly Court. I have informed Tony Edwards, of the Fleis & Bennett Engineering office, that prior to my approval of this application, I want to have a certification signed and scaled by a professional engineer which simply and clearly states that the engineer certifies that the capacity in the existing sewer line underneath A1A is sufficient to accommodate the services to 20 additional residential units. This number of 20 is a little bit higher than what we had initially discussed. An alternative to receiving the separate certification that I have described above, would be for you to pay a review fee to this utility that would compensate the cost of having our own professional engineer review the plans and potentially make recommendations of changes.

Because this plan places additional gravity sewer lines and an additional lift station to maintain I would look to have the service availability fee for these 20 units paid at the time the lines are connected into our system. The service availability fee for sewage is \$925.00 per unit.

The certification from your professional engineer should also certify that the proposed connection into our system would pose no harm or diminish the operation of the existing lift station owned by this utility located adjacent to the Brevard County fire station. If you have any questions, please contact me.

Sincerely yours,



James H. Bates
President

/gak

cc: Fleis & Bennett Engineering, Inc., Engineer
cc: Ron Chupka, SMS

FINANCIAL STATEMENT

EXHIBIT "C"

PROPOSED DEED

EXHIBIT "D"

SPECIAL WARRANTY DEED

THIS INDENTURE, made this the ___ day of _____, 2002, between Service Management Systems, Inc., a Florida corporation, whose address is 235 Hammock Shore Drive, Melbourne, Florida 32951, and whose employer identification number is 592408891, as Grantor, to IRD OSPREY, LLC, a Florida limited liability company, whose address is 7860 Peters Road, Suite F-111, Plantation, Florida 33324, as Grantee,

WITNESSETH:

That the said Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, to it in hand paid by the said Grantee, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said Grantee, heirs and assigns forever, the following described real property situate, lying and being in Brevard County, Florida, to-wit:

See Exhibit "A" attached hereto and made a part hereof

And said Grantor does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

This conveyance is made subject to the following:

1. Zoning and/or restrictions and prohibitions imposed by governmental authority;
2. Restrictions, easements, and other matters appearing on the plat and/or common to the subdivision (without reimposing same); and,
3. Taxes for calendar year 2001 and subsequent years.

IN WITNESS WHEREOF, Grantor has hereunto set its hand and seal the day and

year first above written.

Signed, sealed and delivered
in the presence of:

SERVICE MANAGEMENT SYSTEMS,
INC., a Florida corporation

Signature of Witness

Name of Witness

Signature of Witness

Name of Witness

By: _____
James Bates, President

STATE OF FLORIDA)
COUNTY OF BREVARD)

The foregoing instrument was acknowledged before me, in the County and State
aforesaid, this _____ day of _____, 2001, by James Bates, as President of Service
Management Systems, Inc., a Florida corporation under authority vested in him, who is
personally known by me or who has produced his driver's license as identification and who
did take an oath.

THIS INSTRUMENT PREPARED BY:
Robert W. Frazier, Jr., Esquire
Frazier, Hotte & Associates, P.A.
2400 East Commercial Boulevard
Suite 826
Fort Lauderdale, FL 33308
Telephone: 954-928-1800
Q:\docs\rl\aquarinel\utilityplant\WD.frm

Notary Public
My Commission Expires:

EXHIBIT "A"

Stage 1, Tract D, Aquarina PUD, Plat Book 41, pages 88-92 of the Public Records of Brevard County, Florida, together with all improvements located thereon.

PROPOSED TARIFFS

EXHIBIT "E"

CERTIFICATES

EXHIBIT "F"

EXHIBIT C



FLORIDA

Public Service Commission

CERTIFICATE NUMBER

517-W

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

Aquarina Developments, Inc.

Whose principal address is

235 Hammock Shore Drive
Melbourne, Florida 32951 (Brevard County)

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

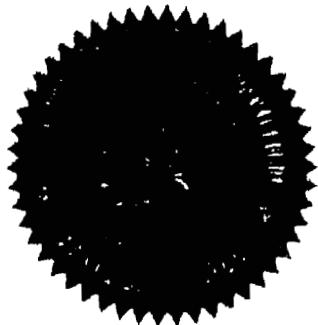
This Certificate shall remain in force and effect until sus-
pended, cancelled or revoked by Orders of this Commis-
sion.

ORDER <u>22075</u>	DOCKET <u>880595-WS</u>
ORDER <u>23059</u>	DOCKET <u>900167-WS</u>
ORDER <u>PSC-92-0119-FOF-WS</u>	DOCKET <u>911129-WS</u>
ORDER _____	DOCKET _____

BY ORDER OF THE
FLORIDA PUBLIC SERVICE COMMISSION

[Handwritten Signature]

Director
Division of Records & Reporting





FLORIDA

Public Service Commission

CERTIFICATE NUMBER

450-S

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

Aquarina Developments, Inc.

Whose principal address is

235 Hammock Shore Drive

Melbourne, Florida 32951 (Brevard County)

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

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

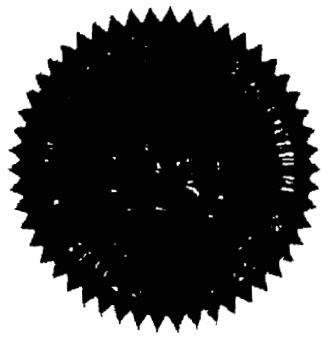
ORDER 22075 DOCKET 880595-WS

ORDER 23059 DOCKET 900167-WS

ORDER PSC-92-0119-FOF-WS DOCKET 911129-WS

ORDER _____ DOCKET _____

BY ORDER OF THE
FLORIDA PUBLIC SERVICE COMMISSION



[Handwritten Signature]

Director
Division of Records & Reporting

AFFIDAVIT OF NOTICING

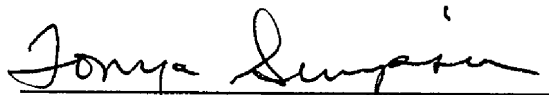
EXHIBIT "G"

AFFIDAVIT OF MAILING

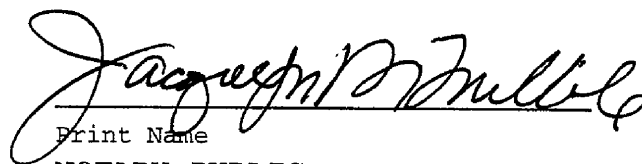
STATE OF FLORIDA
COUNTY OF BREVARD

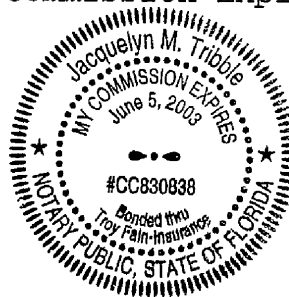
Before me, the undersigned authority, authorized to administer oaths and take acknowledgments, personally appeared TONYA SIMPSON, who, after being duly sworn on oath, did depose on oath and say that she is the secretary of F. Marshall Deterding, attorney for IRD Osprey, LLC d/b/a Aquarina Utilities and that on February 1, 2002, she did send by certified mail, return receipt requested, a copy of the notice attached hereto to each of the utilities, governmental bodies, agencies, or municipalities, in accordance with the list provided by the Florida Public Service Commission, which is also attached hereto.

FURTHER AFFIANT SAYETH NAUGHT.


Tonya Simpson

Sworn to and subscribed before me this 1st day of February, 2002, by Jacquelyn Tribble, who is personally known to me.


Print Name
NOTARY PUBLIC
My Commission Expires:



LIST OF WATER AND WASTEWATER UTILITIES IN BREVARD COUNTY

(VALID FOR 60 DAYS)
01/16/2002-03/16/2002

UTILITY NAME

MANAGER

BREVARD COUNTY

BURKIM ENTERPRISES, INC. (WS842)
2340 N.E. DIXIE HIGHWAY
JENSEN BEACH, FL 34957-5952

KEITH A. BURGE
(561) 334-3433

COLONY PARK UTILITIES, INC. (SU288)
1447 NEWFOUND HARBOR DRIVE
MERRITT ISLAND, FL 32952-2854

LENORE WARREN
(407) 453-1400

EAST CENTRAL FLORIDA SERVICES, INC. (WU643)
1700 13TH STREET, SUITE 2
ST. CLOUD, FL 34769-4300

JAMES B. PAYNE
(407) 957-6744

FLORIDA CITIES WATER COMPANY (BAREFOOT BAY DIVISION) (WS007)
4837 SWIFT ROAD, SUITE 100
SARASOTA, FL 34231-5157

LARRY GOOD
(407) 933-5514

FLORIDA WATER SERVICES CORPORATION (WU561)
P O BOX 609520
ORLANDO, FL 32860-9520

FREDERICK W. LEONHARDT
(407) 598-4152

NORTHGATE PROPERTIES, INC. (WS172)
3277 FIRST AVENUE
MIMS, FL 32754-3134

LESTER GRODMS
(904) 428-0094

PINE LAKE MOBILE HOME ESTATES, INC. (SU698)
2505 EBER BLVD.
MELBOURNE, FL 32904-8848

MARY DARRELL
(407) 723-2754 OR -2125

SAN SEBASTIAN WATER, LLC (WU388)
7900 FOX CREEK TRAIL
FRANKTOWN, CO 80116-9670

WILLIAM F. MCCAIN
(561) 770-1093

SERVICE MANAGEMENT SYSTEMS, INC. (WS571)
235 HAMMOCK SHORE DRIVE
MELBOURNE BEACH, FL 32951-3941

JAMES BATES
(407) 723-2522

LIST OF WATER AND WASTEWATER UTILITIES IN BREVARD COUNTY

(VALID FOR 60 DAYS)
01/16/2002-03/16/2002

UTILITY NAME

MANAGER

GOVERNMENTAL AGENCIES

CLERK, BOARD OF COUNTY COMMISSIONERS, BREVARD COUNTY
P. O. BOX 999
TITUSVILLE, FL 32781-0999

DEP CENTRAL DISTRICT
3319 MAGUIRE BLVD., SUITE 232
ORLANDO, FL 32803-3767

EAST CENTRAL FLORIDA PLANNING COUNCIL
1011 WYMORE ROAD, SUITE 105
WINTER PARK, FL 32789

MAYOR, CITY OF CAPE CANAVERAL
P. O. BOX 326
CAPE CANAVERAL, FL 32920-0326

MAYOR, CITY OF COCOA
P. O. BOX 1750
COCOA, FL 32923-1750

MAYOR, CITY OF COCOA BEACH
UTILITIES DIRECTOR
P. O. BOX 322430
COCOA BEACH, FL 32932-2430

MAYOR, CITY OF INDIAN HARBOUR BEACH
2055 SOUTH PATRICK DRIVE
INDIAN HARBOUR BEACH, FL 32937-4447

MAYOR, CITY OF MELBOURNE
900 EAST STRAWBRIDGE AVENUE
MELBOURNE, FL 32901-4739

LIST OF WATER AND WASTEWATER UTILITIES IN BREVARD COUNTY

(VALID FOR 60 DAYS)
01/16/2002-03/16/2002

UTILITY NAME

MANAGER

MAYOR, CITY OF PALM BAY
120 MALABAR ROAD, S.E.
PALM BAY, FL 32907-3009

MAYOR, CITY OF ROCKLEDGE
P. O. BOX 488
ROCKLEDGE, FL 32955

MAYOR, CITY OF SATELLITE BEACH
565 CASSIA BLVD.
SATELLITE BEACH, FL 32937-3197

MAYOR, CITY OF TITUSVILLE
P. O. BOX 2806
TITUSVILLE, FL 32781-2806

MAYOR, CITY OF WEST MELBOURNE
2285 MINTON ROAD
WEST MELBOURNE, FL 32904-4916

MAYOR, TOWN OF INDIALANTIC
216 FIFTH AVENUE
INDIALANTIC, FL 32903-3199

MAYOR, TOWN OF MALABAR
2725 MALABAR ROAD
MALABAR, FL 32950-1427

MAYOR, TOWN OF MELBOURNE BEACH
507 OCEAN AVENUE
MELBOURNE BEACH, FL 32951-2523

MAYOR, TOWN OF MELBOURNE VILLAGE
555 HAMMOCK ROAD
MELBOURNE VILLAGE, FL 32904-2513

LIST OF WATER AND WASTEWATER UTILITIES IN BREVARD COUNTY

(VALID FOR 60 DAYS)
01/16/2002-03/16/2002

UTILITY NAME

MANAGER

MAYOR, TOWN OF PALM SHORES
151 PALM CIRCLE
PALM SHORES, FL 32940-7209

ST. JOHNS RIVER WTR. MANAGEMENT DISTRICT
P.O. BOX 1429
PALATKA, FL 32178-1429

STATE OFFICIALS

STATE OF FLORIDA PUBLIC COUNSEL
C/O THE HOUSE OF REPRESENTATIVES
THE CAPITOL
TALLAHASSEE, FL 32399-1300

DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES
FLORIDA PUBLIC SERVICE COMMISSION
2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FL 32399-0850

NOTICE

EXHIBIT "H"

February __, 2002
**NOTICE OF APPLICATION FOR TRANSFER
OF WASTEWATER CERTIFICATE AND FACILITIES**

IRD Osprey, LLC d/b/a Aquarina Utilities, 7860 Peters Road, Suite F-111, Plantation, Florida 33324, pursuant to Section 367.071, Florida Statutes, hereby notices its intent to apply to the Florida Public Service Commission for Transfer of Certificate and Facilities of Service Management Systems, Inc. to provide water and wastewater services to the following described territory located in Brevard County, Florida:

Order No. 22075 - Water and Wastewater Service Area

The Hammock Condominium
Township 29 South, Range 38 East, In Section 36

From the Northwest corner of Section 36 run East along the North Section line 2,900 feet to the East right-of-way line of State Road No. A1A; thence run South 26 51'00" East 1,980 feet along the East right-of-way line of State Road No. A1A. This point also known as the Southeast corner of said Lot 1. From the Southeast corner of said Lot 1, thence run South 68 33'54" West along the Southerly boundary of said Lot 1 for 917.97 feet to the Point of Beginning of the following described parcel; thence continue South 68 33'54" West a distance of 224.55 feet; thence run North 26 09'57" West a distance of 233.68 feet; thence run North 63 50'03" East a distance of 127.83 feet to a point of curvature of a circular curve, concave to the Southeast and having a radius of 118.0 feet; thence run Northeasterly along the arc of said curve through a central angle of 06 34'42" an arc distance of 13.44 feet to a point of tangency; thence run North 70 21'45" East a distance of 110.59 feet; thence run South 19 38'45" East a distance of 240.42 feet to the Point of Beginning.

Also, from the Northwest corner of Section 36 run East along the North section line 2,900 feet to the East right-of-way line of State Road No. A1A; thence run South 26 51'00" East 1,980 feet along the East right-of-way line of State Road No. A1A. This point also known as the Southeast corner of said Lot 1. Commence at the Southeast corner of said Lot 1; thence South 68 33'54" West a distance of 1,482.99 feet, thence run North 01 38'06" East a distance of 295.81 feet to the Point of Beginning of the following described parcel; thence continue North 01 38'06" East a distance of 187.16 feet, thence run South 83 21'54" East a distance of 235.37 feet to a point of curvature of a circular curve, concave to the East and having a radius of 120.0 feet bearing North 67 46'27" West from the center of the next described curve; thence Southerly along the arc of said curve through a central angle of 48 23'30" an arc distance of 101.35 feet to a point of tangency, thence run South 26 09'57" East a distance of 22.12 feet; thence run South 63 50'03" West a distance of 155.27 feet to a point of curvature of a circular curve concave to the North and having a radius of 112.0 feet; thence run Westerly along the arc of said curve through a central angle of 48 45'15" an arc distance of 95.30 feet to a point of tangency; thence run North 67 24'43" West a distance of 23.81 feet to the Point of Beginning.

The service description is also described as follows: Phase I of the Hammock Condominium, units 101 thru 309.

Order No. 23059 - Water and Wastewater Service Area

Aquarina Planned Unit Development - Government Lot 4 and 5, Section 25, Township 29 South, Range 38 East, Brevard County, Florida, less the right of way for State Road A1A; and Government Lot 1, Section 35, Township 29 South, Range 38 East, Brevard County, Florida; and Government Lots 1, 2 and 3, Section 36, Township 29 South, Range 38 East, Brevard County, Florida, less the right of way for State Road A1A, the South 50.00 feet of said Government Lots 1, 2 and 3 lying West of State Road A1A, and that portion of said Government Lot 1 parallel with and adjacent to the existing West right of way line of State Road A1A to a depth of 20.00 feet (196.9 Acres ±)

Also described as:

In Township 29 South, Range 38 East, Sections 25, 35 and 36 in Brevard County.

From the NW corner of Section 36, Township 29 South, Range 38 East, Brevard County also known as the point of beginning, run due North along the West line of the Southwest quarter of Section 25 a distance of 1,600 feet more or less. From said point run due East along the North line of Government Lots 4 and 5 less the right-of-way for State Road A1A a distance of 3,300 feet more or less to a point located on the West Bank of the Atlantic Ocean. From said point run Southeasterly along the bank of the Atlantic Ocean a distance of 4,000 feet more or less to a point being the Southeast corner of Government Lot 1. From said point run due West along the South line of Government Lot 1, 2 and 3 less the right-of-way for State Road A1A a distance of 4,500 feet more or less to a point on the East Bank of the Indian River. From said point run Northwesterly parallel with the East Bank of the Indian River to a point located on the North line of Section 35, Township 29 South, Range 38 East in Brevard County. From said point run due East along the North line Of Section 35 a distance of 400 feet more or less to the Point of Beginning.

Order No. PSC-92-0119-FOF-WS

The following described lands located in Brevard County, Florida:

Water

A portion of Section 36, Township 29 South, Range 38 East, Section 31, Township 29 South, Range 38 East and Section 6, Township 30 South, Range 39 East, Section 1, Township 30 South, Range 39 East, Brevard County, Florida being more particularly described as follows:

From the Northwest Corner of said Section 36 run Easterly along the North line of said Section 36 a distance of 2,985 feet more or less to the centerline of State Road A1A; thence run Southeasterly along the centerline of State Road A1A 1,520 feet more or less to the intersection of the North line of Government Lot 6, Section 36, Township 29 South, Range 38 East, with the Centerline of State Road A1A, being the Point of Beginning of the herein described parcel; thence run Easterly along the North line of said government Lot 6 a distance of 300 feet more

or less to the mean high water line of the Atlantic Ocean; thence run Southeasterly along said mean high water line thru said Sections 36, 31 and 6 a distance of 9,100 feet more or less to the South line of Government Lot 3 of said Section 6, Township 30 South, Range 39 East; thence departing said mean high water line run Westerly along the South line of said Government Lot 3 a distance of 1,550 feet more or less to the mean high water line of the Indian River; thence run Northwesterly along said mean high water line 13,300 feet more or less to the North line of Government Lot 4, of said Section 36, Township 29 South, Range 38 East; thence run Easterly along the North lines of Government Lots 4, 5 and 6 of said Section 36 a distance of 3,300 feet more or less to the Point of Beginning.

Less and Except "The Hammock Condominium I", being a portion of Government Lots 5 and 6 of Said Section 36, Township 29 South, Range 38 East, being described in Official Records Book 2732, Page 1060 of the Public Records of Brevard County, Florida.

Water and Wastewater

A Portion of Lot 1, Sunnyland Groves Subdivision, according to the Plat thereof as recorded in Plat Book 9, Page 42, Public Records of Brevard County, Florida, being a Portion of Government Lots 5 and 6, Section 36, Township 29 South, Range 38 East, being more particularly described as follows:

From the Northwest Corner of said Section 36 run Easterly along the North line of said Section 36 a distance of 2,985 feet more or less to the Centerline of State Road A1A; thence run Southeasterly along the Centerline of State Road A1A 1,835 feet more or less; thence run South 68 33'54" West, along the Easterly extension of the Southerly line of said Lot 1 and the Southerly line of said Lot 1, 968.19 feet to the Point of Beginning of the following described parcel; thence continue South 68 33'54" West a distance of 224.55 feet; thence run North 26 09'57" West a distance of 233.68 feet; thence run North 63 50'03" East a distance of 127.83 feet to a point of curvature of a circular curve, concave to the Southeast and having a radius of 118.0 feet; thence run Northeasterly along the arc of said curve through a central angle of 06 31'42" an arc distance of 13.44 feet to a Point of Tangency; thence run North 70 21'45" East a distance of 110.59 feet; thence run South 19 38'15" East a distance of 240.42 feet to the Point of Beginning.

Containing 1.31 Acres, more or less, and less any reservations, dedications, or easements of record.

Wastewater

A portion of Section 25, Township 29 South, Range 38 East and Section 26, Township 29 South, Range 38 East, Brevard County, Florida being more particularly described as follows:

From the Northwest Corner of said Section 25 run Southerly along the West line of said Section 25 a distance of 2,640 feet more or less to the Southwest corner of Government Lot 2 and the Point of Beginning of the herein described parcel; thence run Northerly along the West line of said Government Lot 2 a distance of 1,320 feet more or less to the Northwest corner of said Government Lot 2; thence run Easterly along the North line of said Government Lot 2 a distance of 1,300 feet more or less to the mean high water line of the Atlantic Ocean, thence run Southeasterly along said mean high water line thru said Government Lot 2 and Government Lot 3, of said Section 25 a distance of 3,100 feet more or less to the South line of Government Lot 3 of said Section 25; thence departing said mean high water line run Westerly along the South line of said Government Lot 3 a distance of 2,700 feet more or less to the Southeast corner of Government Lot 3 of the aforesaid Section 26; thence continue Westerly along the South line of said Government Lot 3, Section 26 a distance of 1,270 feet more or less to the mean high water line of Mullet Creek; thence run Northwesterly along said mean high water line 1,750 feet more or less to the North Line of Government Lot 11 of said Section 26; thence departing said mean high water line run Easterly along the North line of said Government Lots 11 and 3, Section 26 a distance of 2,400 feet more or less to the Point of Beginning.

Together with a Portion of Section 36, Township 29 South, Range 38 East, Brevard County, Florida being more particularly described as follows;

From the Northwest corner of said Section 36 run Easterly along the North line of said Section 36 a distance of 2,985 feet more or less to the centerline of State Road A1A; thence run Southeasterly along the centerline of State Road A1A 1,520 feet more or less to the intersection of the North line of Government Lot 6 of said Section 36 with the Centerline of State Road A1A being the Point of Beginning of the herein described parcel; thence run Easterly along the North line of said Government Lot 6 a distance of 300 feet more or less to the mean high water line of the Atlantic Ocean; thence run Southeasterly along said mean high water line thru Government Lots 6 and 8 of said Section 36 a distance of 3,050 feet more or less to the South line of said Government Lot 8; thence departing said mean high water line run Westerly along the South line of said Government Lot 8 a distance of 700 feet more or less to the mean high water line of the Indian River; thence run Northwesterly along said mean high water line 5,700 feet more or less to the North line of Government Lot 4 of said Section 36; thence run Easterly along the North lines of Government Lots 4, 5, and 6 of said Section 36 a distance of 3,300 feet more or less to the Point of Beginning.

Less and except "The Hammock Condominium I", being a portion of Government Lots 5 and 6 of said Section 36, Township 29 South, Range 38 east, being described in Official Records Book 2732, Page 1060 of the Public Records of Brevard County, Florida.

The original territory as described in Order No. PSC-92-0119-FOF-WS, issued in March of 1992 contained a minor scrivener's error which has been corrected in the above-referenced description, and which will be corrected in a subsequent PSC Order. Any objections to the Application must be made in writing and filed with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, with copy to F. Marshall Deterding, Esquire, Rose, Sundstrom & Bentley, 2548 Blairstone Pines Drive, Tallahassee, Florida 32301, no later than 30 days after the last date that the Notice was mailed or published, whichever is later.

WATER TARIFF

IRD OSPREY, LLC
D/B/A AQUARINA UTILITIES
NAME OF COMPANY

FILED WITH
FLORIDA PUBLIC SERVICE COMMISSION

WATER TARIFF

IRD OSPREY, LLC
D/B/A AQUARINA UTILITIES
NAME OF COMPANY

7860 Peters Road, Suite F-111

Plantation, Florida 33324
(ADDRESS OF COMPANY)

(954) 370-7788
(Business & Emergency Telephone Numbers)

FILED WITH
FLORIDA PUBLIC SERVICE COMMISSION

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WATER TARIFF

Table of Contents

	Sheet Number
Communities Served Listing	4.0
Description of Territory Served	3.0
Index of	
Rates and Charges Schedules	11.0
Rules and Regulations	6.0
Service Availability Policy	24.0
Standard Forms	20.0
Technical Terms and Abbreviations	5.0
Territory Served	3.0

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WATER TARIFF

DESCRIPTION OF TERRITORY SERVED

FROM THE NORTHWEST CORNER OF SAID SECTION 36 RUN EASTERLY ALONG THE NORTH LINE OF SAID SECTION 36 A DISTANCE OF 2985 FEET MORE OR LESS TO THE CENTERLINE OF R.R. A-1-A; THENCE RUN SOUTHEASTERLY ALONG THE CENTERLINE OF S.R. A-1-A 1035 FEET MORE OR LESS; THENCE RUN S68 33'54"W, ALONG THE EASTERLY EXTENSION OF THE SOUTHERLY LINE OF SAID LOT 1 AND THE SOUTHERLY LINE OF SAID LOT 1, 968.19 FEET TO THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL; THENCE CONTINUE S68 33'54"W A DISTANCE OF 224.55 FEET; THENCE RUN N26 09'57"W A DISTANCE OF 233.68 FEET; THENCE RUN N63 50'03"E A DISTANCE OF 127.83 FEET TO A POINT OF CURVATURE OF A CIRCULAR CURVE, CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 118.0 FEET; THENCE RUN NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 06 31'42" AN ARC DISTANCE OF 13.44 FEET TO A POINT OF TANGENCY; THENCE RUN N70 21'45"E A DISTANCE OF 110.59 FEET; THENCE RUN S19 30' 15"E A DISTANCE OF 240.42 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.31 ACRES, MORE OR LESS, AND LESS ANY RESERVATIONS, DEDICATIONS, OR EASEMENTS OF RECORD.

D:91440/LEGAL.

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES
 WATER TARIFF

(Continued from Sheet No. 3.0)

DESCRIPTION OF TERRITORY SERVED

A PORTION OF SECTION 36, TOWNSHIP 29 SOUTH, RANGE 38 EAST, SECTION 31, TOWNSHIP 29 SOUTH, RANGE 38 EAST AND SECTION 6, TOWNSHIP 30 SOUTH, RANGE 39 EAST, SECTION 1, TOWNSHIP 30 SOUTH, RANGE 39 EAST, BREVARD COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM THE NORTHWEST CORNER OF SAID SECTION 36 RUN EASTERLY ALONG THE NORTH LINE OF SAID SECTION 36 A DISTANCE OF 2985 FEET MORE OR LESS TO THE CENTERLINE OF S.R. A-1-A; THENCE RUN SOUTHEASTERLY ALONG THE CENTERLINE OF S.R. A-1-A 1520 FEET MORE OR LESS TO THE INTERSECTION OF THE NORTH LINE OF GOVERNMENT LOT 6, SECTION 36, TOWNSHIP 29 SOUTH, RANGE 38 EAST, WITH THE CENTERLINE OF S.R. A-

1-A, BEING THE POINT OF BEGINNING OF THE HEREBY DESCRIBED PARCEL; THENCE RUN EASTERLY ALONG THE NORTH LINE OF SAID GOVERNMENT LOT 6 A DISTANCE OF 300 FT. MORE OR LESS TO THE MEAN HIGH WATER LINE OF THE ATLANTIC OCEAN; THENCE RUN SOUTHEASTERLY ALONG SAID MEAN HIGH WATER LINE THRU SAID SECTIONS 36, 31 AND 6 A DISTANCE OF 9,100 FT. MORE OR LESS TO THE SOUTH LINE OF GOVERNMENT LOT 3 OF SAID SECTION 6, TOWNSHIP 30 SOUTH, RANGE 39 EAST; THENCE DEPARTING SAID MEAN HIGH WATER LINE RUN WESTERLY ALONG THE SOUTH LINE OF SAID GOVERNMENT LOT 3 A DISTANCE OF 1,550 FT. MORE OR LESS TO THE MEAN HIGH WATER LINE OF THE INDIAN RIVER; THENCE RUN NORTHWESTERLY ALONG SAID MEAN HIGH WATER LINE 13,300 FT. MORE OR LESS TO THE NORTH LINE OF GOVERNMENT LOT 4, OF SAID SECTION 36, TOWNSHIP 29 SOUTH, RANGE 38 EAST; THENCE RUN EASTERLY ALONG THE NORTH LINES OF GOVERNMENT LOTS 4, 5 & 6 OF SAID SECTION 36 A DISTANCE OF 3,300 FT. MORE OR LESS TO THE POINT OF BEGINNING.

LESS AND EXCEPT "THE HANNOCK CONDITION 1", BEING A PORTION OF GOVERNMENT LOTS 5 & 6 OF SAID SECTION 36, TOWNSHIP 29 SOUTH, RANGE 38 EAST, BEING DESCRIBED IN OFFICIAL RECORDS BOOK 2732, PAGE 1060 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

A PORTION OF LOT 1, SUNNYLAM GROVES SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 9, PAGE 42, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, BEING A PORTION OF GOVERNMENT LOTS 5 AND 6, SECTION 36, TOWNSHIP 29 SOUTH, RANGE 37 EAST; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WATER TARIFF

COMMUNITIES SERVED LISTING

<u>County Name</u>	<u>Development Name</u>	<u>Rate Schedule(s) Available</u>	<u>Sheet No.</u>
BREVARD	HAMMOCK	GS	
BREVARD	AQUARINA	GS, RS	
BREVARD	ST. ANDREWS	RS	

NATHAN KALICHMAN
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MANAGING MEMBER
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NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WATER TARIFF

TECHNICAL TERMS AND ABBREVIATIONS

- 1.0 **'BFC'** - "BFC" is the abbreviation for "Base Facility Charge" which is the minimum amount the utility may charge to the Company's customers and is separate from the amount billed for water consumption on the utility's bills to its customers.
- 2.0 **'CERTIFICATE'** - A document issued by the Commission authorizing the Company to provide water service in a specific territory.
- 3.0 **'COMMISSION'** - "Commission" refers to the Florida Public Service Commission.
- 4.0 **'COMMUNITIES SERVED'** - The group of customers who receive water service from the Company and who's service location is within a specific area or locality that is uniquely separate from another.
- 5.0 **'COMPANY'** -
- 6.0 **'CUSTOMER'** - Any person, firm or corporation who has entered into an agreement to receive water service from the Company and who is liable for the payment of that water service.
- 7.0 **'CUSTOMER'S INSTALLATION'** - All pipes, shut-offs, valves, fixtures and appliances or apparatus of every kind and nature which are located on the customer's side of the "Point of Delivery" and used in connection with or forming a part of the installation necessary for rendering water service to the customer's premises regardless of whether such installation is owned by the customer or used by the consumer under lease or other agreement.
- 8.0 **'MAIN'** - A pipe, conduit, or facility used for conveying water service through individual services or through other mains.
- 9.0 **'POINT OF DELIVERY'** - For water systems, "point of delivery" shall mean the outlet connection of the meter for metered service or the point at which the company's piping, fittings and valves connect with the customer's piping, fittings and valves for non-metered service.
- 10.0 **'RATE'** - Amount which the utility may charge for water service which is applied to the customer's actual consumption.
- 11.0 **'RATE SCHEDULE'** - The rate(s) or charge(s) for a particular classification of service plus the several provisions necessary for billing, including all special terms and conditions under which service shall be furnished at such rate or charge.

NATHAN KALICHMAN
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NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WATER TARIFF

(Continued from Sheet No. 5.0)

- 12.0 **"SERVICE"** - Service, as mentioned in this tariff and in agreement with customers, shall be construed to include, in addition to all water service required by the customer the readiness and ability on the part of the Company to furnish water service to the customer. Service shall conform to the standards set forth in Section 367.111 of the Florida Statutes.
- 13.0 **"SERVICE LINES"** - The pipe between the Company's mains and the point of delivery and shall include all of the pipe, fittings and valves necessary to make the connection to the customer's premises excluding the meter.
- 14.0 **"TERRITORY"** - The geographical area described by metes and bounds with township, range and section in a certificate, which may be within or without the boundaries of an incorporated municipality and, may include areas in more than one county.

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WATER TARIFF

INDEX OF RULES AND REGULATIONS

	<u>Sheet Number</u>	<u>Rule Number</u>
Access to Premises	9.0	13.0
Adjustment of Bills	10.0	23.0
Adjustment of Bills for Meter Error	10.0	24.0
All Water Through Meter	10.0	22.0
Applications.....	7.0	3.0
Applications by Agents	7.0	4.0
Change of Customer's Installation	8.0	10.0
Continuity of Service	8.0	8.0
Customer Billing.....	9.0	15.0
Delinquent Bills	9.0	16.0
Extensions	8.0	6.0
Filing of Contracts	10.0	26.0
General Information	7.0	1.0
Inspection of Customer's Installation	8.0	11.0
Limitation of Use	7.0	7.0
Meters	10.0	21.0

(Continued to Sheet No. 6.1)

NATHAN KALICHMAN
ISSUING OFFICERMANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WATER TARIFF

(Continued from Sheet No. 6.0)

	<u>Sheet Number</u>	<u>Rule Number</u>
Meter Accuracy Requirements	10.0	25.0
Payment of Water and Wastewater Service Bills Concurrently	9.0	17.0
Policy Dispute	7.0	2.0
Protection of Company's Property	8.0	12.0
Refusal or Discontinuance of Service.....	7.0	5.0
Right of Way or Easements	9.0	14.0
Termination of Service	9.0	18.0
Type and Maintenance	8.0	9.0
Unauthorized Connections - Water	10.0	20.0

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WATER TARIFF

RULES AND REGULATIONS

- 1.0 GENERAL INFORMATION - These Rules and Regulations are a part of the rate schedules and applications and contracts of the Company and, in the absence of specific written agreement to the contrary, apply without modifications or change to each and every customer to whom the Company renders water service.

The Company shall provide water service to all customers requiring such service within its certificated territory pursuant to Chapter 25-30, Florida Administrative Code and Chapter 367, Florida Statutes.

- 2.0 POLICY DISPUTE - Any dispute between the Company and the customer or prospective customer regarding the meaning or application of any provision of this tariff shall upon written request by either party be resolved by the Florida Public Service Commission.
- 3.0 APPLICATION - In accordance with Rule 25-30.310, Florida Administrative Code, a signed application is required prior to the initiation of service.
- 4.0 APPLICATIONS BY AGENTS - Applications for water service requested by firms, partnerships, associations, corporations, and others shall be rendered only by duly authorized parties or agents.
- 5.0 REFUSAL OR DISCONTINUANCE OF SERVICE - The Company may refuse or discontinue water service rendered under application made by any member or agent of a household, organization, or business in accordance with Rule 25-30.320, Florida Administrative Code.
- 6.0 EXTENSIONS - Extensions will be made to the Company's facilities in compliance with Commission Rules and Orders and the Company's tariff.
- 7.0 LIMITATION OF USE - Water service purchased from the Company shall be used by the customer only for the purposes specified in the application for water service and the customer shall not sell or otherwise dispose of such water service supplied by the company.

In no case shall a customer, except with the written consent of the company, extend his lines across a street, alley, lane, court, property line, avenue, or other way in order to furnish water service to the adjacent property through one meter even though such adjacent property may be owned by him. In case of such unauthorized extension, sale, or disposition of service, the customer's water service will be subject to discontinuance until such unauthorized extension, remetering, sale or disposition of service is discontinued and full payment is made to the Company for water service rendered by the Company (calculated on proper classification and rate schedules) and until reimbursement in full is made in full to the Company for all extra expenses incurred for clerical work, testing, and inspections.

NATHAN KALICHMAN
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MANAGING MEMBER
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NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WATER TARIFF

(Continued from Sheet No. 7.0)

8.0 **CONTINUITY OF SERVICE** - In accordance with Rule 25-30.250, Florida Administrative Code, the company will at all times use reasonable diligence to provide continuous water service and, having used reasonable diligence, shall not be liable to the customer for failure or interruption of continuous water service.

If at any time the Company shall interrupt or discontinue its service, all customers affected by said interruption or discontinuance shall be given not less than 24 hours written notice.

9.0 **TYPE AND MAINTENANCE** - In accordance with Rule 25-30.545, Florida Administrative Code, the customer's pipes, apparatus and equipment shall be selected, installed, used and maintained in accordance with standard practice and shall conform with the Rules and Regulations of the Company and shall comply with all Laws and Governmental Regulations applicable to same. The Company shall not be responsible for the maintenance and operation of the customer's pipes and facilities. The customer expressly agrees not to utilize any appliance or device which is not properly constructed, controlled and protected or which may adversely affect the water service; the Company reserves the right to discontinue or withhold water service to such apparatus or device.

10.0 **CHANGE OF CUSTOMER'S INSTALLATION** - No changes or increases in the customer's installation, which will materially affect the proper operation of the pipes, mains, or stations of the Company, shall be made without written consent of the Company. The customer shall be liable for any change resulting from a violation of this Rule.

11.0 **INSPECTION OF CUSTOMER'S INSTALLATION** - All customer's water service installations or changes shall be inspected upon completion by a competent authority to ensure that the customer's piping, equipment, and devices have been installed in accordance with accepted standard practice and local Laws and Governmental Regulations. Where Municipal or other Governmental inspection is required by local Rules and Ordinances, the Company cannot render water service until such inspection has been made and a formal notice of approval from the inspecting authority has been received by the Company.

Notwithstanding the above, the Company reserves the right to inspect the customer's installation prior to rendering water service, and from time to time thereafter, but assumes no responsibility whatsoever for any portion thereof.

12.0 **PROTECTION OF COMPANY'S PROPERTY** - The customer shall exercise reasonable diligence to protect the Company's property. If the customer is found to have tampered with any utility property or refuses to correct any problems reported by the utility, service may be discontinued in accordance with Rule 25-30.320, Florida Administrative Code.

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
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WATER TARIFF

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

(Continued from Sheet No. 8.0)

In the event of any loss or damage to property of the Company caused by or arising out of carelessness, neglect, or misuse by the customer, the cost of making good such loss or repairing such damage shall be paid by the customer.

13.0 ACCESS TO PREMISES - In accordance with Rule 25-30.320(2)(f), Florida Administrative Code, the company shall provide the duly authorized agents of the Company access at all reasonable hours to its property. If reasonable access is not provided, service may be discontinued pursuant to the above rule.

14.0 RIGHT OF WAY OR EASEMENTS - The customer shall grant or cause to be granted to the Company, and without cost to the Company, all rights, easements, permits, and privileges which are necessary for the rendering of water service.

15.0 CUSTOMER BILLING - Bills for water service will be rendered - Monthly, Bimonthly, or Quarterly - as stated in the rate schedule.

In accordance with Rule 25-30.335, Florida Administrative Code, the utility may not consider a customer delinquent in paying his or her bill until the twenty-first day after the utility has mailed or presented the bill for payment.

A municipal or county franchise tax levied upon a water or wastewater public utility shall not be incorporated into the rate for water or wastewater service but shall be shown as a separate item on the utility's bills to its customers in such Municipality or County.

If a utility utilizes the base facility and usage charge rate structure and does not have a Commission authorized vacation rate, the utility shall bill the customer the base facility charge regardless of whether there is any usage.

16.0 DELINQUENT BILLS - When it has been determined that a customer is delinquent in paying any bill, water service may be discontinued after the Company has mailed or presented a written notice to the customer in accordance with Rule 25-30.320, Florida Administrative Code.

17.0 PAYMENT OF WATER AND WASTEWATER SERVICE BILLS CONCURRENTLY - In accordance with Rule 25-30.320(2)(g), Florida Administrative Code, when both water and wastewater service are provided by the Company, payment of any water service bill rendered by the Company to a customer shall not be accepted by the Company without the simultaneous or concurrent payment of any wastewater service bill rendered by the Company.

18.0 TERMINATION OF SERVICE - When a customer wishes to terminate service on any premises where water service is supplied by the Company with water service, the Company may require reasonable notice to the Company in accordance with Rule 25-30.325, Florida Administrative Code.

NATHAN KALICHMAN
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NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WATER TARIFF

(Continued from Sheet No. 9.0)

- 20.0 UNAUTHORIZED CONNECTIONS - WATER - Any unauthorized connections to the customer's water service shall be subject to immediate discontinuance without notice, in accordance with Rule 25-30.320, Florida Administrative Code.
- 21.0 METERS - All water meters shall be furnished by and remain the property of the Company and shall be accessible and subject to its control, in accordance with Rule 25-30.230, Florida Administrative Code.
- 22.0 ALL WATER THROUGH METER - That portion of the customer's installation for water service shall be so arranged to ensure that all water service shall pass through the meter. No temporary pipes, nipples or spaces are permitted and under no circumstances are connections allowed which may permit water to by-pass the meter or metering equipment.
- 23.0 ADJUSTMENT OF BILLS - When a customer has been undercharged as a result of incorrect application of the rate schedule, incorrect reading of the meter, incorrect connection of the meter, or other similar reasons, the amount may be billed to the customer as the case may be pursuant to Rule 25-30.350, Florida Administrative Code.
- 24.0 ADJUSTMENT OF BILLS FOR METER ERROR - When meter tests are made by the Commission or by the Company, the accuracy of registration of the meter and its performance shall conform with Rule 25-30.262, Florida Administrative Code and any adjustment of a bill due to a meter found to be in error as a result of any meter test performed whether for unauthorized use or for a meter found to be fast, slow, non-registering, or partially registering, shall conform with Rule 25-30.340, Florida Administrative Code.
- 25.0 METER ACCURACY REQUIREMENTS - All meters used by the company should conform to the provisions of Rule 25-30.262, Florida Administrative Code.
- 26.0 FILING OF CONTRACTS - Whenever a Developer Agreement or Contract, Guaranteed Revenue Contract, or Special Contract or Agreement is entered into by the Company for the sale of its product or services in a manner not specifically covered by its Rules and Regulations or approved Rate Schedules, a copy of such contracts or agreements shall be filed with the Commission prior to its execution in accordance with Rule 25-9.034 and Rule 25-30.550, Florida Administrative Code. If such contracts or agreements are approved by the Commission, a conformed copy shall be placed on file with the Commission within 30 days of execution.

NATHAN KALICHMAN
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NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WATER TARIFF

INDEX OF RATES AND CHARGES SCHEDULES

	<u>Sheet Number</u>
Customer Deposits	14.0
General Service, GS	12.0
Meter Test Deposit	15.0
Miscellaneous Service Charges	16.0
Residential Service, RS	13.0
Service Availability Fees and Charges	17.0

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
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NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WATER TARIFF

RESIDENTIAL, MULTI-RESIDENTIAL, GENERAL SERVICE

RATE SCHEDULE

- AVAILABILITY - Available throughout the area served by the Company.
- APPLICABILITY - For water service to all customers for which no other schedule applies.
- LIMITATIONS - Subject to all of the Rules and Regulations of this tariff and General Rules and Regulations of the Commission.
- BILLING PERIOD - Monthly

<u>RATE</u>	<u>METER SIZE</u>	<u>BASE FACILITY CHARGE</u>
	5/8" x 3/4"	\$ 16.60
	3/4"	24.89
	1"	41.50
	1 1/2"	83.00
	2"	132.79
	3"	265.58
	4"	414.97
	6"	829.93
	<u>Gallonage Charge</u>	\$5.15 Per 1,000 gallons
	<u>Non-Potable Charge</u>	\$.55 Per 1,000 gallons

- MINIMUM BILL - The applicable Base Facility Charge
- TERMS OF PAYMENT - 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.
- EFFECTIVE DATE -

TYPE OF FILING

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WATER TARIFF

SCHEDULE OF CUSTOMER DEPOSITS

ESTABLISHMENT OF CREDIT - Before rendering water service, the Company may require an applicant for service to satisfactorily establish credit, but such establishment of credit shall not relieve the customer from complying with the Company's rules for prompt payment. Credit will be deemed so established if the customer complies with the requirements of Rule 25-30.311, Florida Administrative Code.

AMOUNT OF DEPOSIT - The amount of initial deposit shall be the following according to meter size:

	<u>Residential</u>	<u>General Service</u>
5/8" x 3/4"	<u>N/A</u>	<u>N/A</u>
1"	<u>"</u>	<u>"</u>
1 1/2"	<u>"</u>	<u>"</u>
Over 2"	<u>"</u>	<u>"</u>

ADDITIONAL DEPOSIT - Under Rule 25-30.311(7), Florida Administrative Code, the Company may require a new deposit, where previously waived or returned, or an additional deposit in order to secure payment of current bills provided.

INTEREST ON DEPOSIT - The Company shall pay interest on customer deposits pursuant to Rule 25-30.311(4) and (4a). The Company will pay or credit accrued interest to the customers account during the month of _____ each year.

REFUND OF DEPOSIT - After a residential customer has established a satisfactory payment record and has had continuous service for a period of 23 months, the Company shall refund the customer's deposit provided the customer has met the requirements of Rule 25-30.311(5), Florida Administrative Code. The Company may hold the deposit of a non-residential customer after a continuous service period of 23 months and shall pay interest on the non-residential customer's deposit pursuant to Rule 25-30.311(4) and (5), Florida Administrative Code.

Nothing in this rule shall prohibit the Company from refunding a customer's deposit in less than 23 months.

EFFECTIVE DATE -

NATHAN KALICHMAN
ISSUING OFFICER

TYPE OF FILING -

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WATER TARIFF

METER TEST DEPOSITS

METER BENCH TEST REQUEST - If any customer requests a bench test of his or her water meter, in accordance with Rule 25-30.266, Florida Administrative Code, the Company may require a deposit to defray the cost of testing; such deposit shall not exceed the schedule of fees found in Rule 25-30.266, Florida Administrative Code.

<u>METER SIZE</u>	<u>FEE</u>
5/8" x 3/4"	\$20.00
1" and 1 1/2"	\$25.00
2"and over	Actual Cost

REFUND OF METER BENCH TEST DEPOSIT - The utility may refund the meter bench test deposit in accordance with Rule 25-30.266, Florida Administrative Code.

METER FIELD TEST REQUEST - A customer may request a field test in accordance with Rule 25-30.266, Florida Administrative Code.

EFFECTIVE DATE -

TYPE OF FILING -

NATHAN KALICHMAN
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MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WATER TARIFF

MISCELLANEOUS SERVICE CHARGES

The Company may charge the following miscellaneous service charges in accordance with the terms state herein. If both water and wastewater services are provided, only a single charge is appropriate unless circumstances beyond the control of the Company requires multiple actions.

INITIAL CONNECTION - This charge would be levied for service initiation at a location where service did not exist previously.

NORMAL RECONNECTION - This charge would be levied for transfer of service to a new customer account at a previously served location or reconnection of service subsequent to a customer requested disconnection.

VIOLATION RECONNECTION - This charge would be levied prior to reconnection of an existing customer after disconnection of service for cause according to Rule 25-30.320(2), Florida Administrative Code, including a delinquency in bill payment.

PREMISES VISIT CHARGE (IN LIEU OF DISCONNECTION) - This charge would be levied when a service representative visits a premises for the purpose of discontinuing service for nonpayment of a due and collectible bill and does not discontinue service because the customer pays the service representative or otherwise makes satisfactory arrangements to pay the bill.

Schedule of Miscellaneous Service Charges

Initial Connection Fee	\$ <u>15.00</u>
Normal Reconnection Fee	\$ <u>15.00</u>
Violation Reconnection Fee	\$ <u>15.00</u>
Premises Visit Fee (in lieu of disconnection)	\$ <u>10.00</u>

EFFECTIVE DATE -

TYPE OF FILING -

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WATER TARIFF

SERVICE AVAILABILITY SCHEDULE OF FEES AND CHARGES

<u>DESCRIPTION</u>	<u>AMOUNT</u>	<u>REFER TO SERVICE AVAIL POLICY SHEET NO./RULE NO.</u>
<u>Back-Flow Preventor Installation Fee</u>		
5/8" x 3/4"	\$	
1"	\$	
1 1/2"	\$	=N/A=
2"	\$	
Over 2"	Actual Cost [1]	
<u>Water Connection (Tap-In) Charge</u>		
5/8" x 3/4" metered service	\$	
1" metered service	\$	
1 1/2" metered service	\$	=N/A=
2" metered service	\$	
Over 2" metered service	Actual Cost [1]	
<u>Guaranteed Revenue Charge</u>		
With Prepayment of Service Availability Charges:		
Residential-per ERC/month (__ GPD).....	\$	
All others-per gallon/month	\$	=N/A=
Without Prepayment of Service Availability Charges:		
Residential-per ERC/month (__ GPD).....	\$	
All others-per gallon/month	\$	
Inspection Fee	Actual Cost [1]	
<u>Main Extension Charge</u>		
Residential-per ERC (__ GPD).....	\$	=N/A=
All others-per gallon	\$	
or		
Residential-per lot (__ foot frontage).....	\$	
All others-per front foot	\$	
<u>Meter Installation Fee</u>		
5/8" x 3/4"	\$150.00	\$
1"	ACTUAL COST	\$
1 1/2"	ACTUAL COST	\$
2"	ACTUAL COST	\$
Over 2"	ACTUAL COST	Actual Cost [1]
Plan Review Charge		Actual Cost [1]
<u>Plant Capacity Charge</u>		
Residential-per ERC (__ GPD).....	\$835.00	\$
All others-per gallon	2.39	\$
<u>System Capacity Charge</u>		
Residential-per ERC (__ GPD).....	\$ 75.00	\$
All others-per gallon21	\$

[1] Actual Cost is equal to the total cost incurred for services rendered by a customer. NATHAN KALICHMAN
ISSUING OFFICER

EFFECTIVE DATE -

TYPE OF FILING - NAME CHANGE

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WATER TARIFF

INDEX OF STANDARD FORMS

	<u>Sheet No.</u>
APPLICATION FOR METER INSTALLATION	21.0
APPLICATION FOR WATER SERVICE	20.0
COPY OF CUSTOMER'S BILL	22.0
CUSTOMER'S GUARANTEE DEPOSIT RECEIPT	19.0

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WATER TARIFF

CUSTOMER'S GUARANTEE DEPOSIT RECEIPT

N/A

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WATER TARIFF

APPLICATION FOR WATER SERVICE

Name _____ Telephone Number _____

Billing Address _____

City _____ State/Zip _____

Service Address _____

City _____ State/Zip _____

Date service should begin _____

Service requested: Water _____ Wastewater _____ Both _____

By signing this agreement, the customer agrees to the following:

- 1. The Company shall not be responsible for the maintenance and operation of the customer's pipes and facilities. The customer agrees not to utilize any appliance or device which is not properly constructed, controlled and protected or which may adversely affect the water service; the Company reserves the right to discontinue or withhold water service to such apparatus or device.
- 2. The Company may refuse or discontinue water service rendered under application made by any member or agent of a household, organization, or business for any of the reasons contained in Rule 25-30.320, Florida Administrative Code. Any unauthorized connections to the customer's water service shall be subject to immediate discontinuance without notice, in accordance with Rule 25-30.320, Florida Administrative Code.
- 3. The customer agrees to abide by all existing Company rules and regulations as contained in the tariff.
- 4. Bills for water service will be rendered - Monthly, Bimonthly, or Quarterly - as stated in the rate schedule. Bills must be paid within 20 days of mailing bills. If payment is not made after five working days written notice, service may be discontinued.
- 5. When a customer wishes to terminate service on any premises where water and/or wastewater service is supplied by the Company, the Company may require (oral, written) notice within __ days prior to the date the customer desires to terminate service.

Signature

Date

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WATER TARIFF

APPLICATION FOR METER INSTALLATION

SEE ATTACHED APPLICATION FOR WATER SERVICE

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WATER TARIFF

COPY OF CUSTOMER'S BILL

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A-AQUARINA UTILITIES

WATER TARIFF

INDEX OF SERVICE AVAILABILITY

	<u>Sheet Number</u>	<u>Rule Number</u>
Acceptance of Facilities.....	N/A	
Availability.....	N/A	
Construction of Oversized Facilities.....	N/A	
Customer Connection (Tap-in).....	N/A	
Customer Installation (Customer Maintained Lines).	N/A	
Cost Records and *As-Built* Plans.....	N/A	
Design by Independent Engineers.....	N/A	
Developer Agreements.....	N/A	
Easements and Rights-of-Way.....	N/A	
Extensions Outside Certificated Territory.....	N/A	
General Information.....	N/A	
Inspections.....	N/A	
Obligations of Developer.....	N/A	
Obligations of Utility.....	N/A	
Off-Site Facilities.....	N/A	
On-Site Facilities.....	N/A	
Refundable Advances.....	N/A	
Schedule of Fees and Charges.....	Go to Sheet No. 17.0	
System Design and Construction.....	N/A	
Table of Daily Flows.....	N/A	<u>NATHAN KALICHMAN</u> ISSUING OFFICER
Transfer of Contributed Property - Bills of Sale..	N/A	<u>MANAGING MEMBER</u> TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES
WATER TARIFF

INDEX OF SERVICE AVAILABILITY

	<u>Sheet Number</u>
Schedule of Fees and Charges.....	Go to Sheet No. 17.0
Service Availability Policy.....	24.0

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WATER TARIFF :

SERVICE AVAILABILITY POLICY

There shall be a main capacity charge of \$75.00 per ERC, a plant capacity charge of \$835.00 per ERC, and a meter installation fee as follows:

<u>METER SIZE</u>	<u>WATER CHARGE</u>	<u>NON-POTABLE CHARGE</u>
5/8" x 3/4"	\$150.00	\$150.00
3/4"	ACTUAL COST	ACTUAL COST
1"	ACTUAL COST	ACTUAL COST
1 1/2"	ACTUAL COST	ACTUAL COST
2"	ACTUAL COST	ACTUAL COST
OVER 2"	ACTUAL COST	ACTUAL COST

These charges shall apply only to new customers who connect to the system. Customers who are currently connected to the system are not subject to these charges.

There shall be a main capacity charge of \$50.00, a plant capacity charge of \$250.00 for Non-Potable water.

EFFECTIVE DATE:

TYPE OF FILING:

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

WASTEWATER TARIFF

IRD OSPREY, LLC
D/B/A AQUARINA UTILITIES
NAME OF COMPANY

FILED WITH
FLORIDA PUBLIC SERVICE COMMISSION

WASTEWATER TARIFF

IRD OSPREY, LLC
D/B/A AQUARINA UTILITIES
NAME OF COMPANY

7860 Peters Road, Suite F-111

Plantation, Florida 33324
(ADDRESS OF COMPANY)

(954) 370-7788
(Business & Emergency Telephone Numbers)

FILED WITH
FLORIDA PUBLIC SERVICE COMMISSION

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WASTEWATER TARIFF

Table of Contents

	Sheet Number
Communities Served Listing	4.0
Description of Territory Served	3.0
Index of	
Rates and Charges Schedules	11.0
Rules and Regulations	6.0
Service Availability Policy	22.0
Standard Forms	17.0
Technical Terms and Abbreviations	5.0
Territory Served	3.0

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

DESCRIPTION OF TERRITORY SERVED

Service to the following lands in Brevard County, Florida:

BWNER

A PORTION OF SECTION 25, TOWNSHIP 29 SOUTH, RANGE 38 EAST AND SECTION 26, TOWNSHIP 29 SOUTH, RANGE 38 EAST BREVARD COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

FROM THE NORTHWEST CORNER OF SAID SECTION 25 RUN SOUTHERLY ALONG THE WEST LINE OF SAID SECTION 25 A DISTANCE 2640 FEET MORE OR LESS TO THE SOUTHWEST CORNER OF GOVERNMENT LOT 2 AND THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE RUN NORTHERLY ALONG THE WEST LINE OF SAID GOVERNMENT LOT 2 A DISTANCE OF 1320 FEET MORE OR LESS TO THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 2; THENCE RUN EASTERLY ALONG THE NORTH LINE OF SAID GOVERNMENT LOT 2 A DISTANCE OF 1,300 FT. MORE OR LESS TO THE MEAN HIGH WATER LINE OF THE ATLANTIC OCEAN; THENCE RUN SOUTHEASTERLY ALONG SAID MEAN HIGH WATER LINE THRU SAID GOVERNMENT LOT 2 AND GOVERNMENT LOT 3, OF SAID SECTION 25 A DISTANCE OF 3,100 FT. MORE OR LESS TO THE SOUTH LINE OF GOVERNMENT LOT 3 OF SAID SECTION 25; THENCE DEPARTING SAID MEAN HIGH WATER LINE RUN WESTERLY ALONG THE SOUTH LINE OF SAID GOVERNMENT LOT 3 A DISTANCE OF 2,700 FT. MORE OR LESS TO THE SOUTHEAST CORNER OF GOVERNMENT LOT 3 OF THE AFORESAID SECTION 26; THENCE CONTINUE WESTERLY ALONG THE SOUTH LINE OF SAID GOVERNMENT LOT 3, SECTION 26 A DISTANCE OF 1,270 FT. MORE OR LESS TO THE MEAN HIGH WATER LINE OF HILLET CREEK; THENCE RUN NORTHWESTERLY ALONG SAID MEAN HIGH WATER LINE 1,750 FT. MORE OR LESS TO THE NORTH LINE OF GOVERNMENT LOT 11 OF SAID SECTION 26; THENCE DEPARTING SAID MEAN HIGH WATER LINE RUN EASTERLY ALONG THE NORTH LINE OF SAID GOVERNMENT LOTS 11 & 3, SECTION 26 A DISTANCE OF 2,400 FT. MORE OR LESS TO THE POINT OF BEGINNING.

TOGETHER WITH A PORTION OF SECTION 36, TOWNSHIP 29 SOUTH, RANGE 38 EAST, BREVARD COUNTY FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

FROM THE NORTHWEST CORNER OF SAID SECTION 36 RUN EASTERLY ALONG THE NORTH LINE OF SAID SECTION 36 A DISTANCE OF 2985 FEET MORE OR LESS TO THE CENTERLINE OF S.R. A-1-A; THENCE RUN SOUTHEASTERLY ALONG THE CENTERLINE OF S.R. A-1-A 1520 FEET MORE OR LESS TO THE INTERSECTION OF THE NORTH LINE OF GOVERNMENT LOT 6 OF SAID SECTION 36 WITH THE CENTERLINE OF S.R. A-1-A BEING THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE RUN EASTERLY ALONG THE NORTH LINE OF SAID GOVERNMENT LOT 6 A DISTANCE OF 300 FT. MORE OR LESS TO THE MEAN HIGH WATER LINE OF THE ATLANTIC OCEAN; THENCE RUN SOUTHEASTERLY ALONG SAID MEAN HIGH WATER LINE THRU GOVERNMENT LOTS 6 AND 8 OF SAID SECTION 36 A DISTANCE OF 3,050 FT. MORE OR LESS TO THE SOUTH LINE OF SAID GOVERNMENT LOT 8; THENCE DEPARTING SAID MEAN HIGH WATER LINE RUN WESTERLY ALONG THE SOUTH LINE OF SAID GOVERNMENT LOT 8 A DISTANCE OF 700 FT.

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES
 WASTEWATER TARIFF

(Continued from Sheet No. 3.0)

DESCRIPTION OF TERRITORY SERVED

MORE OR LESS TO THE MEAN HIGH WATER LINE OF THE INDIAN RIVER; THENCE RUN NORTHWESTERLY ALONG SAID MEAN HIGH WATER LINE 5,700 FT. MORE OR LESS TO THE NORTH LINE OF GOVERNMENT LOT 4 OF SAID SECTION 36; THENCE RUN EASTERLY ALONG THE NORTH LINE OF GOVERNMENT LOTS 4, 5 & 6 OF SAID SECTION 36 A DISTANCE OF 3,300 FT. MORE OR LESS TO THE POINT OF BEGINNING.

LESS AND EXCEPT "THE HAMMOCK CONDOMINIUM I", BEING A PORTION OF GOVERNMENT LOTS 5 & 6 OF SAID SECTION 36, TOWNSHIP 29 SOUTH, RANGE 38 EAST, BEING DESCRIBED IN OFFICIAL RECORDS BOOK 2732, PAGE 1060 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

A PORTION OF LOT 1, SUNNYLAND GROVES SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 9, PAGE 42, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, BEING A PORTION OF GOVERNMENT LOTS 5 AND 6, SECTION 36, TOWNSHIP 29 SOUTH, RANGE 37 EAST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

FROM THE NORTHWEST CORNER OF SAID SECTION 36 RUN EASTERLY ALONG THE NORTH LINE OF SAID SECTION 36 A DISTANCE OF 2905 FEET MORE OR LESS TO THE CENTERLINE OF S.R. A-1-A; THENCE RUN SOUTHEASTERLY ALONG THE CENTERLINE OF S.R. A-1-A 1035 FEET MORE OR LESS; THENCE RUN $960\ 33'54"W$, ALONG THE EASTERLY EXTENSION OF THE SOUTHERLY LINE OF SAID LOT 1 AND THE SOUTHERLY LINE OF SAID LOT 1, 968.19 FEET TO THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL; THENCE CONTINUE $560\ 33'54"W$ A DISTANCE OF 224.55 FEET; THENCE RUN $N26\ 09'57"W$ A DISTANCE OF 233.60 FEET; THENCE RUN $N63\ 50'03"E$ A DISTANCE OF 127.03 FEET TO A POINT OF CURVATURE OF A CIRCULAR CURVE, CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 110.0 FEET; THENCE RUN NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $06\ 31'42"$ AN ARC DISTANCE OF 13.44 FEET TO A POINT OF TANGENCY; THENCE RUN $N\ 70\ 21'45"E$ A DISTANCE OF 110.59 FEET; THENCE RUN $S19\ 30'15"E$ A DISTANCE OF 240.42 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.31 ACRES, MORE OR LESS, AND LESS ANY RESERVATIONS, DEDICATIONS, OR EASEMENTS OF RECORD.

NATHAN KALICHMAN
 ISSUING OFFICER

MANAGING MEMBER
 TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES
WASTEWATER TARIFF

DESCRIPTION OF TERRITORY SERVED

Service to the following lands in Brevard County, Florida:

Phase I of the Hammock Condominium lying in Township 29, Range 38, Section 36, Subdivision .01, 1.01 through 1.27, also known as units 101 through 309 Hammock Condominium Phase I; AND

Aquarina Planned Unit Development- Government Lot 4 and 5, Section 25, Township 29 South, Range 38 East, Brevard County, Florida, less the right of way for State Road A1A; and Government Lot 1, Section 35, Township 29 South, Range 38 East, Brevard County, Florida; and Government Lots 1, 2, and 3, Section 36, Township 29 South, Range 38 East, Brevard County, Florida, less the right of way for State Road A1A, the South 50.00 feet of said Government Lots 1, 2, and 3 lying West of State Road A1A, and that portion of said Government Lot 1 parallel with and adjacent to the existing West right of way line of State Road A1A to a depth of 20.00 feet. (196.9 acres +)

Also described as:

In Township 29 South, Range 38 East, Section 25, 35, and 36 in Brevard County.

From the NW corner of Section 36 Township 29 South, Range 38 East, Brevard County also known as the point of beginning, run due North along the west line of the Southwest quarter of Section 25 a distance of 1600 feet more or less. From said point run due East along the North line of Government Lots 4 and 5 less the right of way for State Road A1A a distance of 3300 feet more or less to a point located on the West Bank of the Atlantic Ocean. From said point run Southeasterly along the bank of the Atlantic Ocean a distance of 4000 feet more or less to a point being the Southeast corner of Government Lot 1. From said point run due West along the South line of Government Lots 1; 2, and 3 less the right of way for State Road A1A a distance of 4500 feet more or less to a point on the East bank of the Indian River. From said point run Northwesterly parallel with the East bank of the Indian River to a point located on the North line of Section 35, Township 29 South, Range 38 East in Brevard County. From said point run due East along the North line of Section 35 a distance of 400 feet more or less to the Point of Beginning.

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WASTEWATERTARIFF

COMMUNITIES SERVED LISTING

<u>County Name</u>	<u>Development Name</u>	<u>Rate Schedule(s) Available</u>	<u>Sheet No.</u>
BREVARD	HAMMOCK	GS	12.0
BREVARD	AQUARINA	GS,RS	12.0, 13.0
BREVARD	ST. ANDREWS	RS	13.0

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WASTEWATER TARIFF

TECHNICAL TERMS AND ABBREVIATIONS

- 1.0 *BFC* - *BFC* is the abbreviation for *Base Facility Charge* which is the minimum amount the utility may charge to the Company's customers and is separate from the amount billed for wastewater consumption on the utility's bills to its customers.
- 2.0 *CERTIFICATE* - A document issued by the Commission authorizing the Company to provide wastewater service in a specific territory.
- 3.0 *COMMISSION* - *Commission* refers to the Florida Public Service Commission.
- 4.0 *COMMUNITIES SERVED* - The group of customers who receive wastewater service from the Company and whose service location is within a specific area or locality that is uniquely separate from another.
- 5.0 *COMPANY* -
- 6.0 *CUSTOMER* - Any person, firm or corporation who has entered into an agreement to receive wastewater service from the Company and who is liable for the payment of that wastewater service.
- 7.0 *CUSTOMER'S INSTALLATION* - All pipes, shut-offs, valves, fixtures and appliances or apparatus of every kind and nature which are located on the customer's side of the *Point of Collection* and used in connection with or forming a part of the installation necessary for disposing of sewage collected from the customer's premises regardless of whether such installation is owned by the customer or used by the customer under lease or other agreement.
- 8.0 *MAIN* - A pipe, conduit, or facility used for conveying wastewater service through individual services or through other mains.
- 9.0 *POINT OF COLLECTION* - For wastewater systems, *point of collection* shall mean point at which the Company's piping, fittings, and valves connection with the customer's piping, fittings and valves.
- 10.0 *RATE* - Amount which the utility may charge for wastewater service which is applied to the customer's water consumption.
- 11.0 *RATE SCHEDULE* - The rate(s) or charge(s) for a particular classification of service plus the several provisions necessary for billing, including all special terms and conditions under which service shall be furnished at such rate or charge.

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WASTEWATER TARIFF

(Continued from Sheet No. 5.0)

- 12.0 ***SERVICE*** - Service, as mentioned in this tariff and in agreement with customers, shall be construed to include, in addition to all wastewater service required by the customer the readiness and ability on the part of the Company to furnish wastewater service to the customer. Service shall conform to the standards set forth in Section 367.111 of the Florida Statutes.
- 13.0 ***SERVICE LINES*** - The pipe between the Company's mains and the point of delivery and shall include all of the pipe, fittings and valves necessary to make the connection to the customer's premises excluding the meter.
- 14.0 ***TERRITORY*** - The geographical area described by metes and bounds with township, range and section in a certificate, which may be within or without the boundaries of an incorporated municipality and, may include areas in more than one county.

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WASTEWATER TARIFF

INDEX OF RULES AND REGULATIONS

	<u>Sheet Number</u>	<u>Rule Number</u>
Access to Premises	9.0	13.0
Adjustment of Bills	10.0	23.0
Applications.....	7.0	3.0
Applications by Agents	7.0	4.0
Change of Customer's Installation	8.0	10.0
Continuity of Service	8.0	8.0
Customer Billing.....	9.0	15.0
Delinquent Bills	9.0	16.0
Evidence of Consumption.....	10.0	22.0
Extensions	8.0	6.0
Filing of Contracts	10.0	26.0
General Information	7.0	1.0
Inspection of Customer's Installation	8.0	11.0
Limitation of Use	7.0	7.0
Payment of Water and Wastewater Service Bills Concurrently	9.0	17.0
Policy Dispute	7.0	2.0
Protection of Company's Property	12.0	12.0
Refusal or Discontinuance of Service.....	7.0	5.0

(Continued to Sheet No. 6.1)

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WASTEWATER TARIFF

(Continued from Sheet No. 6.0)

	<u>Sheet Number</u>	<u>Rule Number</u>
Right of Way or Easements	9.0	14.0
Termination of Service	10.0	18.0
Type and Maintenance	8.0	9.0
Unauthorized Connections - Wastewater	9.0	20.0

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WASTEWATER TARIFF

RULES AND REGULATIONS

- 1.0 GENERAL INFORMATION - These Rules and Regulations are a part of the rate schedules and applications and contracts of the Company and, in the absence of specific written agreement to the contrary, apply without modifications or change to each and every customer to whom the Company renders wastewater service.

The Company shall provide wastewater service to all customers requiring such service within its certificated territory pursuant to Chapter 25-30, Florida Administrative Code and Chapter 367, Florida Statutes.

- 2.0 POLICY DISPUTE - Any dispute between the Company and the customer or prospective customer regarding the meaning or application of any provision of this tariff shall upon written request by either party be resolved by the Florida Public Service Commission.
- 3.0 APPLICATION - In accordance with Rule 25-30.310, Florida Administrative Code, a signed application is required prior to the initiation of service.
- 4.0 APPLICATIONS BY AGENTS - Applications for wastewater service requested by firms, partnerships, associations, corporations, and others shall be rendered only by duly authorized parties or agents.
- 5.0 REFUSAL OR DISCONTINUANCE OF SERVICE - The Company may refuse or discontinue wastewater service rendered under application made by any member or agent of a household, organization, or business in accordance with Rule 25-30.320, Florida Administrative Code.
- 6.0 EXTENSIONS - Extensions will be made to the Company's facilities in compliance with Commission Rules and Orders and the Company's tariff.
- 7.0 LIMITATION OF USE - Wastewater service purchased from the Company shall be used by the customer only for the purposes specified in the application for wastewater service. Wastewater service shall be rendered to the customer for the customer's own use and shall be collected directly into the Company's main wastewater lines.

In no case shall a customer, except with the written consent of the company, extend his lines across a street, alley, lane, court, property line, avenue, or other way in order to furnish wastewater service to the adjacent property even though such adjacent property may be owned by him. In case of such unauthorized extension, sale, or disposition of service, the customer's wastewater service will be subject to discontinuance until such unauthorized extension, remetering, sale or disposition of service is discontinued and full payment is made to the Company for water service rendered by the Company (calculated on proper classification and rate schedules) and until reimbursement in full is made in full to the Company for all extra expenses incurred for clerical work, testing, and inspections.

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WASTEWATER TARIFF

(Continued from Sheet No. 7.0)

8.0 CONTINUITY OF SERVICE - In accordance with Rule 25-30.250, Florida Administrative Code, the company will at all times use reasonable diligence to provide continuous wastewater service and, having used reasonable diligence, shall not be liable to the customer for failure or interruption of continuous wastewater service.

If at any time the Company shall interrupt or discontinue its service, all customers affected by said interruption or discontinuance shall be given not less than 24 hours written notice.

9.0 TYPE AND MAINTENANCE - In accordance with Rule 25-30.545, Florida Administrative Code, the customer's pipes, apparatus and equipment shall be selected, installed, used and maintained in accordance with standard practice and shall conform with the Rules and Regulations of the Company and shall comply with all Laws and Governmental Regulations applicable to same. The Company shall not be responsible for the maintenance and operation of the customer's pipes and facilities. The customer expressly agrees not to utilize any appliance or device which is not properly constructed, controlled and protected or which may adversely affect the wastewater service; the Company reserves the right to discontinue or withhold wastewater service to such apparatus or device.

10.0 CHANGE OF CUSTOMER'S INSTALLATION - No changes or increases in the customer's installation, which will materially affect the proper operation of the pipes, mains, or stations of the Company, shall be made without written consent of the Company. The customer shall be liable for any change resulting from a violation of this Rule.

11.0 INSPECTION OF CUSTOMER'S INSTALLATION - All customer's wastewater service installations or changes shall be inspected upon completion by a competent authority to ensure that the customer's piping, equipment, and devices have been installed in accordance with accepted standard practice and local Laws and Governmental Regulations. Where Municipal or other Governmental inspection is required by local Rules and Ordinances, the Company cannot render wastewater service until such inspection has been made and a formal notice of approval from the inspecting authority has been received by the Company.

Notwithstanding the above, the Company reserves the right to inspect the customer's installation prior to rendering wastewater service, and from time to time thereafter, but assumes no responsibility whatsoever for any portion thereof.

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

WASTEWATER TARIFF

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

(Continued from Sheet No. 8.0)

- 12.0 PROTECTION OF COMPANY'S PROPERTY - The customer shall exercise reasonable diligence to protect the Company's property. If the customer is found to have tampered with any utility property or refuses to correct any problems reported by the utility, service may be discontinued in accordance with Rule 25-30.320, Florida Administrative Code. In the event of any loss or damage to property of the Company caused by or arising out of carelessness, neglect, or misuse by the customer, the cost of making good such loss or repairing such damage shall be paid by the customer.
- 13.0 ACCESS TO PREMISES - In accordance with Rule 25-30.320(2)(f), Florida Administrative Code, the company shall provide the duly authorized agents of the Company access at all reasonable hours to its property. If reasonable access is not provided, service may be discontinued pursuant to the above rule.
- 14.0 RIGHT OF WAY OR EASEMENTS - The customer shall grant or cause to be granted to the Company, and without cost to the Company, all rights, easements, permits, and privileges which are necessary for the rendering of wastewater service.
- 15.0 CUSTOMER BILLING - Bills for wastewater service will be rendered - Monthly, Bimonthly, or Quarterly - as stated in the rate schedule.

In accordance with Rule 25-30.335, Florida Administrative Code, the utility may not consider a customer delinquent in paying his or her bill until the twenty-first day after the utility has mailed or presented the bill for payment.

A municipal or county franchise tax levied upon a water or wastewater public utility shall not be incorporated into the rate for water or wastewater service but shall be shown as a separate item on the utility's bills to its customers in such Municipality or County.

If a utility utilizes the base facility and usage charge rate structure and does not have a Commission authorized vacation rate, the utility shall bill the customer the base facility charge regardless of whether there is any usage.

- 16.0 DELINQUENT BILLS - When it has been determined that a customer is delinquent in paying any bill, wastewater service may be discontinued after the Company has mailed or presented a written notice to the customer in accordance with Rule 25-30.320, Florida Administrative Code.
- 17.0 PAYMENT OF WATER AND WASTEWATER SERVICE BILLS CONCURRENTLY - In accordance with Rule 25-30.320(2)(g), Florida Administrative Code, when both water and wastewater service are provided by the Company, payment of any wastewater service bill rendered by the Company to a customer shall not be accepted by the Company without the simultaneous or concurrent payment of any water service bill rendered by the Company.

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES
WASTEWATER TARIFF

(Continued from Sheet No. 9.0)

- 18.0 TERMINATION OF SERVICE - When a customer wishes to terminate service on any premises where wastewater service is supplied by the Company with wastewater service, the Company may require reasonable notice to the Company in accordance with Rule 25-30.325, Florida Administrative Code.
- 19.0 UNAUTHORIZED CONNECTIONS - WASTEWATER - Any unauthorized connections to the customer's wastewater service shall be subject to immediate discontinuance without notice, in accordance with Rule 25-30.320, Florida Administrative Code.
- 20.0 ADJUSTMENT OF BILLS - When a customer has been undercharged as a result of incorrect application of the rate schedule, incorrect reading of the meter, incorrect connection of the meter, or other similar reasons, the amount may be billed to the customer as the case may be pursuant to Rules 25-30.340 and 25-30.350, Florida Administrative Code.
- 21.0 FILING OF CONTRACTS - Whenever a Developer Agreement or Contract, Guaranteed Revenue Contract, or Special Contract or Agreement is entered into by the Company for the sale of its product or services in a manner not specifically covered by its Rules and Regulations or approved Rate Schedules, a copy of such contracts or agreements shall be filed with the Commission prior to its execution in accordance with Rule 25-9.034 and Rule 25-30.550, Florida Administrative Code. If such contracts or agreements are approved by the Commission, a conformed copy shall be placed on file with the Commission within 30 days of execution.
- 22.0 EVIDENCE OF CONSUMPTION - The initiation or continuation or resumption of water service to the customer's premises shall constitute the initiation or continuation or resumption of wastewater service to the customer's premises regardless of occupancy.

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WASTEWATERTARIFF

INDEX OF RATES AND CHARGES SCHEDULES

	<u>Sheet Number</u>
Customer Deposits	14.0
General Service, GS	12.0
Miscellaneous Service Charges	15.0
Residential Service, RS	13.0
Service Availability Fees and Charges	16.0

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WASTEWATER TARIFF

GENERAL SERVICE

RATE SCHEDULE GS

- AVAILABILITY - Available throughout the area served by the Company.
- APPLICABILITY - For wastewater service to all customers for which no other schedule applies.
- LIMITATIONS - Subject to all of the Rules and Regulations of this tariff and General Rules and Regulations of the Commission.

BILLING PERIOD - Monthly

<u>RATE</u>	<u>METER SIZE</u>	<u>BASE FACILITY CHARGE</u>
	5/8" x 3/4"	\$ 14.51
	3/4"	21.76
	1"	36.26
	1 1/2"	72.52
	2"	116.05
	3"	232.08
	4"	362.61
	6"	725.25
	<u>Gallage Rate</u>	
	Per 1,000 gallons	\$ 4.51

MINIMUM BILL - The applicable Base Facility Charge

TERMS OF PAYMENT - 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.

EFFECTIVE DATE -

TYPE OF FILING

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WASTEWATER TARIFF

RESIDENTIAL SERVICE

RATE SCHEDULE RS

- AVAILABILITY - Available throughout the area served by the Company.
- APPLICABILITY - For wastewater service for all purposes in private residences and individually metered apartment units.
- LIMITATIONS - Subject to all of the Rules and Regulations of this tariff and General Rules and Regulations of the Commission.

BILLING PERIOD - Monthly

<u>RATE</u>	<u>METER SIZE</u>	<u>BASE FACILITY CHARGE</u>
	5/8" x 3/4"	\$ 14.51
	3/4"	21.76
	1"	36.26
	1 1/2"	72.52
	2"	116.05
	3"	232.08
	4"	362.61
	6"	725.25
	<u>Gallonge Rate</u>	
	Per 1,000 gallons	\$ 4.51

MINIMUM BILL - The applicable Base Facility Charge

TERMS OF PAYMENT - 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.

EFFECTIVE DATE -

TYPE OF FILING

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WASTEWATER TARIFF

SCHEDULE OF CUSTOMER DEPOSITS

ESTABLISHMENT OF CREDIT - Before rendering wastewater service, the Company may require an applicant for service to satisfactorily establish credit, but such establishment of credit shall not relieve the customer from complying with the Company's rules for prompt payment. Credit will be deemed so established if the customer complies with the requirements of Rule 25-30.311, Florida Administrative Code.

AMOUNT OF DEPOSIT - The amount of initial deposit shall be the following according to meter size:

	<u>Residential</u>	<u>General Service</u>
5/8" x 3/4"	<u>N/A</u>	<u>N/A</u>
1"	<u>"</u>	<u>"</u>
1 1/2"	<u>"</u>	<u>"</u>
Over 2"	<u>"</u>	<u>"</u>

ADDITIONAL DEPOSIT - Under Rule 25-30.311(7), Florida Administrative Code, the Company may require a new deposit, where previously waived or returned, or an additional deposit in order to secure payment of current bills provided.

INTEREST ON DEPOSIT - The Company shall pay interest on customer deposits pursuant to Rule 25-30.311(4) and (4a). The Company will pay or credit accrued interest to the customer's account during the month of _____ each year.

REFUND OF DEPOSIT - After a residential customer has established a satisfactory payment record and has had continuous service for a period of 23 months, the Company shall refund the customer's deposit provided the customer has met the requirements of Rule 25-30.311(5), Florida Administrative Code. The Company may hold the deposit of a non-residential customer after a continuous service period of 23 months and shall pay interest on the non-residential customer's deposit pursuant to Rule 25-30.311(4) and (5), Florida Administrative Code.

Nothing in this rule shall prohibit the Company from refunding a customer's deposit in less than 23 months.

EFFECTIVE DATE -

NATHAN KALICHMAN
ISSUING OFFICER

TYPE OF FILING -

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WASTEWATER TARIFF

MISCELLANEOUS SERVICE CHARGES

The Company may charge the following miscellaneous service charges in accordance with the terms state herein. If both water and wastewater services are provided, only a single charge is appropriate unless circumstances beyond the control of the Company requires multiple actions.

INITIAL CONNECTION - This charge would be levied for service initiation at a location where service did not exist previously.

NORMAL RECONNECTION - This charge would be levied for transfer of service to a new customer account at a previously served location or reconnection of service subsequent to a customer requested disconnection.

VIOLATION RECONNECTION - This charge would be levied prior to reconnection of an existing customer after disconnection of service for cause according to Rule 25-30.320(2), Florida Administrative Code, including a delinquency in bill payment.

PREMISES VISIT CHARGE (IN LIEU OF DISCONNECTION) - This charge would be levied when a service representative visits a premises for the purpose of discontinuing service for nonpayment of a due and collectible bill and does not discontinue service because the customer pays the service representative or otherwise makes satisfactory arrangements to pay the bill.

Schedule of Miscellaneous Service Charges

Initial Connection Fee	\$ <u>15.00</u>
Normal Reconnection Fee	\$ <u>15.00</u>
Violation Reconnection Fee	\$ <u>Actual Cost (1)</u>
Premises Visit Fee (in lieu of disconnection)	\$ <u>10.00</u>

(1) Actual Cost is equal to the total cost incurred for services.

EFFECTIVE DATE

TYPE OF FILING -

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

WASTEWATER TARIFF

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

SERVICE AVAILABILITY SCHEDULE OF FEES AND CHARGES

<u>DESCRIPTION</u>	REFER TO SERVICE AVAIL. POLICY AMOUNT	<u>SHEET NO./RULE NO.</u>
<u>Customer Connection (Tap-in) Charge</u> --N/A--		
5/8" x 3/4" metered service	\$	
1" metered service	\$	
1 1/2" metered service	\$	
2" metered service	\$	
Over 2" metered service	Actual Cost [1]	
 <u>Guaranteed Revenue Charge</u> --N/A--		
With Prepayment of Service Availability Charges:		
Residential-per ERC/month (___)GPD.....	\$	
All others-per gallon/month.....	\$	
Without Prepayment of Service Availability Charges:		
Residential-per ERC/month (___)GPD.....	\$	
All others-per gallon/month.....	\$	
 Inspection Fee		Actual Cost [1]
 <u>Main Extension Charge</u> --N/A--		
Residential-per ERC (___GPD).....	\$	
All others-per gallon	\$	
or		
Residential-per lot (___foot frontage).....	\$	
All others-per front foot	\$	
 Plan Review Charge		Actual Cost [1]
 <u>Plant Capacity Charge</u>		
Residential-per ERC (280GPD).....	\$ 560.00	
All others-per gallon	\$ 2.00	
 <u>System Capacity Charge</u>		
Residential-per ERC (280GPD).....	\$ 365.00	
All others-per gallon	\$ 1.30	

[1] Actual Cost is equal to the total cost incurred for services rendered by a customer.

EFFECTIVE DATE -
TYPE OF FILING -

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WASTEWATER TARIFF

INDEX OF STANDARD FORMS

	<u>Sheet No.</u>
APPLICATION FOR WATER SERVICE	19.0
COPY OF CUSTOMER'S BILL	20.0
CUSTOMER'S GUARANTEE DEPOSIT RECEIPT	18.0

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WASTEWATER TARIFF

CUSTOMER'S GUARANTEE DEPOSIT RECEIPT

==N/A==

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WASTEWATER TARIFF

APPLICATION FOR WASTEWATER SERVICE

Name _____ Telephone Number _____

Billing Address _____

City _____ State/Zip _____

Service Address _____

City _____ State/Zip _____

Date service should begin _____

Service requested: Water _____ Wastewater _____ Both _____

By signing this agreement, the customer agrees to the following:

1. The Company shall not be responsible for the maintenance and operation of the customer's pipes and facilities. The customer agrees not to utilize any appliance or device which is not properly constructed, controlled and protected or which may adversely affect the wastewater service; the Company reserves the right to discontinue or withhold wastewater service to such apparatus or device.
2. The Company may refuse or discontinue wastewater service rendered under application made by any member or agent of a household, organization, or business for any of the reasons contained in Rule 25-30.320, Florida Administrative Code. Any unauthorized connections to the customer's wastewater service shall be subject to immediate discontinuance without notice, in accordance with Rule 25-30.320, Florida Administrative Code.
3. The customer agrees to abide by all existing Company rules and regulations as contained in the tariff.
4. Bills for wastewater service will be rendered - Monthly, Bimonthly, or Quarterly - as stated in the rate schedule. Bills must be paid within 20 days of mailing bills. If payment is not made after five working days written notice, service may be discontinued.
5. When a customer wishes to terminate service on any premises where water and/or wastewater service is supplied by the Company, the Company may require (oral, written) notice within ___ days prior to the date the customer desires to terminate service.

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WASTEWATER TARIFF

COPY OF CUSTOMER'S BILL

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WASTEWATER TARIFF

INDEX OF SERVICE AVAILABILITY

	<u>Sheet Number</u>	<u>Rule Number</u>
Acceptance of Facilities.....		
Availability.....		
Construction of Oversized Facilities.....		
Customer Connection (Tap-in).....		
Customer Installation (Customer Maintained Lines).		
Cost Records and "As-Built" Plans.....		
Design by Independent Engineers.....		
Developer Agreements.....		
Easements and Rights-of-Way.....		
Extensions Outside Certificated Territory.....		
General Information.....		
Inspections.....		
Obligations of Developer.....		
Obligations of Utility.....		
Off-Site Facilities.....		
On-Site Facilities.....		
Refundable Advances.....		
Schedule of Fees and Charges.....	Go to Sheet No. 16.0	
System Design and Construction.....		
Transfer of Contributed Property - Bills of Sale..		

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WASTEWATER TARIFF

INDEX OF SERVICE AVAILABILITY

	<u>Sheet Number</u>
Schedule of Fees and Charges.....	Go to Sheet No. 16.0
Service Availability Policy.....	22.0

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

NAME OF COMPANY: IRD OSPREY, LLC D/B/A AQUARINA UTILITIES

WASTEWATER TARIFF

SERVICE AVAILABILITY POLICY

There shall be a main capacity charge of \$365.00 per ERC and a plant capacity charge of \$560.00 per ERC charged to new customers of the system. This charge shall not apply to customers who are currently connected to the system. This charge is to be assessed on new customers only.

NATHAN KALICHMAN
ISSUING OFFICER

MANAGING MEMBER
TITLE

020091-WS

CERTIFICATES

EXHIBIT "F"

DN 01359-02
2/5/2

EXHIBIT C



FLORIDA

Public Service Commission

CERTIFICATE NUMBER

517-W

Upon consideration of the record it is hereby ORDERED
that authority be and is hereby granted to
Aquarina Developments, Inc.

Whose principal address is

235 Hammock Shore Drive
Melbourne, Florida 32951 (Brevard County)

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

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

ORDER <u>22075</u>	DOCKET <u>880595-WS</u>
ORDER <u>23059</u>	DOCKET <u>900167-WS</u>
ORDER <u>PSC-92-0119-FOF-WS</u>	DOCKET <u>911129-WS</u>
ORDER _____	DOCKET _____

BY ORDER OF THE
FLORIDA PUBLIC SERVICE COMMISSION

[Signature]
Director
Division of Records & Reporting

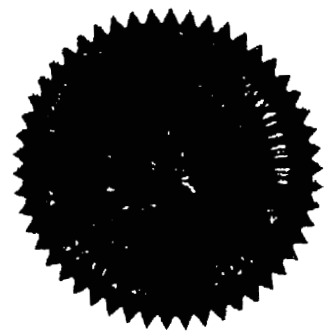


EXHIBIT C



FLORIDA

Public Service Commission

CERTIFICATE NUMBER

450-5

Upon consideration of the record it is hereby ORDERED that authority be and is hereby granted to Aquarina Developments, Inc.

Whose principal address is

235 Hammock Shore Drive

Melbourne, Florida 32951 (Brevard County)

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

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

ORDER 22075 DOCKET 880595-WS

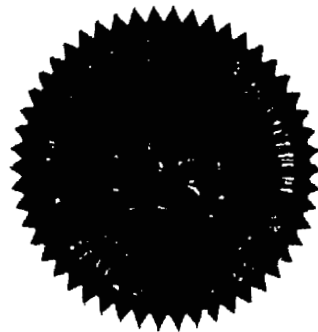
ORDER 23059 DOCKET 900167-WS

ORDER PSC-92-0119-FOF-WS DOCKET 911129-WS

ORDER DOCKET

BY ORDER OF THE FLORIDA PUBLIC SERVICE COMMISSION

Director Division of Records & Reporting



AFFIDAVIT OF NOTICING

EXHIBIT "G"

AFFIDAVIT OF MAILING

STATE OF FLORIDA
COUNTY OF BREVARD

Before me, the undersigned authority, authorized to administer oaths and take acknowledgments, personally appeared TONYA SIMPSON, who, after being duly sworn on oath, did depose on oath and say that she is the secretary of F. Marshall Deterding, attorney for IRD Osprey, LLC d/b/a Aquarina Utilities and that on February 1, 2002, she did send by certified mail, return receipt requested, a copy of the notice attached hereto to each of the utilities, governmental bodies, agencies, or municipalities, in accordance with the list provided by the Florida Public Service Commission, which is also attached hereto.

FURTHER AFFIANT SAYETH NAUGHT.

Tonya Simpson
Tonya Simpson

Sworn to and subscribed before me this 1st day of February, 2002, by Jacquelyn Tribble, who is personally known to me.

Jacquelyn Tribble
Print Name
NOTARY PUBLIC
My Commission Expires:



LIST OF WATER AND WASTEWATER UTILITIES IN BREVARD COUNTY

(VALID FOR 60 DAYS)
01/16/2002-03/16/2002

UTILITY NAME

MANAGER

BREVARD COUNTY

BURKIM ENTERPRISES, INC. (WS842)
2340 N.E. DIXIE HIGHWAY
JENSEN BEACH, FL 34957-5952

KEITH A. BURGE
(561) 334-3433

COLONY PARK UTILITIES, INC. (SU288)
1447 NEWFOUND HARBOR DRIVE
MERRITT ISLAND, FL 32952-2854

LENORE WARREN
(407) 453-1400

EAST CENTRAL FLORIDA SERVICES, INC. (WU643)
1700 13TH STREET, SUITE 2
ST. CLOUD, FL 34769-4300

JAMES B. PAYNE
(407) 957-6744

FLORIDA CITIES WATER COMPANY (BAREFOOT BAY DIVISION) (WS007)
4837 SWIFT ROAD, SUITE 100
SARASOTA, FL 34231-5157

LARRY GOOD
(407) 933-5514

FLORIDA WATER SERVICES CORPORATION (WU561)
P O BOX 609520
ORLANDO, FL 32860-9520

FREDERICK W. LEONHARDT
(407) 598-4152

NORTHGATE PROPERTIES, INC. (WS172)
3277 FIRST AVENUE
MIMS, FL 32754-3134

LESTER GROOMS
(904) 428-0094

PINE LAKE MOBILE HOME ESTATES, INC. (SU698)
2505 EBER BLVD.
MELBOURNE, FL 32904-8848

MARY DARRELL
(407) 723-2754 OR -2125

SAN SEBASTIAN WATER, LLC (WU388)
7900 FOX CREEK TRAIL
FRANKTOWN, CO 80116-9670

WILLIAM F. MCCAIN
(561) 770-1093

SERVICE MANAGEMENT SYSTEMS, INC. (WS571)
235 HAMMOCK SHORE DRIVE
MELBOURNE BEACH, FL 32951-3941

JAMES BATES
(407) 723-2522

LIST OF WATER AND WASTEWATER UTILITIES IN BREVARD COUNTY

(VALID FOR 60 DAYS)
01/16/2002-03/16/2002

UTILITY NAME

MANAGER

GOVERNMENTAL AGENCIES

CLERK, BOARD OF COUNTY COMMISSIONERS, BREVARD COUNTY
P. O. BOX 999
TITUSVILLE, FL 32781-0999

DEP CENTRAL DISTRICT
3319 MAGUIRE BLVD., SUITE 232
ORLANDO, FL 32803-3767

EAST CENTRAL FLORIDA PLANNING COUNCIL
1011 WYMORE ROAD, SUITE 105
WINTER PARK, FL 32789

MAYOR, CITY OF CAPE CANAVERAL
P. O. BOX 326
CAPE CANAVERAL, FL 32920-0326

MAYOR, CITY OF COCOA
P. O. BOX 1750
COCOA, FL 32923-1750

MAYOR, CITY OF COCOA BEACH
UTILITIES DIRECTOR
P. O. BOX 322430
COCOA BEACH, FL 32932-2430

MAYOR, CITY OF INDIAN HARBOUR BEACH
2055 SOUTH PATRICK DRIVE
INDIAN HARBOUR BEACH, FL 32937-4447

MAYOR, CITY OF MELBOURNE
900 EAST STRAWBRIDGE AVENUE
MELBOURNE, FL 32901-4739

LIST OF WATER AND WASTEWATER UTILITIES IN BREVARD COUNTY

(VALID FOR 60 DAYS)
01/16/2002-03/16/2002

UTILITY NAME

MANAGER

MAYOR, CITY OF PALM BAY
120 MALABAR ROAD, S.E.
PALM BAY, FL 32907-3009

MAYOR, CITY OF ROCKLEDGE
P. O. BOX 488
ROCKLEDGE, FL 32955

MAYOR, CITY OF SATELLITE BEACH
565 CASSIA BLVD.
SATELLITE BEACH, FL 32937-3197

MAYOR, CITY OF TITUSVILLE
P. O. BOX 2806
TITUSVILLE, FL 32781-2806

MAYOR, CITY OF WEST MELBOURNE
2285 MINTON ROAD
WEST MELBOURNE, FL 32904-4916

MAYOR, TOWN OF INDIALANTIC
216 FIFTH AVENUE
INDIALANTIC, FL 32903-3199

MAYOR, TOWN OF MALABAR
2725 MALABAR ROAD
MALABAR, FL 32950-1427

MAYOR, TOWN OF MELBOURNE BEACH
507 OCEAN AVENUE
MELBOURNE BEACH, FL 32951-2523

MAYOR, TOWN OF MELBOURNE VILLAGE
555 HAMMOCK ROAD
MELBOURNE VILLAGE, FL 32904-2513

LIST OF WATER AND WASTEWATER UTILITIES IN BREVARD COUNTY

(VALID FOR 60 DAYS)
01/16/2002-03/16/2002

UTILITY NAME

MANAGER

MAYOR, TOWN OF PALM SHORES
151 PALM CIRCLE
PALM SHORES, FL 32940-7209

ST. JOHNS RIVER WTR MANAGEMENT DISTRICT
P.O. BOX 1429
PALATKA, FL 32178-1429

STATE OFFICIALS

STATE OF FLORIDA PUBLIC COUNSEL
C/O THE HOUSE OF REPRESENTATIVES
THE CAPITOL
TALLAHASSEE, FL 32399-1300

DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES
FLORIDA PUBLIC SERVICE COMMISSION
2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FL 32399-0850

NOTICE

EXHIBIT "H"

February __, 2002
NOTICE OF APPLICATION FOR TRANSFER
OF WASTEWATER CERTIFICATE AND FACILITIES

IRD Osprey, LLC d/b/a Aquarina Utilities, 7860 Peters Road, Suite F-111, Plantation, Florida 33324, pursuant to Section 367.071, Florida Statutes, hereby notices its intent to apply to the Florida Public Service Commission for Transfer of Certificate and Facilities of Service Management Systems, Inc. to provide water and wastewater services to the following described territory located in Brevard County, Florida:

Order No. 22075 - Water and Wastewater Service Area

The Hammock Condominium
Township 29 South, Range 38 East, In Section 36

From the Northwest corner of Section 36 run East along the North Section line 2,900 feet to the East right-of-way line of State Road No. A1A; thence run South 26 51'00" East 1,980 feet along the East right-of-way line of State Road No. A1A. This point also known as the Southeast corner of said Lot 1. From the Southeast corner of said Lot 1, thence run South 68 33'54" West along the Southerly boundary of said Lot 1 for 917.97 feet to the Point of Beginning of the following described parcel; thence continue South 68 33'54" West a distance of 224.55 feet; thence run North 26 09'57" West a distance of 233.68 feet; thence run North 63 50'03" East a distance of 127.83 feet to a point of curvature of a circular curve, concave to the Southeast and having a radius of 118.0 feet; thence run Northeasterly along the arc of said curve through a central angle of 06 34'42" an arc distance of 13.44 feet to a point of tangency; thence run North 70 21'45" East a distance of 110.59 feet; thence run South 19 38'45" East a distance of 240.42 feet to the Point of Beginning.

Also, from the Northwest corner of Section 36 run East along the North section line 2,900 feet to the East right-of-way line of State Road No. A1A; thence run South 26 51'00" East 1,980 feet along the East right-of-way line of State Road No. A1A. This point also known as the Southeast corner of said Lot 1. Commence at the Southeast corner of said Lot 1; thence South 68 33'54" West a distance of 1,482.99 feet, thence run North 01 38'06" East a distance of 295.81 feet to the Point of Beginning of the following described parcel; thence continue North 01 38'06" East a distance of 187.16 feet, thence run South 83 21'54" East a distance of 235.37 feet to a point of curvature of a circular curve, concave to the East and having a radius of 120.0 feet bearing North 67 46'27" West from the center of the next described curve; thence Southerly along the arc of said curve through a central angle of 48 23'30" an arc distance of 101.35 feet to a point of tangency, thence run South 26 09'57" East a distance of 22.12 feet; thence run South 63 50'03" West a distance of 155.27 feet to a point of curvature of a circular curve concave to the North and having a radius of 112.0 feet; thence run Westerly along the arc of said curve through a central angle of 48 45'15" an arc distance of 95.30 feet to a point of tangency; thence run North 67 24'43" West a distance of 23.81 feet to the Point of Beginning.

The service description is also described as follows: Phase I of the Hammock Condominium, units 101 thru 309.

Order No. 23059 - Water and Wastewater Service Area

Aquarina Planned Unit Development - Government Lot 4 and 5, Section 25, Township 29 South, Range 38 East, Brevard County, Florida, less the right of way for State Road A1A; and Government Lot 1, Section 35, Township 29 South, Range 38 East, Brevard County, Florida; and Government Lots 1, 2 and 3, Section 36, Township 29 South, Range 38 East, Brevard County, Florida, less the right of way for State Road A1A, the South 50.00 feet of said Government Lots 1, 2 and 3 lying West of State Road A1A, and that portion of said Government Lot 1 parallel with and adjacent to the existing West right of way line of State Road A1A to a depth of 20.00 feet (196.9 Acres ±)

Also described as:

In Township 29 South, Range 38 East, Sections 25, 35 and 36 in Brevard County.

From the NW corner of Section 36, Township 29 South, Range 38 East, Brevard County also known as the point of beginning, run due North along the West line of the Southwest quarter of Section 25 a distance of 1,600 feet more or less. From said point run due East along the North line of Government Lots 4 and 5 less the right-of-way for State Road A1A a distance of 3,300 feet more or less to a point located on the West Bank of the Atlantic Ocean. From said point run Southeasterly along the bank of the Atlantic Ocean a distance of 4,000 feet more or less to a point being the Southeast corner of Government Lot 1. From said point run due West along the South line of Government Lot 1, 2 and 3 less the right-of-way for State Road A1A a distance of 4,500 feet more or less to a point on the East Bank of the Indian River. From said point run Northwesterly parallel with the East Bank of the Indian River to a point located on the North line of Section 35, Township 29 South, Range 38 East in Brevard County. From said point run due East along the North line Of Section 35 a distance of 400 feet more or less to the Point of Beginning.

Order No. PSC-92-0119-FOF-WS

The following described lands located in Brevard County, Florida:

Water

A portion of Section 36, Township 29 South, Range 38 East, Section 31, Township 29 South, Range 38 East and Section 6, Township 30 South, Range 39 East, Section 1, Township 30 South, Range 39 East, Brevard County, Florida being more particularly described as follows:

From the Northwest Corner of said Section 36 run Easterly along the North line of said Section 36 a distance of 2,985 feet more or less to the centerline of State Road A1A; thence run Southeasterly along the centerline of State Road A1A 1,520 feet more or less to the intersection of the North line of Government Lot 6, Section 36, Township 29 South, Range 38 East, with the Centerline of State Road A1A, being the Point of Beginning of the herein described parcel; thence run Easterly along the North line of said government Lot 6 a distance of 300 feet more

or less to the mean high water line of the Atlantic Ocean; thence run Southeasterly along said mean high water line thru said Sections 36, 31 and 6 a distance of 9,100 feet more or less to the South line of Government Lot 3 of said Section 6, Township 30 South, Range 39 East; thence departing said mean high water line run Westerly along the South line of said Government Lot 3 a distance of 1,550 feet more or less to the mean high water line of the Indian River; thence run Northwesterly along said mean high water line 13,300 feet more or less to the North line of Government Lot 4, of said Section 36, Township 29 South, Range 38 East; thence run Easterly along the North lines of Government Lots 4, 5 and 6 of said Section 36 a distance of 3,300 feet more or less to the Point of Beginning.

Less and Except "The Hammock Condominium I", being a portion of Government Lots 5 and 6 of Said Section 36, Township 29 South, Range 38 East, being described in Official Records Book 2732, Page 1060 of the Public Records of Brevard County, Florida.

Water and Wastewater

A Portion of Lot 1, Sunnyland Groves Subdivision, according to the Plat thereof as recorded in Plat Book 9, Page 42, Public Records of Brevard County, Florida, being a Portion of Government Lots 5 and 6, Section 36, Township 29 South, Range 38 East, being more particularly described as follows:

From the Northwest Corner of said Section 36 run Easterly along the North line of said Section 36 a distance of 2,985 feet more or less to the Centerline of State Road A1A; thence run Southeasterly along the Centerline of State Road A1A 1,835 feet more or less; thence run South 68 33'54" West, along the Easterly extension of the Southerly line of said Lot 1 and the Southerly line of said Lot 1, 968.19 feet to the Point of Beginning of the following described parcel; thence continue South 68 33'54" West a distance of 224.55 feet; thence run North 26 09'57" West a distance of 233.68 feet; thence run North 63 50'03" East a distance of 127.83 feet to a point of curvature of a circular curve, concave to the Southeast and having a radius of 118.0 feet; thence run Northeasterly along the arc of said curve through a central angle of 06 31'42" an arc distance of 13.44 feet to a Point of Tangency; thence run North 70 21'45" East a distance of 110.59 feet; thence run South 19 38'15" East a distance of 240.42 feet to the Point of Beginning.

Containing 1.31 Acres, more or less, and less any reservations, dedications, or easements of record.

Wastewater

A portion of Section 25, Township 29 South, Range 38 East and Section 26, Township 29 South, Range 38 East, Brevard County, Florida being more particularly described as follows:

From the Northwest Corner of said Section 25 run Southerly along the West line of said Section 25 a distance of 2,640 feet more or less to the Southwest corner of Government Lot 2 and the Point of Beginning of the herein described parcel; thence run Northerly along the West line of said Government Lot 2 a distance of 1,320 feet more or less to the Northwest corner of said Government Lot 2; thence run Easterly along the North line of said Government Lot 2 a distance of 1,300 feet more or less to the mean high water line of the Atlantic Ocean, thence run Southeasterly along said mean high water line thru said Government Lot 2 and Government Lot 3, of said Section 25 a distance of 3,100 feet more or less to the South line of Government Lot 3 of said Section 25; thence departing said mean high water line run Westerly along the South line of said Government Lot 3 a distance of 2,700 feet more or less to the Southeast corner of Government Lot 3 of the aforesaid Section 26; thence continue Westerly along the South line of said Government Lot 3, Section 26 a distance of 1,270 feet more or less to the mean high water line of Mullet Creek; thence run Northwesterly along said mean high water line 1,750 feet more or less to the North Line of Government Lot 11 of said Section 26; thence departing said mean high water line run Easterly along the North line of said Government Lots 11 and 3, Section 26 a distance of 2,400 feet more or less to the Point of Beginning.

Together with a Portion of Section 36, Township 29 South, Range 38 East, Brevard County, Florida being more particularly described as follows;

From the Northwest corner of said Section 36 run Easterly along the North line of said Section 36 a distance of 2,985 feet more or less to the centerline of State Road A1A; thence run Southeasterly along the centerline of State Road A1A 1,520 feet more or less to the intersection of the North line of Government Lot 6 of said Section 36 with the Centerline of State Road A1A being the Point of Beginning of the herein described parcel; thence run Easterly along the North line of said Government Lot 6 a distance of 300 feet more or less to the mean high water line of the Atlantic Ocean; thence run Southeasterly along said mean high water line thru Government Lots 6 and 8 of said Section 36 a distance of 3,050 feet more or less to the South line of said Government Lot 8; thence departing said mean high water line run Westerly along the South line of said Government Lot 8 a distance of 700 feet more or less to the mean high water line of the Indian River; thence run Northwesterly along said mean high water line 5,700 feet more or less to the North line of Government Lot 4 of said Section 36; thence run Easterly along the North lines of Government Lots 4, 5, and 6 of said Section 36 a distance of 3,300 feet more or less to the Point of Beginning.

Less and except "The Hammock Condominium I", being a portion of Government Lots 5 and 6 of said Section 36, Township 29 South, Range 38 east, being described in Official Records Book 2732, Page 1060 of the Public Records of Brevard County, Florida.

The original territory as described in Order No. PSC-92-0119-FOF-WS, issued in March of 1992 contained a minor scrivener's error which has been corrected in the above-referenced description, and which will be corrected in a subsequent PSC Order. Any objections to the Application must be made in writing and filed with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, with copy to F. Marshall Deterding, Esquire, Rose, Sundstrom & Bentley, 2548 Blairstone Pines Drive, Tallahassee, Florida 32301, no later than 30 days after the last date that the Notice was mailed or published, whichever is later.